

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C.) No. 7455 of 2001

Naz Foundation

...Petitioner

Versus

Govt. of N.C.T. Delhi & Ors

...Respondents

Present: Mr Trideep Pais with Ms Savita Singh for the petitioner.
Mr. Sidharth Mridul, Ms. Harpreet Singh and Mr. Tanuj
Khurana for UOI.
Mr. Ramesh K. Sharma for respondent no. 3.

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In this petition we find there is no cause of action as no prosecution is pending against the petitioner. Just for the sake of testing the legislation, a petition cannot be filed.

It is required to be borne in mind as to what a Full Bench of this Court in Vijay Kumar Mundra vs. Union of India and Others reported in ILR (1972) II Delhi 483 has stated:

“It is well settled law that advisory opinions or declaratory judgments on the constitutionality of legislation of the validity of an action under a valid law cannot be given, apart from some concrete injury or controversy, in the exercise of powers under Article 32 or Article 226 of the Constitution. In Chiranjit Lal Choudhuri vs Union of India etc. 1950 S.C.R. 869, (19) Fazal Ali, J. noticed with approval that in a number of cases in the United States of America it has

been held that no one except those whose rights are directly affected by a law can raise a question of the constitutionality of that law. The learned judge agreed with the speech of Mukhrjee, J. in this case who had reiterated the well settled dictum which we have enunciated above. The court is concerned with the facts of the particular case in disposing of a petition under Article 226 of the Constitution and so does not express its opinion on hypothetical facts or in the abstract (see Chuni Singh Behari Lal and Others vs. Union of India, A.I.R. (1968 Delhi 196) (20). Chagla C.J. in a Bench decision of the Bombay High Court in Heman Santlal vs State of Bombay, A.I.R. 1951 Bombay 121 (21), observed that a court should decide only those questions which directly arose from the facts of the particular case. This is particularly so when the court is dealing with the Constitution. In consequence, the court does not express opinion when nobody is really aggrieved by the action which is impugned and does not examine merely academically the impugned action of the legislature or the executive”.

In view of the above, we feel that an academic challenge to the constitutionality of a legislative provision cannot be entertained. Hence, the petition dismissed.

Sd/-

CHIEF JUSTICE

Sd/-

September 02, 2004

BADAR DURREZ AHMED, J.