

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

INTERLOCUTORY APPLICATION NO. OF 2013

IN

SPECIAL LEAVE PETITION (CIVIL) NO. **33436 OF 2012**

IN THE MATTER OF:

Birendra Kaur & Another

.....**Petitioners**

VERSUS

Union of India

....**Respondent**

AND IN THE MATTER OF:

Bharatvarshiya Digambar Jain

Tirthkshetra Committee,

Registered Office – Hirabaug,

C P Tank, Mumbai (Mah.)

Through General Secretary

.....**Applicant / Intervener**

APPLICATION SEEKING PERMISSION TO INTERVENE

To,

Hon'ble The Chief Justice of India

And His Companion Justices of the

Hon'ble Supreme Court of India

The humble Application of
the Applicant / Intervener
above named

MOST RESPECTFULLY SHOWETH:

(1) That the present Application for intervention is being filed by and on behalf of Bharatvarshiya Digambar Jain Tirth-Kshetra Committee, through its General Secretary. The Applicant / Intervener is a 110 years old organization duly registered under Indian Societies Act bearing Registration No. 570 / 1930 and also registered under Bombay Public Trust Act, 1950 bearing Registration No. F/10 of 1952. The Applicant represents a large section of the Jain Community. The Applicant / Intervener has been at the forefront of all causes which are near and dear to the Jain Community throughout the past century. It is respectfully submitted that the issues in the present matter apply equally to the Jain faith. Any judgment or order passed in the present matter will have an impact on the Jain Community. Thus, the present Application for intervention is being filed.

(2) That the question of law involved in the present matter has been mentioned in the Order passed by this Hon'ble Court issuing notice on 15-10-2012, which is as follows:-

“Delay condoned.

Issue notice on the question as to whether the inclusion of people professing the Sikh, Jaina or

Buddhist faiths, could be included in the enactments relating exclusively to persons professing the Hindu religion, within the ambit of Explanation II to Article 25(2) of the Constitution.

Let notice issue separately to the learned Attorney General also to be served, both through the Ministry of Minority Affairs, as also through the Central Agency, returnable six weeks hence.”

- (3)** That it is respectfully submitted that present Applicant / Intervenor submits that the Jain Community is equally a separate and distinct religion and has been so treated and accepted. In fact, even the Jain Community cannot be included in any enactment which relates to the Hindu religion. In this regard the facts leading to the filing of the present Application are stated succinctly in the following paragraphs.
- (4)** That it is respectfully submitted that the Jain faith is not only distinct from Hinduism, but is a separate, distinct minority, as can be seen from the following:-

 - (a)** The Jain Community is distinct from the Hindu religion and its demand for minority status is almost a century old. In British India, the Viceroy took a decision in principle that the Government would give

representation to “Important Manakchand Hirachand, an eminent Jain philanthropist from Bombay and Acting President of Bharat Varshiya Digambar Jain Maha Sabha made an appeal to the then Viceroy and Governor General of India Lord Minto for the inclusion of the Jain community for representation in the council.

(b) In his petition dated 2nd September, 1909 Seth Maneckchand prayed:

(i) *That the Jain community does constitute an “Important Minority” and should not be neglected in this matter, has been admitted in the despatch of the Government of India dated the 1st October, 1908;*

(ii) *That as regards literacy the Jain community holds the second place throughout India, the first place of honour being held by the Parsees;*

(iii) *That in the Department of Agriculture, Trade and Commerce, also the Jain Community of India is fairly advanced to claim recognition;*

(iv) *That the importance of this, comparatively speaking, small community and its*

conspicuously humble peaceful law abiding, quiet and non-agitating character must have come to the prominent notice to your Excellency's Government in the recent matter of the Parasnath Hill;

(v) *That separated widely in matters of religious belief, social custom and way of living, from the other religious communities of India which group themselves as 'Hindu' as the Jain community of India is, it has no reasonable hope of success in the matter of representation in council if it is left to take its chance with the general 'Hindu' community;*

(vi) *That the Jain community of India inivently hopes and feels confident that your Excellency will be most graciously pleased to reserve one seat in your Excellency's legislative council for a member of the Jain community of India."*

(c) Seth Maneckchand's petition was transferred to the Government of Bombay and the Secretary to the Government of Bombay stated in his reply dated 15th October, 1909:

“With reference to your memorial to His Excellency the Viceroy and Governor General of India, dated the 2nd September, 1909, praying that a seat in the imperial legislative Council may be reserved for a member of the Jain Community, I am directed to inform you that a number of seats have been reserved for the representation of minorities by nomination and that in allotting them the claim of the important Jain Community will receive full consideration.”

- (d)** The debates in the Constituent Assembly demonstrate the initial importance placed by the founding fathers of the Constitution upon Minority safeguards. The Resolution for the setting up of an Advisory Committee on fundamental Rights, Minorities and Tribal and Excluded and Partially Excluded areas clearly acknowledge that:

“The question of minorities everywhere looms large in constitutional discussions. Many a constitution has foundered on this rock.... Unless the minorities are fully satisfied. We cannot make any progress we cannot even maintain peace in an undisturbed manner.”

- (e) Presenting the draft constitution to the Assembly, Dr. Ambedkar, referring to the articles on safeguards for minorities, observed:

“To diehards who have developed a kind of fanaticism against minority protection. I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State. It is for the majority to realise its duty not to discriminate against minorities.”

- (f) The President of the Constituent Assembly Dr. Rajendra Prasad, had nominated the eminent Jain industrialist Shri Kasturbhai Lalbhai as a Jain representative to the Minority advisory Committee of the Constituent Assembly. This supports the contention of the Jains that they constitute a separate religious entity and, thus, cannot be included with Hindu in enactments.

- (g) In his Allahabad speech on 3rd September, 1949 Jawaharlal Nehru said:-

“No doubt India had a vast majority of Hindus, but they could not forget the fact that there are also

minorities Muslims, Christians, Parsis and Jains”
(Emphasis Supplied). (The Statesman 01-09-1949).

(h) The Deputy Prime Minister of India Sardar Vallabhbhai Patel in his letter of 25th August, 1946 addressed to Sir Bhagchand Soni, President, All India Digambar Jain Mahasabha assured the Jain community not to be worried about their religious rights and promised that *“In free India there would be no restrictions upon the religious liberty of any community. There need be no apprehensions in this regard.”*

(i) In a “Memorandum by the Representatives of the Jain Community” presented to the Constituent Assembly, the following points were made:-

“The Jains are an ancient community of India with its own distinctive religion and philosophy, worship and ritual, social customs and manners. It is now recognised amongst oriental scholars that Jainism is essentially a non-Vedic religion and philosophy”. It is often forgotten that Jains have distinctive social and religious customs. Even their ritual is still regulated according to the injunctions in the Jain sacred literature. It may also be mentioned that Jains have even a system of law of their own and

attempts have been made by prominent Jains to secure its acceptance so as to regulate legal relations amongst the Jains according to their amongst the Jains according to their own system of law. It may also be pointed out that the Jains do not follow any Varna system nor is there regular inter-marriage between the Hindus and Jains.”

“The Jain doctrine of non-violence (Ahimsa), which is the foundation of the Gandhian creed, and universal brotherhood and tolerance, is far too well-known to need special mention here. The Jain doctrine of Anekantavada and Syadevada represents a unique contribution to logic and can easily provide a theoretical basis for intellectual tolerance when the world is divided into ideological camps warring against each other.”

“The contribution of Jainism to vernacular literature is noteworthy and along with Buddhists, Jains were the first to use the languages of the people for their sacred literature. It may also be mentioned here that the Jains have their own legal system. High Court Judges like Kumaraswami Shastri, acting Chief Justice of the Madras High Court and Justice Rangnekar of the Bombay High Court have held

that it is utterly wrong to think that the Jains were originally Hindus and later converted to Jainism.”

Advocate Raghavachariar in his latest edition of Hindu Law (1949) supports this view.

“In view of these considerations we strongly feel that the Jains should be treated as a minority. They are a distinctive group with its own distinctive culture and it would be a grave injustice to the Jain community if they were treated as a branch of Hinduism.”

- (j)** The National Commission for Minorities considered the Jain Minority issue at several meetings. More particularly at their 150th meeting held on 01-04-1991, 166th Meeting on 03-01-1994, 168th Meeting on 02-05-1994, and finally at their 172nd Meeting on 03-10-1994.
- (k)** After careful consideration of all aspects including available judicial pronouncements in the matter, the National Commission for Minorities took particular note of the fact that Jainism does not believe in any Creator of the world as such; Jains worship those beings who have achieved salvation in the life by their own efforts or are on the path of liberation;

Tirthankara – ‘Lord Maker’ the title of the Jain patriarchs of the highest order who have attained omniscience-worship is undertaken only for spiritual reasons and not for getting any worldly benefit out of it; and the fundamental principles of Jainism, its philosophy and ethics, its objects and manner of worship were entirely different from those of the Hindus.

- (l) The Commission further noted that while, of course, the Jains believe in transmigration, for the Jains, *“the soul called Jiva is, in contrast to the vedantic Atman (Self) of Finite and of definite variable dimensions, and the soul can never gain liberation until it has rid itself of its whole accumulation of Karma.”* The Commission noted that *“unlike the similar cyclic doctrines of Hinduism and Buddhism, in the Jain system there is no sharp break at the end of the cycle but rather an imperceptible process of systole and diastole.”*
- (m) The Commission took note also of the fact that while in everyday life, the Jains have been much influenced by the Hindus ‘nevertheless’ Hinduism had made little impression on the heart of Jainism which remains much as it was over 2000 years ago

an ancient science purporting to give an explanation of the whole Universe and to show man his way to its topmost point. There have been no great changes in Jainism over the centuries and it is today what it always has been an atheistic ascetic system of moral and spiritual discipline encouraging honesty and kindness in personal relations and rigid and perhaps sometimes exaggerated non-violence.

(n) It may be stated there that all the quotes above are from the Chapter title “The Basic Doctrines of Jainism appearing in the Sources of Indian Tradition Volume – I, edited by Prof. Ainslae T. Embree (Penguin, 1992).

(5) That it is most respectfully submitted that in no manner can the Jain faith be equated with Hinduism much less including the Jain faith in the term ‘Hindu’.

(6) That It is respectfully submitted that the Applicant / Intervener is *ad idem* with the case of the Petitioner in the present Special Leave Petition that the word ‘Hindu’ in the Hindu Succession Act, 1956, Hindu Marriage Act, 1955, Hindu Adoption and Maintenance Act, 1956 and the Hindu Minority and Guardianship Act, 1956 impinges

upon the fundamental rights of the members of the Jain Community as well. The clubbing of various religious groups in the enactments is against the spirit of the Constitution.

(7) That this is more so when the four religious groups mentioned hereinabove admittedly stand on an equal footing yet are independent of each other. In these circumstances, it is respectfully submitted that by clubbing independent religions under the word 'Hindu', the secular character of the Constitution is jeopardised as well as the identity of various religious communities is impinged upon which goes against the spirit of the Constitution of India and the intent of the founding fathers of Indian nation.

(8) That the Article 25 of the Constitution reads as follows:-

“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.”

It is respectfully submitted that Article 25 (1) *ibid* makes it clear that there should be no discrimination as to the status of religions. Article 25 is an Article of Faith in the Constitution, incorporated in recognition of the principle that the real test of the democracy is the ability of every minority to find its identity. Article 25 (2) does not permit calling all religions (including religious minorities) by the name of a single religion.

(9) That the present application is made bonafide in the interests of justice.

PRAYER

In conspectus of the facts and circumstances stated *supra* it is most respectfully prayed that this Hon'ble Court may be pleased to: -:

- (i) Permit the Applicant to intervene in the captioned petition;
and
- (ii) Pass such other and further orders as may be deem fit by this Hon'ble Court.

AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOND SHALL EVER PRAY.

FILED BY:

Abha R. Sharma
(Advocate For Applicant)

FILED ON: 11th March, 2013

PLACE: New Delhi