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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

S.B. CIVIL WRIT PETITION NUMBER : _____/1996

KARPOOR CHANDRA KULISH

- Petitioner

Versus

UNION OF INDIA

- Respondent

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Counsel for the petitioner

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KARPOOR CHANDRA KULISH

son of late Shri Birdhi Chandra, aged 67 years, by caste
Oswal Jain, resident of E-29, Lajpat Marg, C-Scheme,
Jaipur.

- Petitioner

Versus

UNION OF INDIA

through Cabinet Secretary, Government of India, New
Delhi.

- Respondent

S.B. CIVIL WRIT PETITION UNDER ARTICLE
226 OF THE CONSTITUTION OF INDIA.

IN THE MATTER OF THE PREAMBLE TO
THE CONSTITUTION OF INDIA.

To

The Hon'ble Acting Chief Justice Mr.
M.G.Mukerjee and his other companion
Judges of the High Court of Judicature for
Rajasthan at Jaipur Bench, Jaipur.

MAY IT PLEASE YOUR LORDSHIPS:

The humble above named petitioner most respectfully begs to submit as under -

1. That the humble petitioner is a citizen of India hence entitled to file this writ petition.
2. That on 26th day of November 1949 the Preamble to the Constitution of India read as under:-

"**WE**, the people of India, having solemnly resolved to constitute India into a **SOVEREIGN DEMOCRATIC REPUBLIC** and to secure to all its citizens:

JUSTICE, Social, Economic and Political;

LIBERTY of thought, expression, belief, faith and worship;

And to promote among them all;

FRATERNITY assuring dignity of the individual and the unity and integrity of the nation;

In our constituent assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this constitution."

3. That after 42nd amendment in 1976 (w.e.f. 3/1/1977), the Preamble read as under :-

"**WE**, the people of India, having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens:

JUSTICE, Social, Economic and Political;

LIBERTY of thought, expression, belief, faith and worship;

And to promote among them all;

FRATERNITY assuring dignity of the individual and the unity and integrity of the nation;

In our constituent assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this constitution."

4. That the word "Socialist" was added to the Preamble by 42nd Constitution (Amendment) Act, 1976 which came into force w.e.f. 3rd January 1977.

5. That the word Socialist was added by the aforesaid 42nd Constitution (Amendment) Act during the declared emergency when Parliament had ceased to represent the national will as most of the leaders of all the opposition parties were behind bars along with lacs of other people.

6. That, as per Prof Archibald Cox, "When a popular leader seizes power and moves to suppress dissents, an independent judiciary affords the best and perhaps the only protection against such threats to truly fundamental principles as arbitrary arrest and detention without trial, the invasion of homes by security forces without judicial warrants and the suppression of political opposition, including of freedom of expression. In countries with written constitution and other democratic forms of government, the switch to dictatorship or another form of authoritarian rule has usually been accomplished by declaration of an emergency suspending the Constitution and the exterior powers of independent courts."

7. That, unfortunately the same happened in India when late Mrs Indira Gandhi declared emergency in 1975 and suppressed the political opposition by heavy hand

which was nothing but merciless butchering of democracy. This resulted in negation of the constitutional provisions which even the Hon'ble Supreme Court refused to consider.

8. That the word "Socialism" remains undefined in the Constitution. Various meanings have been attributed to it in the past.

9. That it was Pandit Jawahar Lal Nehru, an aristocrat by nature, who by chain of circumstances had led the people in the goodness of the word Socialism due to impressions which he gathered from Russian Revolution during his early age. It was he who gave the slogan of Socialistic Pattern of Society during the Awadi Session of Indian National Congress. It would be also relevant here to mention that at the time of Awadi Session, the Congress had lost, unfortunately for the country, many stalwarts like Sardar Vallabh Bhai Patel, whose presence could have checked Pt. Nehru from taking the path of so-called socialism.

10. That Socialism, as understood by Lenin, Stalin, Engels and other Marxist theoreticians, means deprivation of an individual of property, suppression of individual liberty by iron hand sending to concentration camps in Siberia all those who disagree with the so-called

national leadership, total suppression of voice of dissent and physical liquidation of the political opponents. Certainly Nehru had no intention to apply this philosophy to this country as he was a tabian socialist and under influence of Prof. Lasky.

11. That the word 'Socialism' has never been defined or understood properly by pseudo-intellectuals and it has been widely misused for fulfilling the personal and political interests of politicians and to the detriment of the nation at large.

12. That the word "Socialism" could not have been added to the Constitution as no constitutional provision is in accordance with any of the Marxist theory. Our Constitution is all for dignity of the individual and for protection of fundamental and natural rights of a citizen, while the believers of Marxist faith, particularly in China, Russia and some of the eastern European countries were out to suppress freedom as provided by our Constitution. There is a sea of change there in these countries now as they have also opted for democracy now.

13. That the word which was neither defined in the Constitution nor the same was in consonance with the provisions of our constitution, has been added unnecessarily to the Preamble. The constitution-framers

did not commit this nation to any particular economic order or dogma.

14. That the Hon'ble Supreme Court has made a fine distinction between "Constituent Power" and the "Constitution making power". The former is enjoyed by the Parliament under Article 368 while the later being a plenary power, can be exercised by the constituent assembly alone.

15. That as the Hon'ble Court observed, "the donee of a limited power can not, by exercise of that power, convert the limited power into an unlimited power".

16. That the theory of judicial activism, as being vigorously applied by the Hon'ble Supreme Court and various Hon'ble High Courts of the country empowers this Hon'ble Court to a judicial review of a void amendment made to the Preamble of the Constitution by a Parliament which at the time of making the amendment, had ceased to be a representative of the national will/or opinion. It is obvious that the 42nd Constitution (Amendment) Act was passed in order to please Mrs Indira Gandhi and on her whip/dictation which tentamounts to gross misuse of majority in Parliament in the absence of political opposition and abuse of authority.

17. That Prof. Archibald Cox rightly says "Constitutionalism works, our liberties are protected, and our society free because officially individuals and the people as a whole realise that liberty for the weak depends upon the rule of law and the rule of law depends upon voluntary compliance. When the test comes, that realisation must be strong enough for the people to rise up : morally and politically and overwhelm the offender. The roots of constitutionalism lie in the hearts of the people". It appears that Cox is speaking the language of Mahatma Gandhi.

18. That judicial review protects people from unauthorised action of the executive. Thomas Jefferson observed "the laws of the land administered by upright judges would protect you from any exercise of power unauthorized by Constitution of the United States".

19. That judicial review provides for better protection for enduring values often violated by politicians and of which the people too often lose sight in the emotional intensity and maneuvering of political conflict, specially in national crisis.

20. That Constitution of a country is expected to represent the aspirations of the people and to provide

people with an instrument of government best suited to meet their needs.

21. That the words "We the People" indicates that the people and not the institutions of the government, created by the Constitution, are sovereign. Hence no institution of government could claim to represent the general will of the people not even the Parliament.

22. That "the basic idea of Socialism involves not only the socialisation of essential instruments of production in the widest sense but also the abolition of private incomes which allow men to live without rendering or having rendered - any kind of useful service to their fellows and also sweeping away all educational preferences which divide men into social classes. It involves any effect whatever is needed for establishment of what socialists called a 'classless' society." G.D.H.Cole.

23. That it is difficult to define Socialism, social justice. Allen has rightly observed that "social justice has no definite content and it means different things to different people".

24. That the addition of the word "Socialist" to the Preamble is wholly unnecessary and unwarranted as the provisions of the Constitution i.e. Articles 18, 38 and 39

refer to social and economic justice, Article 19 refers to liberty of thought and expression, Articles 14, 15 and 16 to equality of status and opportunity; and Articles 25, 26 and 27 to freedom of belief, faith and worship.

25. That the effect of inclusion of the word "Socialism" as one of the aims of the State has increased the power of the government. Hon'ble Matthew J. observed in "Democracy, Equality and Freedom" at page 49 as follows:

"But when social justice becomes a conscious end of state policy, there is vast and inevitable increase in the frequency with which ordinary citizens come into relationship of a direct encounter with state power holders. The citizen's encounter now is not with the policemen or the criminal magistrate but with the official representing a regulatory authority, administration of social insurance, or a state - operated economic enterprise - authorities empowered to issue licenses and permits, etc. It has dramatically increased incidents of encounter that sets the task of the rule of the law.

26. That the objectives mentioned in the Preamble as adopted and enacted in 1949 are a part of the basic structure of the Constitution hence the Preamble could not be amended as to destroy the basic objectives.

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27. That the word "Socialist" should have been defined. It is a word of many meanings and its appropriation by the Soviet Union a few years back, would seem to suggest that a socialist form of government can be the dictatorship which is foreign to our Constitution.

28. That in fact an amendment to the Preamble moved by Maulana Hasrat Mohari, namely, "We the People of India having solemnly resolved to constitute India into a Union of Indian Socialist Republic to be called UISR on the lines of the USSR" was rejected as inconsistent with our Constitution.

29. That many other amendments to the Preamble were rejected by the Constituent Assembly.

30. That as per Hon'ble Supreme Court the word "Socialism" is vague as held in Nakara Vs. Union of India.

31. That the word "Socialism" is unwarranted in the Preamble to the Constitution of India in view of the fact that since 1991 the national governments led by ex-Prime Minister Shri P.V.Narsimha Rao and the present Prime Minister Shri H.D.Devegowda, have totally reversed the gear by changing economic policies in the name of economic reforms.

32. That at a time when the word "Socialism" does not find favour with a large number of political parties, it is highly undesirable and against the will of the people.

33. That during the last few years, we have seen the socialist countries falling apart and giving up the theory of "Socialism" in almost all the countries of the world except China and even China has opened the doors for foreign capital against the dictates of Karl Marx.

34. That the word "Socialism" should be deleted from the Constitution as it is irrelevant and does not find favour with our political philosophy, the provisions of Constitution and has already been given up by those countries of the world who, at one time, loudly proclaimed their faith in the word.

35. That the 42nd Constitution (Amendment) Act is void as it does not represent the will of the people.

36. That the petitioner has no alternative or efficacious or speedy remedy except to invoke the extra ordinary jurisdiction of this Hon'ble Court under the provisions of Article 226 of the Constitution of India.

37. That the petitioner has not filed any similar writ petition either before this Hon'ble Court or before the Hon'ble Supreme Court of India.

It is, therefore, most humbly and respectfully prayed that your Lordships' may graciously be pleased to accept this writ petition and be further graciously pleased to -

- a) issue an appropriate writ, order or direction to strike down the word "Socialist" from the Preamble to the Constitution of India;
- b) issue any other appropriate writ, order or direction which your Lordships' may deem fit and proper in favour of the prayer of the humble petitioner.

Your Lordships' humble
petitioner :

(Karpoor Chandra Kulish)
through his counsel:

(Mohan Singh Raghaw/R.K.Sharma/Shree Swami)
Advocates

Notes:

1. As no vires of any Act or Rules made thereunder or the any order of the Rajasthan Civil Services Appellate Tribunal is under challenge in this writ petition, it is a S.B. writ petition.
2. No such writ petition has earlier been filed or is pending before this Hon'ble Court.
3. Process fee, notices and extra copies will be filed within the stipulated period.
4. Since pie papers were not readily available, this writ petition has been typed on stout papers by my private stenographer.

Counsel for the petitioner

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
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KARPOOR CHANDRA KULISH

- Petitioner

Versus

UNION OF INDIA

- Respondent

Affidavit in support of writ petition

I, Karpoor Chandra Kulish son of late Shri Birdhi Chandra, aged 67 years, by caste Oswal Jain, resident of E-29, Lajpat Marg, C-Scheme, Jaipur, do hereby state on oath as under :-

1. That I am the petitioner in this case and am fully conversant with the facts thereof.
2. That the annexed writ petition has been drafted under my instructions by my counsel and the contents thereof have been read and understood by me fully.
3. That the contents of the annexed writ petition from para No.1 to 37 are true and correct to my personal knowledge.

Deponent

Verification:

I, Karpoor Chandra Kulish, the above named deponent do hereby declare and verify that the contents of my this affidavit from para No.1 to 3 are true and correct to my personal knowledge. Nothing material has been concealed therein and no part of it is false. SO HELP ME GOD.

Deponent