

## India: Full Text of Bombay High Court Ruling - State Cant Compel Citizens to Declare Religion

Thursday, 25 September 2014

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### IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION PUBLIC INTEREST LITIGATION NO.139 OF 2010

1. Dr. Ranjeet Suryakant Mohite, )
2. Kishore Ramakant Nazare, and )
3. Subhash Suryakant Ranaware. )..

#### Petitioners

Vs

- 1.The Union of India, and )
- 2.The State of Maharashtra.)..

#### Respondents

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**Shri Surel S. Shah for the Petitioners.**  
**Shri Parag Vyas for Respondent No.1.**  
**Shri S.N. Patil, AGP for Respondent No.2.**

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**CORAM : A.S. OKA & A.S.CHANDURKAR, JJ**

DATE ON WHICH SUBMISSIONS WERE HEARD : 22ND JULY 2014

DATE ON WHICH JUDGMENT IS PRONOUNCED: 23RD SEPTEMBER 2014

( Signed judgment pronounced by Shri A.S. Oka, J in accordance with Rule 1 (i) of Chapter XI of the Appellate Side Rules as Shri A.S. Chandurkar, J is not available in Bombay and is sitting at Nagpur Bench.)

#### JUDGMENT ( PER A.S. OKA, J )

Notice for final disposal at the admission stage was issued on 12th March 2014. A very interesting issue is raised by the Petitioners.

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The contention of the Petitioners is that the State cannot compel any citizen to disclose his religion while submitting forms and/or declarations. The contention is that a citizen has a right to claim that he does not believe in the philosophy of any religion and therefore, he does not practice or profess any religion. The contention in short is that a citizen can always claim that he belongs to "No Religion".

2. The Petitioners claim to be the members of a registered organization by the name "Full Gospel Church of God" which is stated to have more than 4,000 members. The Union of India and the State of Maharashtra are the Respondents. The case made out in the Petition is that the said organization does believe in the existence of Lord Jesus Christ, but does not believe in any religion much less Christianity. The contention of the Petitioners is that the said organization believes that the Lord Jesus Christ desired to have a kingdom of heaven and did not intend to form any religion. The contention of the Petitioners is that the holy bible is entirely silent about the religion.

3. The Petitioners claim that they made an Application to the State Government Printing Press for notifying the change of religion. They wanted a gazette notification to be issued recording that they are not the Christians but they belong to "No Religion". The Applications were rejected by the Government Printing Press. That is the cause of

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action for filing the present Petition. The only substantive prayer in the Petition is Prayer Clause (A), which reads thus:

"(A) That this Honorable Court be pleased to issue writ of mandamus or any other

appropriate writ order or direction thereby directing the respondents to recognize "No Religion" as a form of religion and not to insist on writing/mentioning/specifying/ quoting religion in any of its forms or declarations".

4. The submission of the learned counsel appearing for the Petitioners is based on the Article 25 of the Constitution of India. His submission is that the State cannot compel any citizen to disclose his religion inasmuch as there is a freedom conferred by the Constitution on every citizen to claim that he does not practice or profess any religion. He has placed reliance on the decisions of the Apex Court in the cases of *Ratilal Panachand Gandhi and others 1 v. State of Bombay and others* and *S.P. Mittal v. Union of India and others 2*. He pointed out that various authorities of the State require the citizens and even students to fill up various forms for various purposes. He submitted that against the column of religion, a citizen who is filling up the form has a right to state that he belongs to "No Religion".

1 AIR 1954 SC 388

2 AIR 1983 SC 1

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5. The learned AGP representing the Government of Maharashtra and the learned counsel representing the Union of India invited the attention of the Court to Prayer Clause (A). Their submission is that "No Religion" cannot be treated as a religion or a form of religion. Their submission is that a Prayer Clause (A) as framed can never be granted.

6. We have given careful consideration to the submissions. It will be necessary to make a reference to the Article 25 of the Constitution of India, which reads thus:

"25. Freedom of conscience and free profession, practice and propagation of religion.

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I. The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

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Explanation II. In subclause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

Conscience can be defined as moral sense of right or wrong as applied to one's own judgment and actions. In the case of **Ratilal Panachand Gandhi and others v. State of Bombay and others**, the Apex Court considered the concept of religion. The Apex Court held thus:

"12. The moot point for consideration, therefore, is where is the line to be drawn between what are matters of religion and what are not? Our Constitutionmakers have made no attempt to define "what religion" is and it is certainly not possible to frame an exhaustive definition of the word "religion" which would be applicable to all classes of persons. As has been indicated in the Madras case referred to above, the definition of "religion" given by Fields, J. in the American case of *Davis v. Beason*<sup>1</sup> does not seem to us adequate or precise. "The term 'religion'" thus observed the learned Judge in the case mentioned above, "has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His Will. It is often confounded with cults or form of worship of a particular sect, but is distinguishable from the latter".

It may be noted that **"religion" is not necessarily theistic and in fact there are well known religions in India like Buddhism and Jainism which do not believe in the existence of God or of any Intelligent First Cause.** A religion undoubtedly has its basis in a system of beliefs and doctrines which are regarded by those who profess that religion to be conducive to their spiritual well being, but it would not be correct to say, as seems to have been suggested by one of the learned Judges

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of the Bombay High Court, that matters of religion are nothing but matters of religious faith and religious belief. A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well".

(Emphasis added ) In the case of Sri Sri Sri Lakshamana Yatendru and others v. State of A.P and another 3, the Apex Court in Paragraph 14 held thus:

"14. Article 25, as its language amplifies, assures to every person subject to public order, health and morality, freedom not only to entertain his religious beliefs, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outwardly act as he thinks proper and to propagate or disseminate his ideas for the edification of others."

The Apex Court in the case of Commr. of Police and others v. Acharya Jagadishwarananda Avadhuta and another 5 observed thus :

**"76. The full concept and scope of religious freedom is that there are no restraints upon the free exercise of religion according to the dictates of one's conscience or upon the right to freely profess, practise and propagate religion, save those imposed under the police power of the State and the other provisions of Part III of the Constitution.** This means the right to worship God according to the dictates of one's conscience. **Man's relation to his God is made no concern of the State.** Freedom of conscience and religious belief cannot, however, be set up to avoid those duties which every citizen owes to the nation e.g. to receive military training, to take an oath expressing willingness to perform military service and so on.

3 (1996)8 SCC 705 at page 722

5 (2004)12 SCC 770 at page 802

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77. Though the freedom of conscience and religious belief are absolute, the right to act in exercise of a man's freedom of conscience and freedom of religion cannot override public interest and morals of the society and in that view it is competent for the State to suppress such religious activities which are prejudicial to public interest". ( Emphasis added )

7. Clause (1) of Article 25 of the Constitution of India is in two parts. The first part confers fundamental right to freedom of conscience. The second part confers a right on a citizen to freely profess, practice or propagate any religion. We have already discussed the concepts of conscience and religion. The term religion cannot be necessarily theistic. Apart from the freedom of conscience, there is a fundamental right to freedom of speech and expression. Articles 19 and 25 confer a freedom of conscience on a citizen which is a fundamental right guaranteed by the Constitution of India. As far as the freedom of speech and expression is concerned, it guarantees the freedom to an individual from compulsion as to what he shall think and what he shall say. India is a secular democratic republic. The State has no religion. There is a complete freedom for every individual to decide whether he wants to adopt or profess any religion or not. He may not believe in any religion. If he is professing a particular religion, he can give up the religion and claim that he does not belong to any religion.

There is no law which compels a citizen or any individual to have a religion. The freedom of conscience conferred by the Constitution includes a right not

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to profess, practice or propagate any religion. The right of freedom of conscience conferred on a citizen includes a right to openly say that he does not believe in any religion and, therefore, he does not want to practice, profess or propagate any religion. If the parents of a citizen practice any particular religion, he has a freedom of conscience to say that he will not practice any religion. There is a freedom to act as per his conscience in such matters.

8. Freedom of conscience under Article 25 of the Constitution encompasses in itself a freedom to an individual to take a view that he does not belong to any religion. The freedom conferred by Article 25 of the Constitution also includes a right of an individual to claim that he is an 'Atheist'. As the freedom of conscience confers a fundamental right to entertain a religious belief, it also confers a right on an individual to express an opinion that he does not belong to any religion.

9. No authority which is a State within the meaning of Article 12 of the Constitution of India or any of its agency or instrumentality can infringe the fundamental right to

freedom of conscience. Any individual in exercise of right of freedom of conscience is entitled to carry an opinion and express an opinion that he does not follow any religion or any religious tenet. He has right to say that he does not believe in any religion. Therefore, if he is called upon by any agency or

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instrumentality of the State to disclose his religion, he can always state that he does not practice any religion or he does not belong to any religion. He cannot to be compelled to state that he professes a particular religion.

**10.** The prayer made in this Petition is to direct the Respondents to recognize "No Religion" as a form of religion. When an individual says that he does not practice or profess any religion, he does not belong to any religion or any religious sect. The other part of the Prayer Clause (A) seeks a writ of mandamus directing the Respondents not to insist on writing/mentioning/specifying/quoting religion in any of its forms or declarations which are to be filled in by a citizen. No individual can be compelled to state that he belongs to a particular religion, though he does not practice or profess the said religion. He has a fundamental right to state that he does not profess or practice any religion and, therefore, what follows is the second part of the Prayer Clause (A) which will have to be granted. Therefore, the Government Printing Press cannot deny request of a citizen to declare in the gazette that he does not belong to any religion.

**11.** Therefore, the Petition must succeed and we pass the following order:

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ORDER :

- (a) We issue a writ of mandamus directing the Respondents not to compel any individual to declare or specify his religion in any form or any declaration;
- (b) We declare that by virtue of Article 25 of the Constitution of India, every individual has right to claim that he does not belong to any religion and that he does not practice or profess any religion;
- (c) The order of the Government Printing Press is set aside to that extent;
- (d) The Petition is allowed on above terms.

( A.S.CHANDURKAR, J )  
( A.S. OKA, J )

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PUBLIC  
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NO.139 OF 2010  
( PER A.S. OKA, J  
) [Formatted  
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DATE ON WHICH  
JUDGMENT IS  
PRONOUNCED:  
23RD SEPTEMBER  
2014

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