

HIGH COURT OF JAMMU AND KASHMIR
SRINAGAR

Case No: CONT. 572/2014 in OWP 610/2007 Dated :12 -05- 2015

SANJAY TICKOO AND OTHERS VERSUS ANIL GOSWAMI (SECT. MINISTRY OF HOME)

ORDER SHEET

CORAM:

HON'BLE MR. JUSTICE MUZAFFAR HUSSAIN ATTAR— JUDGE

Whether approved for reporting : yes

FOR THE PETITIONER/s : MR. SALEEM GUPKARI
FOR THE RESPONDENT NO.1.: MR. S.A.MAKROO, ASGI

1/ This contempt petition is filed for seeking implementation of decision dated 09th October, 2013 passed in OWP 610/2007 in case titled Sanjay Tickoo & others versus State and others.

2/ Respondents 1,5 & 10 have filed Statement of Facts. The petitioners have filed additional pleadings.

3/ Respondent No.1, in his Statement of Facts, has stated that its role is only that of an Advisor and it is the Government of J&K, which has to implement the Court judgement. It is also stated that respondent No.1 has requested the State Government for taking steps for implementation of the Court judgement.

4/ Respondent No.5, in his Statement of Facts, has stated that the Court judgement has been forwarded to all concerned authorities including the Divisional Commissioner, Kashmir, for its implementation. Similarly, respondent No.10, in his Statement of Facts, has stated that all the concerned authorities in the District have been directed to implement the Court judgement.

5/ In the contempt petition, no specific details were given by the petitioners, which necessitated for filing of additional Affidavit. In the additional Affidavit, required information has been given.

6/ Learned counsel for the petitioners submitted that these details have now also been provided to the Divisional Commissioner, Kashmir.

7/ The Divisional Commissioner, Kashmir, is duty bound to implement the judgement of the Court. Since the requisite information has now been provided to the Divisional Commissioner, Kashmir, this contempt petition, at this stage, would require to be closed to afford opportunity to the Divisional Commissioner, Kashmir, and other concerned authorities to implement the Court judgement.

8/ It becomes necessary to place on record that few individuals misunderstood the purport and import of judgment dated 09th October, 2013 passed in OWP 610/2007 in case titled *Sanjay Tickoo and Ors Vs. State and Ors*. Despite provocations of few persons the people exhibited highest degree of maturity. It is an established fact that like people belonging to other faiths, a Muslim stands guarantee to truth, righteousness and peace.

9/ The press reports of the time, when judgement was pronounced, would show that the expression “**Indianism**” was torn out of the context of the theme of the judgement by a small group of persons. The maturity shown by all sections of the society is appreciated by the Institution of Judiciary as also by one and all. The judiciary has, even in extreme adverse circumstances, enforced the laws of the land and protected the rights of the people.

10/ The expression “**Indianism**” appearing in paragraph 19 of the judgement of Sanjay Tickoo’s case is clearly and sufficiently explained in the preceding and succeeding paragraphs thereof, more particularly, paragraphs, 14 to 18 and 20. The Court in Sanjay Tickoo’s case has interpreted the Constitution of India. It has been

sufficiently clarified in the said judgement that India is pluralistic State. Its citizens are hindus, muslims, sikhs, christians etc. All the rights, which include religious rights of all these citizens belonging to different religious denominations, are protected and guaranteed by Constitution of India. The expression “**Indianism**” in the context of Constitution of India and as clearly explained in Sanjay Tickoo’s case, would mean and is defined as follows :

a/ India is a pluralistic State ;

b/ All the citizens of India, viz. hindus, muslims, sikhs, christians, etc. have guaranteed right, in terms of Article 25 of the Constitution of India, to freedom of conscience and the right to freely profess, practice and propagate religion;

c/ Article 26 of the Constitution of India guarantees every religious denomination or any section thereof right to establish and maintain Institutions for religious and charitable purposes ; to maintain its own affairs in matters of religion ; to own and acquire moveable and immoveable property ; and to administer such property in accordance with law ;

d/ Article 27 of the Constitution of India provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated for payment of expenses for the promotion and maintenance of any particular religion or religious denomination.

e/ Article 28 to 30 of the Constitution of India, besides protecting the cultural and educational rights of the minorities also give them right to establish and administer educational Institutions.

11/ The expression “**Indianism**” also provides that the State shall not deny any person, which means a hindu, muslim, sikh, budhist,

christian etc., equality before law or equal protection of laws within the territory of India (Article 14). Article 15 of the Constitution of India provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them and that these reasons shall not subject the citizens to any disability, liability, restriction or conditions with regard to ;

a/ Access to shops, public restaurants, hotels and places of public entertainment ;

b/ Use of wells, tanks, bathing ghats, roads and places of public resorts maintained wholly or partly out of State funds.

12/ Similarly, Article 16 of the Constitution of India guarantees equality of opportunity to all citizens in the matters relating to employment or appointment to any office under the State. It further provides that no citizen shall on grounds only of **religion**, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of any employment or office under the State. Similarly other rights, viz., right to life and property are guaranteed to every person. The preamble of the Constitution of India specifically declare the solemn resolve of the people to secure to all its citizens..... liberty of thought, expression, belief, faith and worship.

13/ It is the aforementioned peculiar characteristic of the Indian Constitution, which constitute “**Indianism**”. The “**Indianism**” does not and would not mean that citizens/persons do not have right to practice and propagate their religion. The “**Indianism**” in the context of the Constitution not only protects but guarantees right to every citizen, which includes muslims of this country to practice and propagate their religion. No law can be made to prevent the muslims

or any other community to practice and propagate their religion. All the people, belonging to different religious denominations including muslims, have freedom to effectively follow their religion.

14/ “Indianism” in the context of Indian Constitution protects all religions and all religious activities and does not create any new cult. The concept **“Indianism”** is evolved in the backdrop of the Constitution of India to ensure that there is no inter-religious conflict and people, though have right to *practice, preach and propagate* their religion, do not cause harm to other citizens belonging to other religions and live in harmony. **“Indianism”** would otherwise mean living in harmony by people belonging to different religions, castes, cultures and linguistic groups. India as a nation country belongs to hindus, muslims, sikhs, christians etc. India is a nation whose heart beats reverberate with its multireligious, multilingual and multicultural ethos. The concept of **“Indianism”** is evolved to highlight rights of all the citizens, be it a hindu, a muslim, a christian, a sikh etc, with express right to practice, preach and propagate the respective religions by all of them. **“Indianism”** protects such rights which are, otherwise, guaranteed by the Constitution.

15/ Though all this has been, in clear and lucid terms, mentioned in Sanjay Tickoo’s case, but in order to ensure that the small group of persons should not succeed in its design to create confusion in the minds of people, the necessity to further clarify concept of **“Indianism”** arose. By whipping up the religious sentiments, efforts, though already stand frustrated by the wisdom of the people, were being made to create disorder in the society. The Courts have been protecting the religious practices, places as also propagation thereof as the same is guaranteed under the Constitution of India.

16/ The Courts have been constituted to administer justice in accordance with the laws, so that order is maintained in the society.

17/ The Indian Constitution (**Indianism**), which guarantees the rights to its citizens of practicing, preaching and propagating their religion, would further mean and show that every citizen of this country, whether muslim, hindu, christian, sikh or budhist, is free to attain moral heights by following his religion. The muslims can attain spiritual and moral heights by practicing and propagating their religion, which is their basic human right and is also recognized by Article 21 and 25 of Constitution.

18/ Indianism is Hindustaniat (), which is akin to Kashmiriat (کشمیریات).

19/ Fascist bent of mind, otherwise, called fascism, is abhorrent to and antithesis of “*Idea of India*”, otherwise called ‘**Indianism**’ (Hindustaniat).

20/ This order shall be deemed to be and form part of the decision dated 09th October, 2013 passed in OWP 610/2007 in case titled Sanjay Tickoo and others versus State and others.

21/ Registry to place copy of this order on the file of Sanjay Tickoo’s case. (OWP 610/2007 decided on 09th October, 2013).

22/ Before concluding, it is prayed to Almighty God that the small group of people, who either misunderstood the judgment or made deliberate attempts to mislead the religious scholars in particular and people in general, be forgiven and lead to the path of truth and righteousness.

23/ Contempt petition is **disposed** of.

TARIQ Mota
SRINAGAR
12-05-2015

(MUZAFFAR HUSSAIN ATTAR) J

