

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR
(Through Virtual Mode)**

WP(C)PIL No.20/2019
CM No.6672/2019

Syed Tassadque Hussain
S/o Late Syed Nazir Ahmed
R/o Nageen, Srinagar
Profession Senior Most Senior Advocate of J&K
High Court Srinagar, age 75 years

....Petitioner(s)/Appellant(s)

Through :- None.

V/s

1. Union of India
through Union Home Secretary
Shastri Bhawan New Delhi.
2. State of J&K
through Chief Secretary,
Jammu and Kashmir
C/o Civil Sectt. Srinagar.



....Respondent(s)

Through :- Mr. D.C. Raina, AG with
Mr. Bikramdeep Singh, Dy. AG; and
Mr. Faheem Nissar Shah, GA with
Ms. Maha Majeed, Assisting Counsel.
Mr. T.M. Shamsi, DSGI with
Ms. Rehana Qayoom, Advocate.

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE**

ORDER

09.10.2024

1. Instant Public Interest Litigation has been filed by the petitioner invoking jurisdiction of this Court in view of the fact that about 2000 people have been detained and 253 habeas corpus petitions post lockdown have been filed. Amongst other reliefs sought by the petitioner, the star relief is for direction to the Union of India to bring into force the amendments made to Article 22 of the Constitution of India.

2. The petitioner is a resident of Srinagar and by profession a Senior Advocate, practicing in High Court of Jammu & Kashmir and Ladakh at Srinagar Wing.

3. Objections to this Public Interest Litigation have been filed by the respondents-Home Department wherein raising preliminary objection that this petition is not maintainable because it does not meet the requisite conditions for filing PIL. It is further contended that the relief sought by the petitioner, even otherwise cannot be allowed either on the touch stone of law holding the field or under the PIL jurisdiction of this Court. It is further submitted that the relief sought is not permissible under law in view of authoritative pronouncement of the Apex Court, reported in **1982 vol 1 SCC 271** titled **A.K Roy vs. Union of India**. It is apt to reproduce paragraphs 50 and 51 hereunder for facility of reference.

“.....It, therefore, becomes necessary to leave to the judgment of an outside agency the question as to when the law should be brought into force and to which areas it should be extended from time to time. What is permissible to the Legislature by way of conditional legislation cannot be considered impermissible to the Parliament when, in the exercise of its constituent power, it takes the view that the question as regards the time of enforcement of a Constitutional amendment should be left to the judgment of the executive. We are, therefore, of the opinion that [section 1\(2\)](#) of the 44th Amendment Act is not ultra vires the power of amendment conferred upon the Parliament by [Article 368 \(1\)](#) of the Constitution.

.....We may now take up for consideration the question which was put in the forefront by Dr. Ghatate, namely, that since the Central Government has failed to

exercise its power within a reasonable time, we should issue a mandamus calling upon it to discharge its duty without any further delay. Our decision on this question should not be construed as putting a seal of approval on the delay caused by the Central Government in bringing the provisions of [section 3](#) of the 44th Amendment Act into force. That Amendment received the assent of the President on April 30, 1979 and more than two and half years have already gone by without the Central Government issuing a notification for bringing [section 3](#) of the Act into force. But we find ourselves unable to intervene in a matter of this nature by issuing a mandamus to the Central Government obligating it to bring the provisions of [section 3](#) into force. The Parliament having left to the unfettered judgment of the Central Government the question as regards the time for bringing the provisions of the 44 Amendment into force, it is not for the Court to compel the Government to do that which, according to the mandate of the Parliament, lies in its discretion to do when it considers it opportune to do it. The executive is responsible to the parliament and if the Parliament considers that the executive has betrayed its trust by not bringing any provision of the Amendment into force, it can censure the executive. It would be quite anomalous that the inaction of the executive should have the approval of the Parliament and yet we should show our disapproval of it by issuing a mandamus.”

4. The petitioner has stated in this PIL that about 2000 people have been detained and 253 habeas corpus petitions after the lockdown have been filed by the affected persons.

5. Mr. D.C Raina, learned Advocate General has vehemently argued that as the persons who are detained under the Public Safety Act have already approached this Court by filing habeas corpus petitions questioning therein their detention orders, which fact is also admitted by the petitioner, therefore, the issue raised in this PIL cannot be considered as it would tantamount to double adjudication on the same issue.

6. Since the issue of detention of citizens as raised in this petition is already pending adjudication before this Court, therefore, in our considered opinion, this PIL is not maintainable as being a parallel litigation.

7. In view of the preceding analysis, this Public Interest Litigation is, accordingly, **rejected** being not maintainable. However, the leftover persons who have not challenged the detention orders passed against them under the Jammu and Kashmir Public Safety Act shall be at liberty to question the same.

(MA Chowdhary)
Judge

(Tashi Rabstan)
Chief Justice

Srinagar:
09.10.2024
Surinder

Whether the order is speaking?
Whether the order is reportable?

Yes/No
Yes/No