

Court No. - 32

Case :- WRIT - C No. - 17394 of 2020

Petitioner :- Sultana Mirza And Another

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Dharendra Kumar
Srivastava, Mohd. Naushad

Counsel for Respondent :- C.S.C.

Hon'ble Shashi Kant Gupta, J.

Hon'ble Pankaj Bhatia, J.

This writ petition has been filed, inter alia, for the following relief:

"(i) Issue a writ, order or direction in the nature of mandamus directing the respondent no. 2, 3 and 4 not to adopt any coercive process against the petitioner as well as respondent no. 5 and 6 may be directed not to interfere in the living relationship of both the petitioners."

Heard learned counsel for the petitioners, learned Standing counsel for the State and perused the record.

The petition highlights the stark reality of the society where the citizens are facing discrimination at the hands of the society only on account of their sexual orientation despite it being well settled that sexual orientation is innate to human being.

The present petition has been filed alleging that the petitioner no. 1 as well as the petitioner no. 2 claim to be females having attained the age of majority and the petitioner no. 1 is said to be gainfully employed as

Financial Adviser whereas petitioner no. 2 is employed in a private company.

The petitioners claim that they are living in live-in-relationship since a couple of years and are voluntarily living with each other on account of their sexual orientation. The said relationship, somehow, has faced resistance at the hands of family members as well as the immediate society, as a result whereof, the petitioners apprehend harassment and threat to their life and enjoyment of their relationship.

The counsel for the petitioners argues that despite legitimacy being accorded to such relations by the Supreme Court in the case of ***Navtej Singh Johar and others Vs. Union of India, (2018) 10 SCC 1***, the petitioners are being threatened with violation of their rights enshrined under Article 21 of the Constitution of India only on the ground of their sexual orientation.

Learned Standing Counsel has not been able to oppose the contention made by learned counsel for the petitioners.

The Supreme Court in case of Navtej Singh Johar (supra) considered the plight of LGBT community in context of the constitutional principles and after analyzing the comparative jurisprudence from across the world recorded

the following principles that emerged from the comparative jurisprudence.

"561.1. Sexual orientation is an intrinsic element of liberty, dignity, privacy, individual autonomy and equality;

561.2. Intimacy between consenting adults of the same-sex is beyond the legitimate interests of the state;

561.3. Sodomy laws violate equality by targeting a segment of the population for their sexual orientation;

561.4. Such a law perpetrates stereotypes, lends authority of the state to societal stereotypes and has a chilling effect on the exercise of freedom;

561.5. The right to love and to a partner, to find fulfillment in a same-sex relationship is essential to a society which believes in freedom under a constitutional order based on rights;

561.6. Sexual orientation implicates negative and positive obligations on the state. It not only requires the state not to discriminate, but also calls for the state to recognise rights which bring true fulfillment to same-sex relationships."

Considering the fact that the Supreme Court has categorically held "*that the Constitutional morality requires that all the citizens need to have a closer look at, understand and imbibe the broad values of the Constitution, which are based on liberty, equality and fraternity. Constitutional morality is thus the guiding spirit to achieve the transformation which, above all, the Constitution seeks to achieve. This acknowledgement carries a necessary implication: the process through which a society matures and imbibes constitutional*

morality is gradual, perhaps interminably so. Hence, constitutional courts are entrusted with the duty to act as external facilitators and to be a vigilant safeguard against excesses of state power and democratic concentration of power. This Court, being the highest constitutional court, has the responsibility to monitor the preservation of constitutional morality as an incident of fostering conditions for human dignity and liberty to flourish. Popular public morality cannot affect the decisions of this Court. Lord Neuberger (of the UK Supreme Court) has aptly observed:

“[W]e must always remember that Parliament has democratic legitimacy - but that has disadvantages as well as advantages. The need to offer oneself for re-election sometimes makes it hard to make unpopular, but correct, decisions. At times it can be an advantage to have an independent body of people who do not have to worry about short term popularity.”

This Court being a constitutional Court is duty bound to monitor and observe the Constitutional morality as well as the rights of the citizens which are under threat only on account of the sexual orientation, as such considering the facts and circumstances of the case, we direct the Superintendent of Police,

Shamli to extend suitable protection to the petitioners in the event they approach the Superintendent of Police, Shamli for the necessary protection and ensure that no harassment is caused to them.

The writ petition, with the said observation, is finally disposed off.

Order Date :- 2.11.2020
Puspendra