

In Chamber

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 2497 of 2019

Petitioner: Rajat Gangwar

Respondents: State of U.P. and others

Counsel for Petitioner: Kunal Shah, Abhinav Bhattacharya

Counsel for Respondents: Nimai Das, SC

Hon'ble Sudhir Agarwal, J.

Hon'ble Rajeev Misra, J.

1. Heard Sri Kunal Shah and Sri Abhinav Bhattacharya, Advocates for petitioner and Sri Nimai Das, learned Additional Chief Standing Counsel assisted by Sri B.P. Singh Kachhawah, Standing Counsel for respondents.

2. Petitioner-Rajat Gangwar, has filed this writ petition claiming himself to be an Advocate registered with U.P. Bar Council, Enrollment No. U.P. (G) 6734/2014 and Advocate on Roll No. 1494/2016, practicing with Sri Mohd. Arif Khan, Senior Advocate and Sri Amrendra Nath Tripathi, Advocate, at Lucknow.

3. The writ petition has been filed as Public Interest Litigation (*hereinafter referred to as 'PIL'*) with following prayer:

“(a) Issue a writ, order or direction in the nature of a mandamus directing the Respondents to formulate guidelines for grant of permission of peaceful demonstrations after taking into consideration the competing interests of various stakeholders.

*(b) Issue a suitable order for setting up of Claims Commissioner in the light of the guidelines stipulated by the Hon'ble Supreme Court in **Destruction of Public and Private Properties v. State of A.P. and Others (2009) 5 SCC 212.***

(c) Issue a writ, order or direction in the nature of a mandamus directing the Respondents to upload information on accessible electronic database with respect to detainees who have been arrested in the aftermath of the protests that ensued in the State

of Uttar Pradesh after the enactment of Citizenship Amendment Act, 2019, status reports of the investigation/trials and provide visitation rights to their lawyers and friends, as per law.

(d) Issue any other suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;

4. Petitioner claims to espouse the cause of residents of State of U.P. including peaceful protesters, persons who have suffered loss of property and life due to protests, turning violent, and injured police personnel of State of U.P. Petitioner also seeks enforcement of various guidelines laid down by Supreme Court in **In Re: Destruction of Public and Private Properties vs. State of Andhra Pradesh and others, 2009(5) SCC 212; Mazdoor Kisan Shakti Sangathan vs. The Union of India (UOI) and Ors., AIR 2018 SC 3476**; and, **Kodungallur Film Society and Ors. vs. Union of India (UOI) and Ors., 2018(10) SCC 713**.

5. Brief facts stated in the writ petition are that, on 19.07.2016 Citizenship (Amendment) Bill, 2016 was introduced in Lok Sabha and on 12.08.2016 it was referred to Joint Parliamentary Committee. It was passed by Lok Sabha on 08.01.2019 but due to dissolution of Lok Sabha, Bill lapsed. Later on Citizenship (Amendment) Bill 2019 was introduced on 09.12.2019 in 17th Lok Sabha and passed on 10.12.2019. On 11.12.2019 Rajya Sabha also passed Bill. It received assent of President of India on 12.12.2012 and became Citizenship (Amendment) Act, 2019 (*hereinafter referred to as “CAA, 2019”*). It is also stated in Para 15 of writ petition that vires of CAA, 2019 has been challenged before Supreme Court by filing writ petitions under Article 32 of Constitution of India. On 18.12.2019 Supreme Court issued notices and has fixed 22.01.2020 for hearing. In the meantime several protests ensued across the country which included protests held at Jamia Millia Islamia University, Delhi (*hereinafter referred to*

as 'JMIU') and Aligarh Muslim University, Aligarh (*hereinafter referred to as 'AMU'*). In State of U.P. also similar protests ensued at Lucknow on 19.12.2019 which turned violent resulting in damage to public property as also loss of life and injuries to several persons. Print and Electronic Media have reported information of spreading of similar protests which turned violent in different cities of State of U.P., i.e., Aligarh, Meerut, Muzaffarnagar, Bijnor, Bulandshahr, Kanpur, Rampur, Gorakhpur and Varanasi, wherein about 17 persons lost their life, to the best knowledge of petitioner. Police outpost and several private and government movable and immovable properties were vandalized and set ablaze. At some places stone pelting and firing by belligerent protesters also took place. District authorities imposed restrictions under Section 144 Cr.P.C. but violating the same various protests which turned violent were raised. Protests continued at different places in State of U.P. As per newspaper report the restrictions under Section 144 Cr.P.C. imposed on 20.12.2019 have been extended upto 31.01.2020. Chief Minister is also reported to have stated that no permission was granted by State authorities to anyone to observe protest amidst operation of restriction under Section 144 Cr.P.C. Similar statement was made by Director General of Police, State of U.P. (*hereinafter referred to as 'DGPUP'*). It is further stated that though petitioner does not dispute that requirement of prior permission to exercise fundamental rights of peaceful protests and peaceful assembly guaranteed under Article 19(1)(a) and 19(1)(b) of Constitution of India is valid restriction, but respondents-authorities under the garb of restrictive orders, passed under Section 144 of Cr.P.C., cannot scuttle, efface or throttle fundamental rights of peaceful protesters and demonstrators. Their exists a duty on the part of State to balance competing interest i.e. rights under Article 19(1)(a) and 19(1)(b) of citizens vis-a-vis duty of State to maintain law and public order. It is to be undertaken in the manner as stated by Supreme

Court in Para 29 of the judgments in **Ramlila Maidan Incident vs. Home Secretary, Union of India (UOI) and Ors., 2012(5) SCC 1; In Re: Destruction of Public and Private Properties vs. State of Andhra Pradesh (supra); Mazdoor Kisan Shakti Sangathan vs. The Union of India (supra); and, Kodungallur Film Society and Ors. vs. Union of India (supra)**. State is under a dual obligation to bolster and foster fundamental rights of citizens under Article 19 of Constitution. At the same time, it is under an obligation to ensure public order, tranquility and social order. Rights of citizens can be regulated with reasonable restrictions but cannot be prohibited altogether. However, State has failed in its obligation to secure law and order and protect fundamental rights of citizens inasmuch as State Government did not conceive of any guidelines qua granting/refusal of permission in the wake of operation of orders under Section 144 Cr.P.C. State has failed to conceptualize guidelines for granting permission and regulating protesters. It is imperative upon State, as a part of regulative measures, to demarcate area, time slot of protest, identification etc. of protesters and credentials thereof, before grant of any permission for observing protests, processions etc. State is also under obligation to deploy adequate security forces, provide medical facilities, drone photography/videography, availability of fire brigades etc. It is also obligatory to deploy requisite strength of water cannons to ensure peaceful procession and to overcome any untoward incident.

6. Some directions were issued in similar matter by a Division Bench of Madras High Court in **Writ Petition No. 36634 of 2019, Varaaki vs. Chief Secretary Tamil Nadu**, decided on 22.12.2019 and the same are relied in para 37 of the writ petition.

7. It is pleaded by petitioner in para 39 onwards that State of U.P. is engulfed in a very sorry state of affairs. There have been widespread destruction of public and private properties. The incident

of violence has continued unabated for the past a few days and have gripped various cities of State of U.P. The said demonstrations/protests have thrown public and private life and property in jeopardy. News of violence is continuing with each passing hour. Several police personnel, innocent citizens and protesters have sustained injuries. Some have lost lives. Public and private property have also been damaged by certain miscreants and anti-social elements. The miscreants have sabotaged peaceful protests and hindering the right of free speech of innocent citizens. They have also committed criminal acts qua private and public properties. It is imperative upon Government to assess damages caused to public and private property, by appointing a Claims Commissioner and thereafter to make investigation into the liability. Print and Electronic Media report shows that respondents have started identification of miscreants and to recover loss of public and private property, fixing liability and recovering the amount of damages. However, a road map or procedure qua assessment of damages has to be prepared in the light of guidelines laid down by Supreme Court in **In Re: Destruction of Public and Private Properties vs. State of Andhra Pradesh (supra)**.

8. Petitioner has also stated in Para 46 that respondents must upload information on accessible electronic database with respect to the detainees and provide visitation rights to their lawyers, family members and friends, as per law. Respondents-authorities after the protest turned violent instead of devising a mechanism and participating with persons organising protests, have started a massive unprecedented crackdown on activists and other persons, arresting and detaining several of them. A number of activists including lawyers have also been detained by respondents.

9. Petitioner claims to have received telephonic calls in the

evening of 21.12.2019, stating that some activists of Peoples Union for Civil Liberties (*hereinafter referred to as 'PUCL'*) have been arrested and detained in Lucknow and Muzaffarnagar.

10. One Mohd. Shoaib, Advocate was detained in Lucknow by respondents and his whereabouts were not known to his kith and kin, resulting into filing of Habeas Corpus Writ Petition No. 36848 of 2019 before Lucknow Bench of this Court, wherein an order was passed on 21.12.2019 (copy of the said order has been placed on record as Annexure 9 to the writ petition). In Para 51 of the writ petition, it is stated that petitioner has received information from colleagues and other persons that various persons detained are facing similar predicaments and their whereabouts are not known to their kiths and kins. In this regard, a reference is made to the cases of Shamim Ahmad, Shavez Ahmad, Abdul Hafez and Ibad Ahmad, whose whereabouts have not been communicated to their kiths and kins and in this regard, a letter dated nil (Annexure 10 to the writ petition) has been submitted by one Raees Jahan, wife of Irshad Ahmad to the District Magistrate, Lucknow. In this backdrop, it has been prayed that directions be issued as prayed in the writ petition, which we have quoted above.

11. Learned counsel for petitioner contended that peaceful protest and assembly is a part of fundamental right of speech and movement. Though reasonable restrictions may be imposed but fundamental rights of protest and assembly or raising voice of dissent cannot be prohibited in an arbitrary manner. In the garb of taking action against protest march, which turned violent, State authorities cannot penalize innocent protesters, ignoring the fact that violent activities have been dominated by some miscreants and anti-social elements who have intruded the peaceful protests. Instead of identifying those miscreants and anti-social elements, State is illegally arresting and detaining

innocent people, attaching their properties, denying information, which they, under law, are bound to disclose, to their kith and kin. A large number of residents of State of U.P. are being denied their fundamental rights of free movement etc. at the pretext of arrest and detention. He further submitted that various guidelines and preventive actions which State authorities are obliged to observe in such circumstances as laid down by Supreme Court in various authorities are being ignored and blatantly, being violated. Since the number of such persons is so much that everyone cannot approach this Court, hence, this writ petition for protection of their rights in the hands of arbitrary and illegal action of the respondents.

12. Shri Nimai Das, learned Additional Chief Standing Counsel (*hereinafter referred to as 'ACSC'*) assisted by Shri B.P. Singh Kachhwahah, Standing Counsel, after receiving instructions, has stated that as on 25.12.2019 in all, 1022 persons have been arrested at different places and details thereof are as under :-

Sl.No.	District	Number of persons arrested
1.	Meerut	13
2.	Ghaziabad	62
3.	Muzaffarnagar	1
4.	Bareilly	63
5.	Pilibhit	10
6.	Amroha	10
7.	Bijnor	236
8.	Moradabad	2
9.	Rampur	50
10.	Sambhal	45
11.	Firozabad	24
12.	Aligarh	26

13.	Hathras	2
14.	Kanpur Nagar	24
15.	Fatehgarh	7
16.	Jhansi	4
17.	Lucknow	170
18.	Raebareilly	2
19.	Sitapur	19
20.	Ambedkarnagar	6
21.	Fatehpur	1
22.	Pratapgarh	5
23.	Hamirpur	8
24.	Deoria	17
25.	Gorakhpur	5
26.	Kushinagar	23
27.	Sant Kabir Nagar	1
28.	Gonda	1
29.	Bahraich	66
30.	Varanasi	68
31.	Jaunpur	3
32.	Azamgarh	13
33.	Mau	20
34.	Bhadohi	15
	Total	1022

13. He has also placed before us a copy of letter dated 26.12.2019 sent by the Additional Chief Secretary (Home) (*hereinafter referred to as 'Add. CS (Home)'*) to the District Magistrates of Lucknow, Meerut, Hapur, Saharanpur, Rampur, Firozabad, Kanpur Nagar, Muzaffarnagar, Mau, Aligarh, Gorakhpur and Bulandshahar, directing them to make assessment of loss of public and private property and

take action for recovery of damages from responsible protesters causing such damage, in accordance with Government Order dated 27.04.2011, which was issued pursuant to Supreme Court's judgment in **In Re: Destruction of Public and Private Properties vs. State of Andhra Pradesh (supra)** and this Court's judgment in **Mohammad Shujauddin vs. State of U.P. and others, 2011(1) ADJ 63**. Learned ACSC further stated that after making due identification of guilty persons i.e. after collecting video clipping, photographs etc. which have been prepared by individual residents of the affected area, media and police authorities etc., notices are being sent to those persons who are identified *prima facie*, giving them opportunity to reply and thereafter, appropriate action is under process. He clearly stated that without proper identification and ascertaining involvement of individual in destructive activities, causing damage to public and private property etc., no action would be taken by State against any individual who is otherwise innocent. Every care and precaution, as far as possible, to the highest extent, is being taken by State authorities in ensuring this objective.

14. We have heard parties at length. The entire genesis of dispute raised in this writ petition is Citizenship Act, 1955 (*hereinafter referred to as 'Act, 1955'*) and amendment made therein *vide* CAA, 2019. It would, therefore, be appropriate to have a glimpse of aforesaid statute.

15. Part-II of Constitution of India deals with subject of 'Citizenship'. It has Articles 5 to 11. Article 5 provides that at commencement of this Constitution, every person who has his domicile in territory of India and (a) was born in the territory of India; or (b) either of whose parents was born in the territory of India; or (iii) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a

citizen of India.

16. Therefore, every person who had his domicile in territory of India and born before 26th January, 1950 or any of his parents was born in the territory of India or the individual was residing in territory of India for a period not less than five years before 26th January, 1950, shall be a citizen of India. This is 'Citizenship' conferred by Article 5 at the commencement of Constitution.

17. The term "territory of India" has been defined in Article 1. Article 6 talks of citizenship of such persons who migrated to India from Pakistan. Giving overriding effect over Article 5, Article 5 provides that a person who has migrated to territory of India from territory now included in Pakistan, shall be deemed to be a citizen of India at the commencement of Constitution if (i) he or either of his parents or any of his grandparents was born in India, as defined in Government of India Act, 1935 (as originally enacted); and (ii) in case where such person has so migrated before 19th July, 1948, he has been ordinarily resident in territory of India since the date of his migration; or in the case where such person has so migrated on or after 19th July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by Government of the Dominion of India on an application made by him therefor to such officer before the commencement of Constitution in the form and manner prescribed by Government.

18. There is a proviso also that no person shall be so registered unless he has been resident in territory of India for at least six months immediately preceding the date of his application.

19. Article 7 talks of rights of citizenship of certain migrants to Pakistan after 1st March, 1947. It is stated that a person, who has after 1st March, 1947, migrated from territory of India to territory now included in Pakistan, shall not be deemed to be a citizen of India.

There is a proviso, however, providing that a person who had so migrated to Pakistan, but then returned to territory of India under a permit for resettlement or permanent return issued by or under the authority of any law, every such person shall, for the purposes of Article 6 (b), be deemed to have been migrated to territory of India after 19th July, 1948. Article 7 has been given overriding effect over Articles 5 and 6 both.

20. Article 8 talks of right of citizenship to certain persons of Indian origin residing outside India. Article 9 talks of loss of citizenship of India if any person has voluntarily acquired citizenship of any foreign State. Article 10 provides that every person who is or is deemed to be a citizen of India under any of the provisions of Part-II of Constitution, shall, subject to the provisions of any law that may be made by Parliament, continue to be such citizen. Article 11 provides that nothing in the foregoing provisions of Part-II shall derogate from the power of Parliament to make any provision with respect to acquisition and termination of citizenship and all other matters relating to citizenship.

21. Considering the above provision, in **State of U.P. and others vs. Shah Mohammed and others, (1969) 1 SCC 771**, Court held that Constitution does not intend to lay down a permanent or comprehensive law relating to citizenship of India. Power to enact such a law is left to Parliament and it is not fettered by Articles 5 to 10. It is competent for Parliament, in exercise of power conferred by Article 11, to take away or effect citizenship already acquired under other articles of Part-II of the Constitution. This is what was also held in **Izhar Ahmad Khan vs. Union of India, 1962 AIR 1052**.

22. Entry 17, list I Schedule VII of Constitution provides subject of “Citizenship, naturalisation and aliens” and thus, power to make law in respect of citizenship is within the ambit of Parliament.

23. In exercise of aforesaid power, Parliament enacted Act, 1955. Section 3 of Act, 1955 deals with the subject of 'Citizenship by birth'; Section 4 talks of 'Citizenship by descent'; Section 5 provides 'Citizenship by registration' and Section 6 deals with 'Citizenship by naturalisation'. Section 8 confers power upon any citizen to renounce citizenship and Section 9 talks of termination of citizenship. Section 10 talks of 'Deprivation of citizenship' in certain cases. Section 13 makes a provision for Certificate of Citizenship in case of doubt, which can be issued by Central Government. It provides that such certificate, when issued, shall be conclusive evidence that person was citizen on date of such certificate, but this is without prejudice to any evidence that he was such a citizen at an earlier date. Section 16 confers power upon Central Government to delegate its powers, except Sections 10 and 18, to such officer or authority as may be so specified. Section 18 confers power of making rules upon Central Government.

24. Initially, there were four Schedules appended to Act, 1955, but First and Fourth Schedule having already been omitted, now, there remained only two schedules i.e. Second and Third Schedule. The Third Schedule provides qualifications for naturalisation i.e. in the context of subject of citizenship governed by Section 6(1) of Act, 1955.

25. After initial enactment, Act, 1955 has undergone four amendments vide Act 65 of 1985, Act 6 of 2004, Act 32 of 2005 and Act 1 of 2015.

26. The first amendment of 1985 i.e. Act 65 of 1985 was necessitated due to Memorandum of Settlement (Assam Accord) relating to foreigners' issue. It resulted in insertion of Section 6A, making special provisions as to citizenship of persons covered by Assam Accord.

27. The next amendment of 2004 was necessitated due to policy accepted by Central Government for providing dual citizenship to persons of Indian origin belonging to certain specified countries. It resulted in insertion of Sections 7A, 7B, 7C and 7D, which came into force on 3.12.2004, but these provisions have been substituted in order to give effect the later modified policy of Government of India by substitution of Section 7A to 7D w.e.f. 6.1.2015 *vide* Act 1 of 2015.

28. The amendment of 2005 i.e. Act 32 of 2005 resulted in omission of Clause 2(gg) and Fourth Schedule w.e.f. 28.06.2005.

29. The present amendment made in Act, 1955 i.e. CAA, 2019 has resulted in amendments of Section 2(1)(b) by insertion of a Proviso, insertion of Section 6B, insertion of Clause (da) in Section 7D and also insertion of Proviso after Clause (f) in Section 7D. It has also inserted Clause (eei) in Section 18 (2) and a Proviso in Clause (d) of Third Schedule.

30. Section 2(b) of Act, 1955 defines “illegal migrant”. Earlier provision was substituted by Act 6 of 2004 w.e.f. 3.12.2004, replacing Clause (b) and (c) and Proviso, as existed earlier. Initially, Section 2 (b) and (c) read as under :-

“(b) "citizen", in relation to a country specified in the First Schedule, means a person who, under the citizenship or nationality law for the time being in force in that country, is a citizen or national of that country;

“(c) "citizenship or nationality law", in relation to a country specified in the First Schedule, means an enactment of the Legislature of that country which at the request of the Government of that country, the Central Government may, by notification in the Official Gazette, have declared to be an enactment making provisions for the citizenship or nationality of that country:” (emphasis added)

31. The aforesaid Clauses (b) and (c) of Section 2 were substituted

by Clause (b) w.e.f. 3.12.2004 and it reads as under :-

(b) “illegal migrant” means a foreigner who has entered into India—

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time; (emphasis added)

32. Now, after Section 2(b)(i), a Proviso has been inserted by CAA, 2019 and it reads as under :-

“Provided that any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian community from Afghanistan, Bangladesh or Pakistan, who entered into India on or before 31st day of December, 2014 and who has been exempted by the Central Government by or under clause (c) of sub-section (2) of section 3 of the Passport (Entry into India) Act, 1920 or from the application of the provisions of the Foreigners Act, 1946 or any rule or order made thereunder, shall not be treated as illegal migrant for the purposes of this Act;” (emphasis added)

33. Section 6B has been inserted for making special provisions as to citizenship of person covered by proviso to clause (b) of sub-section (1) of Section 2 and it reads as under :-

“6B. (1) The Central Government or an authority specified by it in this behalf may, subject to such conditions, restrictions and manner as may be prescribed, on an application made in this behalf, grant a certificate of registration or certificate of naturalisation to a person referred to in the proviso to clause (b) of sub-section (1) of section 2.

(2) Subject to fulfilment of the conditions specified in section 5 or the qualifications for naturalisation under the provisions of the Third Schedule, a person granted the certificate of registration or certificate of naturalisation under

sub-section (1) shall be deemed to be a citizen of India from the date of his entry into India.

(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2019, any proceeding pending against a person under this section in respect of illegal migration or citizenship shall stand abated on conferment of citizenship to him:

Provided that such person shall not be disqualified for making application for citizenship under this section on the ground that the proceeding is pending against him and the Central Government or authority specified by it in this behalf shall not reject his application on that ground if he is otherwise found qualified for grant of citizenship under this section:

Provided further that the person who makes the application for citizenship under this section shall not be deprived of his rights and privileges to which he was entitled on the date of receipt of his application on the ground of making such application.

(4) Nothing in this section shall apply to tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule to the Constitution and the area covered under "The Inner Line" notified under the Bengal Eastern Frontier Regulation, 1873. (emphasis added)

34. A perusal of Section 6B(4) shows that it has not been extended to tribal area of Assam, Meghalaya, Mizoram and Tripura as included in Sixth Schedule of Constitution and also to area covered under "The Inner Line" notified under Bengal Eastern Frontier Regulation, 1873.

35. Section 7D of Act, 1955 conferred power upon Central Government to cancel registration granted under Section 7A(1) to Overseas Citizen of India cardholders. Such power can be exercised by Central Government if it is satisfied that the conditions provided in Clauses (a) to (f) mentioned therein exist. By inserting clause (da), one more such condition has been provided in Section 7D. Further, at the end of Section 7D i.e. after Clause (f), a Proviso has been inserted

that no order shall be passed under Section 7D without giving reasonable opportunity of being heard to the persons concerned i.e. Overseas Citizen of India cardholders. Section 18 is Rule-making power conferred upon Central Government and by inserting Clause (eei) in sub-Section (2) of Section 18, one more subject has been added in respect whereof rules can be framed by Central Government. Clause (eei) reads as under :-

“(eei) the conditions, restrictions and manner for granting certificate of registration or certificate of naturalisation under sub-section (1) of Section 6B;”

36. As we have already said that Third Schedule deals with qualification for naturalisation with reference to Section 6(1) of Act, 1955. By inserting a Proviso in Clause (d), a modified qualification has been provided with respect to period of residence or service of Government in India and instead of 11 years provided in Clause (d), it has been reduced to 5 years for the category of persons mentioned in said proviso.

37. The statement of object and reasons for CAA, 2019 provides that in order to give protection to the persecuted members of certain minority communities in the three countries, namely, Pakistan, Bangladesh and Afghanistan, amendments have been made in Act, 1955 *vide* CAA, 2019.

38. Learned ACSC submitted that under the Constitution of India, people of India, the source of power of making Constitution, as a matter of policy, while contemplating equality in all respects to the residents of India, still have protected on certain aspects, rights of minorities by virtue of Articles 29 and 30 of Constitution. Similarly, Parliament in its policy of protecting certain minority communities of three neighbouring countries, who are being persecuted thereat on account of the fact that they are religious minorities in those countries,

have desired to provide protection to such persecuted persons and therefore aforesaid amendments have been made by CAA, 2019. He stated that earlier also, when dual citizenship to persons of Indian Origin was contemplated and given effect to by Amendment Act 6 of 2004, it was confined to Indians belonging to certain specified countries, but at that time also, persons of Indian Origin of Pakistan and Bangladesh were excluded. When Amendment Act 32 of 2005 was enacted, exclusion of Pakistan and Bangladesh continued for the purpose of dual citizenship. He urged that selection of countries was within the realm of Parliament and made in accordance with policy. This time, when three countries have been chosen, integral reason is to protect continuous persecution of members of certain minority communities in the aforesaid countries only on account of their being religious minorities.

39. However, We need not go in further details of this aspect for the reason that neither rational of the aforesaid amendment is up for consideration before this Court nor anything has been argued on this aspect, but reference to the aforesaid provisions have been made only to understand the backdrop of large-scale protest, agitation and processions which have erupted, giving rise to the present writ petition. We are also informed that Supreme Court is already ceased with this matter.

40. Learned counsel for the petitioners stated that protest and procession is against discriminatory amendment based on religion, inasmuch as, members of other religion residing in aforesaid three countries viz. Pakistan, Bangladesh and Afghanistan, who do not belong to religions mentioned in the provisions, added by way of amendment by CAA, 2019 have been singled-out, only on the ground of religion, which is not permissible in the Constitution and it is *per se* arbitrary and discriminatory, hence, to oppose this discrimination

founded only on religion, a large number of people at different places, have protested, taken out processions, which have resulted at some places, some violence and destructive activities. It is contended that petitioner is not, either supporting the amendment or opposing it; he is also not looking into genuineness of protest, march and processions taken out by individuals or groups of people, but what he is concerned about, is that every individual has a fundamental right of speech, assembly and movement and such fundamental right of individuals cannot be thwarted away by Executives by means of either resorting to restrictive provisions like Section 144 Cr.P.C. or by involving such individuals in various criminal cases, etc. He said that individual fundamental rights are being breached with impunity by resorting to illegal arrest and without following guidelines laid down by Supreme Court in the matters of arrest, etc. in **Joginder Kumar vs. State of U.P. and others 1994(4) SCC 260**, which read as under :

“1. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.”

41. Per contra, Sri Nimai Das, learned Additional Chief Standing Counsel stated that State has taken all precaution and care to protect fundamental right of every individual, but simultaneously, it has not allowed and cannot allow the so-called “protesters” to breach fundamental rights of other innocent peaceful residents. State is obliged to protect life, liberty including property of such people. State

is also obliged to ensure non-infringement of their fundamental rights of movement, speech, assembly, etc. by creating obstruction, destruction and damage in various ways by such Protesters. Individual rights of non protesters and also protecting their property involves fundamental rights of non-protesters. He said that State has made all attempts to keep a balance in maintaining all such rights, but where protesters and processionists have crossed the limit of lawful and peaceful protest and demonstration and their act has entered into the realm of offence or criminal activity, State Authorities are bound and they have actually intervened at that stage to prevent commission of offence or unlawful activities. Where breach of law has continued and went unabated, State has taken all permissible steps including detention and arrest of persons indulged in such activities. He stated that wherever necessary, even temporary detention was resorted to and as soon as its necessity disappeared, those detainees were immediately released. He said that after verification of various material in the form of electronic and other evidence, identity of the persons has been verified and thereafter, action has been taken, which includes imposition of damages and also initiating criminal proceedings. He said that procedure for assessment of damage to public and private property has been laid down in relevant Government Order and that is being strictly followed. Every care is being taken so that no innocent person, who is not indulged in the wrong activities, is harassed, penalised or otherwise involved in various proceedings. He said that the status of a person is of no relevance. Merely for the reason that a person is a professional or a businessman or serviceman etc. it would not guide the authorities to see whether they should act against him or not even if such individual is indulged in illegal and unlawful activities. Every violator of law has to be dealt with equally. The illustration given by petitioners about Mohd. Shoaib, Advocate arrested by police would not help the petitioner in any manner, for the

reason that a person even if an advocate, would not get a licence to indulge in unlawful, illegal and destructive activities. In order to enjoy own individual fundamental right of speech, movement, assembly, no person, even if he is an Advocate, has a licence, liberty or privilege to obstruct other innocent residents and citizens of State of U.P. in exercise of similar rights of their own self and property. If any property, public or private is damaged by anyone in the garb of exercising his fundamental right, such right ceases to be a valid exercise or enjoyment of fundamental right but becomes an illegal, unlawful activity, which is punishable and actionable in the manner provided in law.

42. The general propositions, as argued above on both sides, we find have consensus that fundamental right of speech and includes right of assembly or right of taking peaceful procession. A voice of dissent is fundamental in a democracy. A person, who raised his voice of dissent, cannot be held guilty of any illegal or unlawful activities so long as dissent is peaceful, maintains harmony, does not disturb public tranquility and also protects similar fundamental rights enjoyed by others, who are not part of such processions or protests. Further, if a person or group of persons, collect or gather in a large number, constitute a procession and take out such procession on public way, obstructing movement of others, they violate fundamental rights of others of free movement and therefore, such persons taking out processions are also under an obligation to take care that their exercise of fundamental right does not infringe fundamental rights of others as both have to be maintained and enjoyed simultaneously. Fundamental right of an individual or group of individuals cannot override similar fundamental rights of others, who are similarly situated, though not participants of such protest or procession. A march on public road has to take care that free movement of traffic is not obstructed, other

people's fundamental rights of movement is not obstructed, necessary services like ambulance, fire brigade, etc. are not obstructed. If any such obstruction takes place, it cannot be said that those, who are part and parcel of alleged protest or procession, are simply exercising their fundamental right, inasmuch as, exercise of fundamental right does not mean obstruction, defeat and infringement of fundamental rights of others. Further, those who carry out a procession on public road or public passage or path or public place, are responsible to ensure that no person i.e. the alleged miscreant or criminal element, intrude and become part of said procession or collection of such individuals protesting so as to cause any damage or destruction to public or private property. No defence is available to those who are collecting and not able to keep out such miscreants or criminal elements from becoming part of their own procession and thereby to contend that they have not done anything and it was responsibility of State to sift out those miscreants and criminal elements and detain them. When a group of persons is collected, it is their responsibility to identify a person who is not a member of their group, but has intruded their group and gets indulged in unlawful activities, for the reason that they better know, understand and identify members of their own group. If those who became part of a protest march, procession etc., claim that they do not identify each individual, still it is their responsibility to ensure maintenance of peace and tranquility else any action of one or more persons, who are part of such procession, whether with the knowledge of others or not, will make no difference and all who are part of said procession or protest march, etc. will be equally responsible. No one can claim that he can take out a procession with a gathering of hundreds of thousands persons, but still he has no liability or responsibility to ensure that such group or collection of people remain free from intrusion of miscreants. In our opinion, principle of **Rylands vs. Fletcher, (1868) 3 HL (LR) 330** can be

extended to such cases also and those who intentionally and knowingly do something which may turn out in a situation causing loss of damage to public or private property or otherwise, harassment to the members of general public, they are responsible for the consequences caused by their own act and cannot shift responsibility upon State.

43. So far as guidelines for taking out procession etc. are concerned, we find that State is responsible to maintain law and order. For this purpose, enough provisions are available under various statutes. Whenever necessary, Executive also has been provided statutory power of imposing restrictions, exercising power under Section 144 of Cr.P.C. No challenge to the validity of such restriction has been made in this case. Once restrictions are imposed, no one can claim that he, individually or collectively is entitled to breach such restrictions and still can claim that his action is lawful. Statutory Authority when exercises a statutory power and certain restrictions are imposed, such a statutory order is obligatory to be complied with by all concerned. No one can claim that with impunity such restriction can be violated, still he can claim immunity from legal action, for what has been done by him, individually or collectively.

44. At this stage, we find that petitioner has not placed on record any material to show that State has violated any statutory provision. This Court does not exercise its jurisdiction under Article 226 in absence of any cause of action or any reason to show that there is any infringement of legal or fundamental right of an individual or group of individual by the State. The stand taken by learned ACSC is very fair and we do not find infringement or even lack of transparency on the part of State, particularly when sufficient material is not on record to draw any otherwise inference or conclusion.

45. In our view, therefore, the relief sought by petitioner in the

present writ petition is not justified to be granted at this stage.

46. Writ petition is therefore **dismissed in limine**.

Order Date : 27.12.2019

I. Batabyal/AK/KA