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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 13276/2021 & CM APPL. 41889/2021**

VINEET JINDAL

..... Petitioner

Through: Mr. Raj Kishor Choudhary, Adv.

versus

UNION OF INDIA, MINISTRY OF INFORMATION AND  
BROADCASTING & ORS.

..... Respondents

Through: Mr. Chetan Sharma, ASG and Mr.  
Anil Soni, CGSC with Mr. Sahaj  
Garg, GP and Mr. Devesh Dubey,  
Adv. for respondent Nos. 1 to 3.  
Mr. Trideep Pais, Sr. Adv. with Ms.  
Radhika Kolluru and Ms. Sanya  
Kumar, Adv. for respondent No.4.  
Mr. S. G. Hasnain and Mr. Zafar  
Khurshid, Sr. Adv. with Mr. Bilal  
Anwar Khan, Mr. Aman Khullar, Mr.  
Aadil Singh Boparai and Ms. Lubna  
Naz, Adv. for respondent No.5.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**ORDER**

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**25.11.2021**

**CM APPL. 41890/2021 (For Exemption)**

Allowed, subject to all just exceptions.

The application stands disposed of.

**W.P.(C) 13276/2021 & CM APPL. 41889/2021**

1. This petition has been preferred seeking the following reliefs: -  
“(a) issue a writ in the nature of mandamus directing the respondent no. 1 to 3 to stop the circulation, sale, purchase and

publication of the book namely “sunrise over ayodhaya” written by the respondent no. 5 and published by the respondent no. 4 in any form, i.e., either printed or electronic, or

(b) issue any other appropriate writ, order or direction in the facts and circumstances of the case.”

2. The petitioner contends that the State respondents have been derelict in the discharge of their functions in failing to stop the circulation, sale, purchase and publication of the book “*Sunrise Over Ayodhya*” authored by the fifth respondent. Learned counsel would contend that the writings contained in the aforementioned work falls foul of Article 19 of the Constitution. On being queried further by the Court of how Article 19 could be said to have been violated and since undisputedly that Article to the contrary guarantees freedom of speech and expression, he chose to fall back on Article 19(2). The Court finds itself unable to appreciate this submission since the said constitutional provision empowers the State to impose a reasonable restriction which otherwise may not impinge upon the salutary rights conferred by the principal clause of that Article. In exercise of the powers conferred by Article 19(2), the State admittedly has framed and put in place numerous statutory safeguards to ensure that public order and peace is maintained. It was then contended that the publication and circulation of the work may result in the breach of public peace and harmony and this would clearly warrant the Court issuing the writs as prayed for.

3. At the outset it may be noted that the allegations levelled and apprehensions expressed are not based on a holistic reading of the work authored by the fifth respondent. In fact the book in its entirety was not even placed before the Court for its consideration. The entire writ petition rests

solely on certain extracts appearing in Chapter Six of the publication. Even that Chapter has not been placed in its entirety before this Court. The Supreme Court has consistently held that while dealing with challenges like the present, it is imperative for the petitioner to establish that upon a comprehensive consideration of the literary work, it is manifest that it would violate the restrictions which are recognized to apply to the exercise of literary freedom. Reiterating this settled principle the Supreme Court in **N. Radhakrishnan Vs. Union of India (2018) 9 SCC 725** observed: -

**30.** In *Samaresh Bose v. Amal Mitra* [*Samaresh Bose v. Amal Mitra*, (1985) 4 SCC 289 : 1985 SCC (Cri) 523] , the question that arose before this Court was whether the accused persons had committed an offence under Section 292 IPC. In the said case, an author had written a novel under the caption *Prajapati* which was published in *Sarodiya Desh*. The contention before the trial court was that the novel was obscene and both the accused persons, namely, the author and the publisher had sold, distributed, printed and exhibited the same. The accused persons who faced trial stood convicted. Their conviction was affirmed by the High Court. This Court, while dealing with the issue for the purpose of deciding the question of obscenity in any book, story or article, opined : (SCC pp. 313-14, para 29)

“29. ... The decision of the court must necessarily be on an objective assessment of the book or story or article as a whole and with particular reference to the passages complained of in the book, story or article. The court must take an overall view of the matter complained of as obscene in the setting of the whole work, but the matter charged as obscene must also be considered by itself and separately to find out whether it is so gross and its obscenity so pronounced that it is likely to deprave and corrupt those whose minds are open to influence of this sort and into whose hands the book is likely to fall. ...”

4. That then leaves the Court to consider whether the writ petition itself is liable to be entertained let alone notices being issued to the respondents here.

5. In the considered opinion of this Court, the freedom of speech and expression as conferred and guaranteed by Article 19 of the Constitution must be zealously protected by Courts unless it is conclusively established that the work would fall foul of the constitutional or statutory restrictions on the exercise of that right which apply. A democracy governed by the rule of law would be placed in serious peril if creative voices were stifled or intellectual freedom suppressed or suffocated. The freedoms guaranteed by Article 19 are not liable to be freely expressed only if they fall in line with a majoritarian view. The right to dissent or to have and express a contrarian view with respect to current affairs or historical events are the essence of a vibrant democracy. That fundamental and precious right guaranteed by our Constitution can neither be restricted nor denied merely on the perceived apprehension of the view being unpalatable or disagreeable to some. The freedom to freely express ideas and opinions cannot be permitted to be overshadowed by the ominous cloud of being non-conformist. These principles were eloquently expressed by three learned Judges of the Supreme Court in **N. Radhakrishnan** in the following terms:-

**27.** Literature can act as a medium to connect to the readers only when creativity is not choked or smothered. The free flow of the stream of creativity knows no bounds and imagination brooks no limits. A writer or an artist or any person in the creative sphere has to think in an unfettered way free from the shackles that may hinder his musings and ruminations. The writers possess the freedom to express their

views and imagination and readers too enjoy the freedom to perceive and imagine from their own viewpoint. Sans imagination, the thinking process is conditioned.

**28.** Creative voices cannot be stifled or silenced and intellectual freedom cannot be annihilated. It is perilous to obstruct free speech, expression, creativity and imagination, for it leads to a state of intellectual repression of literary freedom thereby blocking free thought and the fertile faculties of the human mind and eventually paving the path of literary pusillanimity. Ideas have wings. If the wings of free flow of ideas and imagination are clipped, no work of art can be created. The culture of banning books directly impacts the free flow of ideas and is an affront to the freedom of speech, thought and expression. Any direct or veiled censorship or ban of book, unless defamatory or derogatory to any community for abject obscenity, would create unrest and disquiet among the intelligentsia by going beyond the bounds of intellectual tolerance and further creating danger to intellectual freedom thereby gradually resulting in “intellectual cowardice” which is said to be the greatest enemy of a writer, for it destroys the free spirit of the writer. It shall invite a chilling winter of discontent. We must remember that we live not in a totalitarian regime but in a democratic nation which permits free exchange of ideas and liberty of thought and expression. It is only by defending the sacrosanct principles of free speech and expression or, to borrow the words of Justice Louis Brandeis, “the freedom to think as you will and to speak as you think” and by safeguarding the unfettered creative spirit and imagination of authors, writers, artists and persons in the creative field that we can preserve the basic tenets of our constitutional ideals and mature as a democratic society where the freedoms to read and write are valued and cherished.

**37.** It would usher in a perilous situation, if the constitutional courts, for the asking or on the basis of some

allegation pertaining to scandalous effect, obstruct free speech, expression, creativity and imagination. It would lead to a state of intellectual repression of literary freedom. When we say so, we are absolutely alive to the fact that the said right is not absolute but any restriction imposed thereon has to be extremely narrow and within the reasonable parameters as delineated by Article 19(2) of the Constitution. Here, we may remind ourselves of the expression used by George Orwell. It is free thinking and intellectual cowardice. Creative writing is contrary to intellectual cowardice and intellectual pusillanimity.”

6. The Court deems it appropriate to remember and reiterate the wisdom of Voltaire who said:-

“While I wholly disagree of what you say, I will defend to the death your right to say it”

7. For all the aforesaid reasons, this writ petition shall stand dismissed.

**YASHWANT VARMA, J.**

**NOVEMBER 25, 2021/bh**