

TEHSEEN S POONAWALA VS UNION OF INDIA

WRIT PETITION (CIVIL) No. 000754-000754 / 2016

(2018) 9 SCC 501

- Vaishnavi

Court – SUPREME COURT

Bench – Hon’ble Chief Justice Dipak Misra, Hon’ble Dr. Justice D.Y. Chandrachud,
Hon’ble Mr. Justice A.M. Khanwilkar

Decided on – 17th July, 2018

Relevant Sections – Section 12 of the Gujarat Animal Prevention Act, 1954; Section 13 of the Maharashtra Animal Prevention Act, 1976; Section 15 of the Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964; Articles – 15, 21, 32, 256, 257 of the Indian Constitution.

FACTS:

We, humans, are aware of the factual statement, ‘Every dark cloud has a silver lining’.

After a cloudburst of incidents of mob lynching over the last few years, Tehseen Poonawalla, a distressed social activist, filed a writ petition under Article 32 of the constitution. They sought the court to issue a direction to the centre and some states to take action against cow vigilantes. The urge of vigilantism has unquestionably increased over the past years.

The petitioners drew the court’s concern on issues for the survival of humanity in the world today, however the matter in the rise of cow vigilantism, where private citizens violently punish people who they suspect of consuming beef. Notable example includes hanging of two men in Jharkhand by cow vigilantes and the recent lynching of Pehlu Khan in Alwar on suspicion of smuggling a cow.

The petitioners challenged the provisions that prohibit any legal action against persons for actions done in 'good faith' under the law as per Section 13 of the Maharashtra Animal Preservation Act, 1976 which states 'that no suit, prosecution or other legal proceedings shall be instituted against any person for anything which is in good faith or intended to be done under this Act or the rules made thereunder'.

ISSUE:

- 1) Whether the States and the Centre should frame effective and immediate action plan to be undertaken against these violent cow protection mobs and whether they frame a victim compensation scheme to address the issue of lynching?
- 2) Whether the State and the Centre should make separate laws addressing the offence of lynching?
- 3) whether State cow protection laws such as Section 12 of the Gujarat Animal Prevention Act, 1954, Section 13 of the Maharashtra Animal Prevention Act, 1976 and Section 15 of the Karnataka Prevention of cow Slaughter and Cattle Prevention Act, 1964 which protects cow vigilantes acting in 'good faith' are constitutional?
- 4) Whether the State and the Centre should issue a further direction to remove the violent social media content uploaded by these groups?

RULE:

It was argued that no one shall engage themselves in an activity of lynching just on the mere perception that an offence had taken place. Also, it was pointed that the activities which amounted to mob violence and mob lynching must not be unnoticed and should be checked by the executive. Reliance upon the case of Vahini v. Union of India (2018) 7 SCC 192.

It was argued that law can be invoked and used to keep the man from lynching him. It was further argued that the Central Government had the power to intervene in the matter by using its power which had been vested in it by Articles 256 and 257 of the Constitution for issuing directions to the State Governments.

It was stated that the primary reason for such activities was the circulation of false news which was based on the suspicion that the victims were engaging illegally in activities of cattle trade.

ANALYSIS:

A three-judge Bench led by Chief Justice of India Dipak Misra held that it was the obligation of the State to protect citizens and ensure that the ‘pluralistic social fabric’ of the country holds against mob violence. The judgment authored by Chief Justice Misra for the Bench, also comprising Justices A.M. Khanwilkar and D.Y. Chandrachud, said such law should be effective enough to instill a sense of fear in the perpetrators.

The court said the growing numbness of the ordinary Indian to the frequent incidents of lynchings happening right before his eyes in a society based on rule of law is shocking. The government should see the judgment as a ‘clarion call’ in a time of exigency and work towards strengthening the social order.

It was also the obligation of the Centre and the States to ensure that ‘nobody takes the law into his hands nor become a law into himself’, the court said. It directed several preventives, remedial and punitive measures to deal with lynching and mob violence. The court ordered the Centre and the States to implement the measures and file compliance reports within the next four weeks.

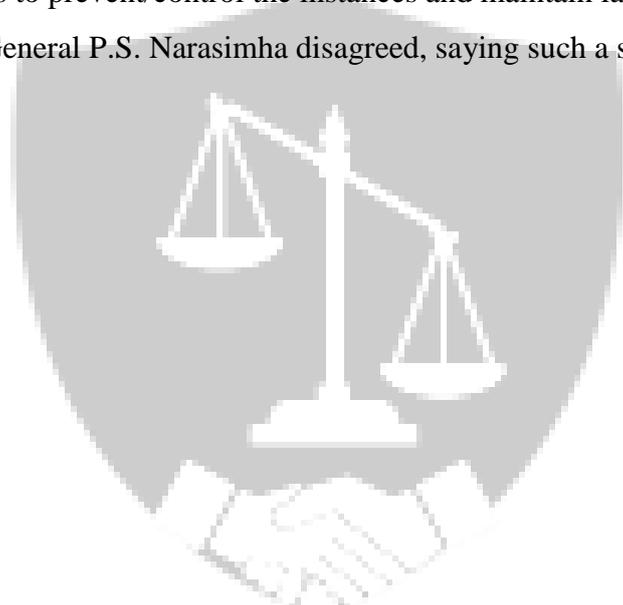
In the last hearing of the case, the court had classified lynching as sheer ‘mob violence’. It had said compensation for victims should not be determined solely on the basis of their religion, caste, etc, but on the basis of the extent of injury caused as ‘anyone can be a victim’ of such a crime. Chief Justice Misra said the States could not give even the ‘remotest chance’ to let lynching happen.

CONCLUSION:

The judgment came in a contempt petition filed by activist Tehseen Poonawalla. It said that despite the Supreme Court order to the States to prevent lynching and violence by cow vigilantes, the crime continued with impunity. Despite your order to the States to appoint

nodal officers to prevent such incidents, there was a lynching and death just 60 km away from Delhi just recently, senior advocate Indira Jaising had submitted. Ms. Jaising argued that the incidents of lynching go "beyond the description of law and order... these crimes have a pattern and a motive. For instance, all these instances happen on highways. This court had asked the States to patrol the highways. The lynching was 'targeted violence' against particular religion, caste, and thus, in violation of the constitutional guarantees under Article 15 of the Constitution. Article 15 protected from discrimination on the basis of religion, caste, sex, gender, etc., Ms. Jaising said.

Chief Justice Misra had even asked the Centre to frame a scheme under Article 256 to give directions to the States to prevent/control the instances and maintain law and order, but Additional Solicitor General P.S. Narasimha disagreed, saying such a scheme was unnecessary.



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