

SECTION – PIL

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A.No. OF 2020

IN

WRIT PETITION (C) NO. 956 OF 2020

IN THE MATTER OF:

FIROZ IQBAL KHAN

.....PETITIONER

VERSUS

UNION OF INDIA

....RESPONDENT

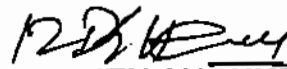
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<u>S.No.</u>	<u>DESCRIPTION</u>	<u>COPIES</u>	<u>COURT FEES</u>
1.	Application for Intervention with Affidavit	1 + 3	120
2.	Vakalatnama	1	10
		Court fee	130

Place: New Delhi

Date:22.09.2020

FILED BY


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APPLICATION FOR INTERVENTION

PAPER BOOK

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ADVOCATE FOR THE APPLICANT: NISHE RAJEN SHONKER

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IN THE SUPREME COURT OF INDIA

1

CIVIL ORIGINAL JURISDICTION

I.A.No. OF 2020

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WRIT PETITION (C) NO. 956 OF 2020

IN THE MATTER OF:

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AND IN THE MATTER OF:

Mr. Sashi Kumar,

S/o V. Balakrishna Menon,

aged 68 years,

residing at P1 Palmwoods,

4 Seshadri Road, Chennai 6000108

AN APPLICATION FOR INTERVENTION

To

The Hon'ble Chief Justice of India
and his Companion Justices of the
Hon'ble Supreme Court of India

The humble petition of the Applicant
above named.

MOST RESPECTFULLY SHOWETH:

1. That the above writ petition poses significant questions relating to freedom of expression in general and media's freedom in particular.
2. The facts of the case had been fully detailed in the Writ Petition and the same may be read part and parcel of this Application and the same is not repeated for the sake of brevity.
3. The petitioner is a media practitioner, film maker and writer. He is presently working as Chairman and Editor-in- Chief of *Asiaville*

News and he is one of the founders of the said media house. He founded the nation's first regional satellite TV Channel called *Asianet*. He is the founder and Chairperson of the Media Development Foundation which runs the Asian College of Journalism, Chennai. His career in journalism started at *The Hindu*. He was the West Asia correspondent of the said newspaper in the 1980s. At present, he is contributing in his humble ways to the journalism education as the Chairman of the Asian College. As such, he is genuinely interested in the above case.

4. The above writ petition has posed significant questions relating to freedom of expression in general and media's freedom in particular. The curious aspect is that the first respondent has come forward with a contention that regulation of 'hate speech' including the speech that promotes communal disharmony is a matter for the legislature and 'no general exercise to be undertaken merely based on one episode or few episodes of one channel'. They *inter alia* said that there is a need to regulate digital media.

5. The issue involved is a very complex one. It is an irony that instances of publications and telecasts which amount to an offence under Section 153 of Indian Penal Code (of creating communal disharmony and hatred between communities or groups) are sought to be protected under Article 19 (1)(a) of the Constitution by the majoritarian forces. When the constitutional scheme in this regard is clear, there is no ambiguity warranting a legislation. Still further, there is no need to leave these aspects to a majoritarian exercise in the Parliament, especially in view of the fact that secularism is an unalterable basic structure of the Constitution of India as declared in S.R. Bommai v. Union of India (1994) 3 SCC 1. It is also pertinent to note that unlike the Constitution of the U.S. which protects all kinds of speech under the first amendment, Indian framework is abundantly clear that hate speech is not protected under the fundamental rights. It is settled that hate speech undermines the very value of the freedom of speech.
6. It is erroneous to think that under the guise of religious freedom, hate speech and hate telecast with a move to create communal

disharmony and hatred for political gain is permissible. In *Bommai*, this Hon'ble Court has referred to several instances where the state or even the political parties ventured to do the activities that damage the secular fabric of the state and the society. Viewed so, it is unacceptable to say that anything could be telecasted under the guise of religious freedom by any community or group.

7. It is pertinent to note that in individual instances of offences under Section 153 IPC, the institutions are supposed to carry out their respective roles. But unfortunately, the cases where the instrumentalities of the state failed to take cognizance of such offence and failed to take further actions in curtailing such attempts are increasing day by day. This is probably a reason why persons from different sections of society approach the constitutional courts seeking remedies. Therefore, the instances of institutional failures in this regard are a matter to be placed before this Hon'ble Court with concrete illustrations. Also, it is necessary to deliberate over the role of the constitutional courts in such instances. At any rate, the attempt to project hate speech

as part of freedom of speech protected under Article 19 (1)(a) is to be rejected.

8. The plea also may involve the alleged situations of conflict of rights. In *Maneka Gandhi v. Union of India* (1978) 1 SCC 248, this Hon'ble Court has held that fundamental rights are not isolated islands but they create a continent. It was held that the rights necessarily intrude into and overlap with one another. But on a theoretical level, it is also possible to say that either there is a right or there is no right and therefore, at any rate, there is no conflict of rights. In the instant case, one cannot assert a right to make a speech or telecast which falls within the ambit of the offence under Section 153 of IPC and thereafter say that it falls under Article 19 (1)(a). That goes against the very scheme of Article 19.

9. After the judgment in *K.S. Puttaswamy v. Union of India* (2019) 1 SCC 1(Aadhar- 5) upheld in unequivocal terms the individual right to dignity, it is all the more important to revisit hate speech jurisprudence evolved in the country. The horizontal rights are

not totally alien to the process of judicial review under Article 32.

It is true that the vertical approach posed by thinkers like Gardbaum, which is the traditional approach is intended to achieve a larger autonomy for private players. The state action doctrine in the U.S. is an example which does not extend the provisions of the fundamental rights beyond the acts of the state.

It is also important to take lessons from other jurisdictions.

Section 9 (4) of the Bill of Rights of the Final Constitution of South Africa says that "no person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3)" (which talks about a set of grounds which bind the State). Thus, an express horizontal application is provided for in the South African Constitution. One finds an analogy in the Irish judiciary also which accepted the principles of judicial review even in horizontal right violation. See for example the judgment in *Meskell v. C.I.E.* 1973 IR 121. Paragraph 397 of the judgment in *Puttasawamy* has thrown light into the nature of rights. It is necessary to contend the nature and scope of Article 19 in the above matter.

10. There was serious deliberation on the scope of freedom of expression in the constituent assembly debates. Members like Sardar Bhopinder Singh (2nd December 1948) Damodar S. Seth (1st December 1948) and Sardar Hukum Singh (2nd December 1948) expressed concerns regarding about the possibility of the fundamental rights being curtailed by the legislations. Thereupon, a counter narrative on the limitations of free speech was given by members like Shibban Lal Saksena (2nd December, 1948) and T.T. Krishnamachari (2nd December, 1948) and Algu Rai Shastri (2nd December, 1948) and Dr. K. Hanumanthaiya. Dr. Ambedkar referred to some of the speeches and said:

"With regard to the general attack on article 13 which has centred on the sub-clauses to clause (1), I think I may say that the House now will be in a position to feel that the article with the amendments introduced therein has emerged in a form which is generally satisfactory. My explanation as to the importance of article 8, my amendment to the phrase "existing laws" and the introduction of the word "reasonable" remove, in my judgment, the faults which were pointed out by honourable members when they spoke on this article, and I think the speeches made by my friends Professor Shibban Lal Saksena and Mr. T. T. Krishnamachari and Mr. Algu Rai Shastri, will convince the House that the article as it now stands with the amendments should find no difficulty in being accepted and therefore

I do not want to add anything to what my friends have said in support of this article. In fact, I find considerable difficulty to improve upon the arguments used in their speeches in support of this article."

The point that emerges is that Article 19 in itself is a self-contained code and therefore it is not possible either for the State or for the private players to justify a speech amounting to an offence in the guise of religious freedom or free speech.

11. It is therefore important to guard against the state not only when it curtails the freedom of speech but also when it encourages the hate speech in the guise of freedom of expression which is clearly against the ideology of the constitution. The question of media freedom therefore, is something which should be examined in the constitutional scheme. It is important to strike a judicious balance in this regard. The petitioner has certain materials and submissions which hopefully would help this Hon'ble Court in the course of the proceedings. Due to paucity of time, all such materials could not be submitted in the present petition for intervention. Those aspects will be placed when the matter is taken up and when this petitioner is permitted to place his views and written submissions.

12. The petitioner is a media person having wide experience as a journalist and also as a person who administered a few media houses. It is submitted that in view of the importance of the issue involved in the matter, the petitioner may be heard in the matter as an intervener. He has a legal interest in the above matter.

13. Hence, this Hon'ble Court may be pleased to allow the petitioner to intervene in the matter and place his submissions and materials before this Hon'ble Court during the hearing of the above matter.

PRAYER

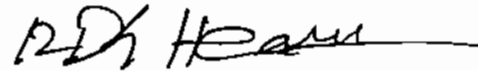
It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- A) allow the petitioner to intervene in the matter and place his submissions and materials before this Hon'ble Court during the hearing of the above matter; and
- B) Pass any other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

And for which act of kindness the respondent shall as in duty bound ever
pray.

Filed On: 22.09.2020

New Delhi.



NISHE RAJEN SHONKER

Advocate for The Applicant/Respondent

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

12

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WRIT PETITION (C) NO. 956 OF 2020

IN THE MATTER OF:

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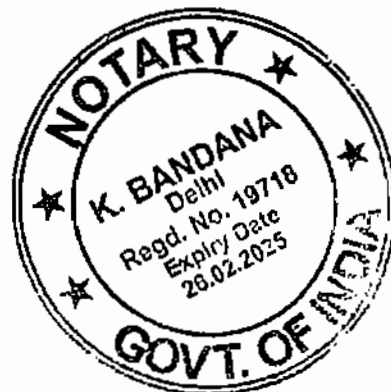
UNION OF INDIA

....RESPONDENT

AFFIDAVIT

I, Mr.Sashi Kumar, S/o V. Balakrishna Menon, aged 68 years, residing at P1 Palmwoods, 4 Seshadri Road, Chennai 600 108, (presently in delhi), solemnly affirm as follows:

1. That I am the applicant herein in the above mentioned application and as such I am well conversant with the facts and circumstances of the case and competent to swear this affidavit for and on behalf of applicant.



2. That I state that I have read and understood the contents of the applications for Intervention and state that the facts mentioned therein are true and correct to my knowledge and belief.

3. That the facts stated above are true and correct.

[Handwritten signature]

DEPONENT

VERIFICATION

MR. J. Manu
I identify the deponent/E
who has signed in my presence

I, the above named deponent, do hereby affirm that the contents of para 1 to 3 of the affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom. Verified at New Delhi on this 22nd day of September, 2020

22 SEP 2020

[Handwritten signature]

DEPONENT



22 SEP 2020

ATTESTED
[Signature]
NOTARY DELHI (INDIA)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2020

IN THE MATTER OF:
FIROZ IQBAL KHAN

....PETITIONER

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....RESPONDENT


VAKALATNAMA

I, Sashi Kumar., the authorized signatory of the respondent in the above Special Leave Petition do hereby appoint and retain Mr. NISHE RAJEN SHONKER., Advocate of the Supreme Court of India to act appear for us in the above matter and on our behalf to conduct and prosecute (or defend) the same and to appear in all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein, including proceedings in taxation and applications for Review, to file and obtain return of documents and to deposit and receive money on my / our behalf in the said matter and to represent me / us and to take all necessary steps on my / our behalf in the above matter. I /We agree to ratify allacts done by the aforesaid Advocate in pursuance of this authority.

Dated this the 21st day of september 2020

(Sashi Kumar)
Respondent

ACCEPTED & IDENTIFIED
(s) / Caveator (s)


(NISHE RAJEN SHONKER)
Advocate-on-Record
Supreme Court of India,
T/4, F/301, SUPREME TOWERS,
SECTOR - 99, NOIDA - 201 304



MEMO OF APPEARANCE

To
The Registrar
Supreme Court of India
New Delhi

Sir,

Please enter an appearance for the above named Respondent (s) in the above mentioned petition / case / appeal /matter.

Dated:22.09.2020

Yours faithfully,


(NISHE RAJEN SHONKER)
Advocate for the Respondents

