

**Court No. - 1**

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**Case :-** P.I.L. CIVIL No. - 2084 of 2021

**Petitioner :-** Hindu Personal Law Board Thru Pres. Ashok Pandey (In Person)

**Respondent :-** Union Of Bharat Thru Secy. Home Affairs Ministry New Delhi

**Counsel for Petitioner :-** Asok Pande

**Counsel for Respondent :-** A.S.G.

**Hon'ble Ritu Raj Awasthi,J.**

**Hon'ble Manish Mathur,J.**

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Heard Mr. Ashok Pande petitioner in person and Mr. S.B. Pandey, Assistant Solicitor General of India, assisted by Mr. Ambrish Rai, learned Central Government Counsel for respondents.

The petition has been filed in the nature of Public Interest Litigation seeking the following relief:-

(i) issue a writ of mandamus directing the concerned respondent to consider for legislating a law regulating the religious conversion on the pattern of the law legislated on the subject by the State of U.P. and other States.

(ii) to issue any such other order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

(iii) Allow the writ petition with cost.

Petitioner in person has submitted that the Court would very well be within its jurisdiction to issue a direction as prayed for in the petition to ameliorate the condition with regard to a particular sect or religion. It has been further submitted that the petitioner in person is only seeking a direction for the concerned respondent to consider for legislating a law regulating religious conversion and no specific direction is being sought to Parliament or any State Legislature to enact any legislation. It is submitted that in view of this distinction, this petition in nature of public interest litigation would be

maintainable since it only seeks consideration of petitioner's grievance particularly since all the laws giving criminality to any act or omission have been legislated by the Union and therefore the law regulating religious conversion should also be made by Union of India.

With regard to aforesaid prayer, a Constitution Bench of Hon'ble the Supreme Court in the case of **Manoj Narula v. Union of India** reported in (2014) 9 SCC 1 had declared a similar relief not maintainable in context of the doctrine of constitutional trust.

The subject of doctrine of constitutional trust has been explained in the aforesaid judgment in context of debates held in the Constituent Assembly and particularly with regard to separation of jurisdiction and powers of various constitutional functionaries and authorities. It was held that the doctrine of constitutional trust clearly is with regard to the maxim *Salus populi suprema lex esto*. It was held that it cannot be believed that a constitutional authority or functionary would not act in accordance with and within the scope of its powers as indicated in the Constitution of India.

Hon'ble the Supreme Court referred to various judgments of the Supreme Court itself in which it has been clearly held that Courts have very limited role with regard to judicial legislation since neither the Courts can legislate nor they have any competence to issue directions to legislature to enact a law in a particular manner.

Relevant portion of the judgment is as follows:-

"124. In *Municipal Committee, Patiala v. Model Town Residents Assn.*, (2007) 8 SCC 669 [Municipal Committee, Patiala v. Model Town Residents Assn., (2007) 8 SCC 669] this Court referred to *Parent of a student of Medical College v. State of H.P.* [Parent of a student of Medical College, (1985) 3 SCC 169. This was a judgment delivered by a Bench of three learned Judges.] and held that legislation is in the domain of the legislature. It was said:

*"It is so well settled and needs no restatement at our hands that the*

*legislature is supreme in its own sphere under the Constitution subject to the limitations provided for in the Constitution itself. It is for the legislature to decide as to when and in what respect and of what subject-matter the laws are to be made. It is for the legislature to decide as to the nature of operation of the statutes."*

*"125. More recently, V.K. Naswa [V.K. Naswa v. Union of India, (2012) 2 SCC 542 : (2012) 1 SCC (Cri) 914] referred to a large number of decisions of this Court and held that the Court cannot legislate or direct the legislature to enact a law. It was said: (SCC p. 547, para 18)*

*"18. Thus, it is crystal clear that the court has a very limited role and in exercise of that, it is not open to have judicial legislation. Neither the court can legislate, nor has it any competence to issue directions to the legislature to enact the law in a particular manner."*

*"126. However, a discordant note was struck in Gainda Ram [Gainda Ram v. MCD, (2010) 10 SCC 715. This was a judgment delivered by a Bench of two learned Judges.] wherein this Court issued a direction to the legislature to enact legislation before a particular date. It was so directed in paras 70 and 78 of the Report in the following words: (SCC pp. 739 & 743)"*

*"70. This Court, therefore, disposes of this writ petition and all the IAs filed with a direction that the problem of hawking and street vending may be regulated by the present schemes framed by NDMC and MCD up to 30-6-2011. Within that time, the appropriate Government is to legislate and bring out the law to regulate hawking and hawkers' fundamental right. Till such time the grievances of the hawkers/vendors may be redressed by the internal dispute redressal mechanisms provided in the schemes.*

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*78. However, before 30-6-2011, the appropriate Government is to enact a law on the basis of the Bill mentioned above or on the basis of any amendment thereof so that the hawkers may precisely know the contours of their rights. This Court is giving this direction in exercise of its jurisdiction to protect the fundamental rights of the citizens."*

*"127. The law having been laid down by a larger Bench than in Gainda Ram [Gainda Ram v. MCD, (2010) 10 SCC 715. This was a judgment delivered by a Bench of two learned Judges.] it is quite clear that the decision, whether or not Section 8 of the Representation of the People Act, 1951 is to be amended, rests solely with Parliament."*

In view of aforesaid dictum, it is clear that no direction can be issued for enacting any legislation in any particular manner by High Courts under Article 226 of the Constitution of India.

So far as submission of petitioner in person is concerned that only a direction for consideration of petitioner's grievance has been made in the petition, aforesaid doctrine of constitutional trust also bars any grant of relief prayed for in the manner as envisaged in the petition.

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Considering the aforesaid factors and enunciation by Hon'ble the Supreme Court, the writ petition being devoid of merit is **dismissed** at the admission stage itself.

**Order Date :-** 25.1.2021

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