

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 209 OF 2016

Sunil Mane & Anr.	.. Petitioners
V/s	
Union of India & Anr.	.. Respondents

Mr. Nikhilesh Pote for the petitioners.
Mr. M.M. Pabale, AGP for the respondent – State.

**CORAM: DR. MANJULA CHELLUR, C.J. &
G.S. KULKARNI, J.**

DATE : 6th JANUARY 2017

P.C.:

Heard learned counsel for the petitioners.

We have gone through the contents of the PIL petition. According to the petitioners, they came across an incident in Bhivandi Magistrate Court, which occurred on 4th March 2015, where a witness Mr. Sunil Bhalerao when asked to take oath by putting hands on a religious book “Bhagwat Geeta”, he refused to do so saying he did not believe in any God. He was denied to take oath on Indian Constitution and asked to leave the Court. Again another incident came to the notice of the petitioners which occurred on 29th March 2016 in the District Court of Pune when one witness

Mr. Dnyaneshwar Molak refused to take oath on the religious book “Bhagwat Geeta” and in the name of God. He was not allowed to take oath on Indian Constitution and the case was adjourned without hearing in Pune District Court.

2. According to the petitioners, this practice of Hindus and Muslims swearing by religious book of their religion further ended in the year 1969 as the Law Commission in its 20th Report did suggest amendments to the Indian Oaths Act, 1973, therefore, according to them, there has to be uniform system of taking oath all over the country. Therefore, under the 1969 Law, which is still in force, a witness can swear in the name of Universal God without referring to any particular religion or he can say – he solemnly affirms and tells the truth and nothing but the truth. According to the petitioners, if the witnesses are to take oath only in the name of God and those persons, who are not believers of God, are not allowed to take oath by putting their hands on the Constitution of India, it is nothing but violative of Articles 14, 19 and 21 of the Constitution of India as well as the object behind the introduction of the Oaths Act. Hence, the petitioners are before this Court seeking following prayers:

“A. Please to hold and declare that the Oaths Act, 1969 is violative of Articles 14, 19 and 21 of the Constitution of India, 1950 as well as the object behind the introduction of the said Act and be pleased to quash and set aside such provisions of the Act.

- B. *Directions in the form of Mandamus Writ may kindly be issued declaring that those, who are not willing to take oath by the name of God or by putting their hands on any religious book, shall be allowed to take oath in the name of Indian Constitution.*
- C. *Be pleased to issue guidelines to all Courts in Maharashtra with respect to the Oaths Act, 1969 and Indian Constitution.*
- D. *All courts in Maharashtra be given instruction on taking suo motu action proactively against the people giving false affidavit on oath.”*

3. The Oaths Act of 1969 refers to the schedule how the format of oath has to be there for different categories of persons, i.e. witnesses, jurors, interpreters and people who come to swear the affidavit in their personal capacity. We do not find any difference so far as the format with reference to the above categories of persons. In all formats, it says – either the person swears in the name of God or he solemnly affirms and states as follows: No doubt, there is no third option provided in the Act. It is for the law makers to respond to this issue raised before this Court whether there has to be other options or not. We only have to see whether this format in the Oaths Act is really in contravention of Articles 14, 19 and 21 of the Constitution of India. The two options, as stated above, clearly

indicate if a person is believer of the Universal God or existence of some supernatural power, which is referred to as Almighty or God, then irrespective of religion, caste or creed he is taking oath in the name of Almighty without touching religion, caste or creed. If he is not intending to take such oath in the name of God being a non-believer in that supernatural power, which is referred to as Almighty or God, it provides that such person in his individual capacity affirms that he will be taking a solemn oath to tell the truth and only the truth in the affidavit or the evidence or in whatever context he is required to take such oath. Indian Constitution gives utmost respect and importance to the citizens of this country allowing them to take part in every aspect of the matter which touches all walks of life. That respect is also expressed by giving importance to an individual who can even affirm in his individual capacity saying – “I solemnly affirm and state as follows”. This is nothing but the respect a citizen will have in this country as encompassed in the Constitution of India. We fail to understand if an individual as a citizen of this country or for that matter even an outsider who is not an India, who intends to come and depose before the Court, the respect shown to the human being as an individual speaks volumes with this provision in the Oaths Act. Therefore, we are of the opinion that there is proper and meaningful object behind the introduction of the Oaths Act of 1969 having regard to the culture and heritage of this country which speaks volumes and is acknowledged across the world.

4. Coming to the second prayer, i.e. prayer (b), to take oath in the name of Indian Constitution, it is for the law makers to introduce such option. We fail to understand how a direction in the form of Mandamus Writ could be issued when the existing provisions do give an option to non-believer in God to take oath in his individual capacity.

5. Then coming to prayer (c), answer to prayers (a) and (b) will suffice to answer prayer (c).

6. So far as prayer (d), i.e. directions to Courts in Maharashtra to take suo motu action proactively against the people giving false affidavit on oath, such provision is already provided under Section 191 of IPC and even if the Court is not taking proactive action in such matters, it is always open to the party aggrieved to bring to the notice of the Court such action to be initiated.

7. In that view of the matter, we fail to understand how specific directions in the form of reliefs sought could be granted in the present public interest litigation. Accordingly the PIL is disposed of.

(G.S. KULKARNI, J.)

CHIEF JUSTICE