

Balram Singh vs Union Of India on 25 November, 2024

Author: Sanjay Kumar

Bench: Sanjay Kumar

2024 INSC 893

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

Writ Petition (Civil) No 645 of 2020

Dr Balram Singh and Others

Versus

Union of India and Another

Writ Petition (Civil) No 1467 of 2020

Miscellaneous Application No 835 of 2024

ORDER

Writ Petition (C) No 645 of 2020 and Writ Petition (C) No 1467 of 2020 These writ petitions seek to challenge the insertion of the words 'socialist' and 'secular' in the Preamble to the Constitution of India by the Constitution (Forty-second Amendment) Act in 1976. The challenge is on various grounds, namely, retrospectivity of the insertion in 1976, resulting in falsity as the Constitution was adopted on the 26th day of November 1949; the word 'secular' was deliberately eschewed by the Constituent Assembly, and the word 'socialist' fetters and restricts the economic policy choice vesting in the elected government, which represents the will of the people. Besides, it is submitted that the Forty-second Amendment is vitiated and unconstitutional as it was 'passed' during the Emergency on November 2, 1976, after the normal tenure of the Lok Sabha that had ended on March 18, 1976. Therefore, it is argued, that there was no will of the people to sanction the amendments.

2 The writ petitions do not require detailed adjudication as the flaws and weaknesses in the arguments are obvious and manifest. Two expressions—'secular' and 'socialist' and the word 'integrity' were inserted in the Preamble vide the Constitution (Forty-second Amendment) Act, 1976.

These amendments were made in 1976. Article 368 of the Constitution permits amendment of the Constitution. The power to amend unquestionably rests with the Parliament. This amending power extends to the Preamble. Amendments to the Constitution can be challenged on various grounds, including violation of the basic structure of the Constitution. The fact that the Constitution was adopted, enacted, and given to themselves by the people of India on the 26th day of November, 1949, does not make any difference. The date of adoption will not curtail or restrict the power under Article 368 of the Constitution. The retrospectivity argument, if accepted, would equally apply to amendments made to any part of the Constitution, though the power of the Parliament to do so under Article 368, is incontrovertible and is not challenged.³ While it is true that the Constituent Assembly had not agreed to include the words 'socialist' and 'secular' in the Preamble, the Constitution is a living document, as noticed above with power given to the Parliament to amend it in terms of and in accord with Article 368. In 1949, the term 'secular' was considered imprecise, as some scholars and jurists had interpreted it as being opposed to religion. Over time, India has developed its own interpretation of secularism, wherein the State neither supports any religion nor penalizes the profession and practice of any faith. This principle is enshrined in Articles 14, 15, and 16 of the Constitution, which prohibit discrimination against citizens on religious grounds while guaranteeing equal protection of laws and equal opportunity in public employment. The Preamble's original tenets—equality of status and opportunity; fraternity, ensuring individual dignity—read alongside justice - social, economic political, and liberty; of thought, expression, belief, faith, and worship, reflect this secular ethos. Article 25 guarantees all persons equal freedom of conscience and the right to freely profess, practice, and propagate religion, subject to public order, morality, health, other fundamental rights, and the State's power to regulate secular activities associated with religious practices. Article 26 extends to every religious denomination the right to establish and maintain religious and charitable institutions, manage religious affairs, own and acquire property, and administer such property in accordance with law. Furthermore, Article 29 safeguards the distinct culture of every section of citizens, while Article 30 grants religious and linguistic minorities the right to establish and administer their own educational institutions. Despite these provisions, Article 44 in the Directive Principles of State Policy permits the State to strive for a uniform civil code for its citizens.

⁴ A number of decisions of this Court, including the Constitution Bench judgments in *Kesavananda Bharati v. State of Kerala*¹ and *S R Bommai vs Union of India*², have observed that secularism is a basic feature of the Constitution. In *R C Poudyal v. Union of India*³, the Court elucidated that although the term 'secular' was not present in the Constitution before its insertion in the Preamble by the Constitution (Forty-second Amendment) Act, 1976, secularism essentially represents the nation's commitment to treat persons of all faiths equally and without discrimination. In *M Ismail Faruqui (Dr) v. Union of India*⁴, this Court elaborated that the expression secularism in the Indian context is a term of the widest possible scope. The State maintains no religion of its own, all persons are equally entitled to freedom of conscience along with the right to freely profess, practice, and propagate their chosen religion, and all citizens, regardless of their religious beliefs, enjoy equal freedoms and rights. However, the 'secular' nature of the State does not prevent the elimination of attitudes and practices derived from or connected with religion, when they, in the larger public interest impede development and the right to equality. In essence, the concept of secularism represents one of the facets of the right to equality, intricately woven into the basic fabric that

depicts the constitutional scheme's pattern.

5 Similarly, the word 'socialism', in the Indian context should not be interpreted as restricting the economic policies of an elected government 1 (1973) 4 SCC 225 (13 Judges) 2 (1994) 3 SCC 1 (9 Judges) 3 (1994) Supp (1) SCC 324 4 (1994) 6 SCC 360 of the people's choice at a given time. Neither the Constitution nor the Preamble mandates a specific economic policy or structure, whether left or right. Rather, 'socialist' denotes the State's commitment to be a welfare State and its commitment to ensuring equality of opportunity. India has consistently embraced a mixed economy model, where the private sector has flourished, expanded, and grown over the years, contributing significantly to the upliftment of marginalized and underprivileged sections in different ways. In the Indian framework, socialism embodies the principle of economic and social justice, wherein the State ensures that no citizen is disadvantaged due to economic or social circumstances. The word 'socialism' reflects the goal of economic and social upliftment and does not restrict private entrepreneurship and the right to business and trade, a fundamental right under Article 19(1)(g).

6 The argument that the Constitution (Forty-second Amendment) Act, 1976, should be struck down due to its enactment during the Emergency and the extended period of the Lok Sabha was previously deliberated in Parliament, during the consideration of the Constitution Forty-Fifth Amendment Bill, 1978. During these deliberations, the inclusion of the words 'secular' and 'socialist' came under scrutiny. Subsequently, this Bill was renumbered and called the Constitution Forty-Fourth Amendment Act 1978. The word 'secular' was explained as denoting a republic that upholds equal respect for all religions, while 'socialist' was characterized as representing a republic dedicated to eliminating all forms of exploitation—whether social, political, or economic. However, the said amendment as proposed to Article 366 was not accepted by the Council of States. No doubt, in *Excel Wear v. Union of India and Others*⁵, this Court had held that the addition of the word socialist in the Preamble may enable the Court to lean more in favour of nationalization and State ownership of industries, yet this Court recognized private ownership of industries, which forms a large portion of the economic structure. The majority judgment of this Court in the 9-Judge Constitution Bench in *Property Owners Association and Others v. State of Maharashtra and Others*⁶ has cleared any doubt and ambiguity, as it is held that the Constitution, as framed in broad terms, allows the elected government to adopt a structure for economic governance which would sub-serve the policies for which it is accountable to the electorate. Indian economy has transitioned from the dominance of public investment to the co-existence of public and private investment.

7 The fact that the writ petitions were filed in 2020, forty-four years after the words 'socialist' and 'secular' became integral to the Preamble, makes the prayers particularly questionable. This stems from the fact that these terms have achieved widespread acceptance, with their meanings understood by "We, the people of India" without any semblance of doubt. The additions to the Preamble have not restricted or impeded legislations or policies pursued by elected governments, provided such actions did not infringe upon fundamental and constitutional rights or the basic structure of the Constitution. Therefore, we do not find any legitimate cause or 5 (1978) 4 SCC 224 6 2024 INSC 835 justification for challenging this constitutional amendment after nearly 44 years. The circumstances do not warrant this Court's exercise of discretion to undertake an exhaustive examination, as the constitutional position remains unambiguous, negating the need for a detailed

academic pronouncement. This being the clear position, we do not find any justification or need to issue notice in the present writ petitions, and the same are accordingly dismissed.

8 Pending applications, including the applications for intervention, shall also stand dismissed.

Miscellaneous Application No 835 of 2024 1 The Miscellaneous Application is allowed. The Registry is directed to register the Writ Petition (Civil) Diary No. 14904 of 2024. 2 In view of the order passed in Writ Petition (Civil) No. 645 of 2020 and Writ Petition (Civil) No.1467 of 2020, the Writ Petition shall be treated as dismissed.

.....CJI.

[Sanjiv Khanna]J. [Sanjay Kumar] New Delhi;

November 25, 2024.