

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Civil) No(s).222/2018

SAMEENA BEGUM

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(FOR ADMISSION)

WITH

[ITEM NO.18 – W.P.(C)NO.202/2018 (FOR ADMISSION)] ;
[ITEM NO.39 – W.P.(C)NO.235/2018 (FOR ADMISSION)] ; AND
[ITEM NO.40 – W.P.(C)NO.227/2018 (FOR ADMISSION AND I.R.)] .

Date : 26-03-2018 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

For Petitioner(s) Mr. Mohan Parasaran, Sr. Adv.
In WP(C)No.202/18 Mr. A.K. Upadhyay, Adv.
Ms. Asha Upadhyay, Adv.
Mr. Giridhar Upadhyay, Adv.
Mr. R.D. Upadhyay, Adv. [AOR]

In WP(C)No.222/18 Mr. V. Shekhar, Sr. Adv.
Ms. Archana Pathak Dave, Adv. [AOR]
Ms. Ankita Chaudhry, Adv.
Mr. Shashank Shekhar, Adv.
Mr. Virag Gupta, Adv.
Mr. Prithviraj Singh, Adv.
Ms. Stuti Naina Karwal, Adv.

In WP(C)No.235/18 Mr. Sajan Poovayya, Sr. Adv.
Mr. Priyadarshi Banerjee, Adv.
Mr. Pratibhanu Singh Kharola, Adv.
Mr. A.K. Upadhyay, Adv.
Mr. R.D. Upadhyay, Adv. [AOR]

In WP(C)No.227/18 Mr. Gopal Sankaranarayanan, Adv.
Mr. Ashwani Kumar Dubey, Adv. [AOR]
Mr. Shrutanjaya Bhardwaj, Adv.
Ms. Veera Mahuli, Adv.
Ms. Anuja Kapur, Adv.

For Applicant(s) – Muslim Women Resistance Committee :

Mr. V.K. Biju, Adv.
Mr. Vineet Kumar Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard Mr. Mohan Parasaran; Mr. V. Shekhar; Mr. Sajan Poovayya, learned senior counsel and Mr. Gopal Sankaranarayanan, learned counsel for the petitioners and Mr. V.K. Biju, learned counsel for one of the applicants.

It is submitted by learned counsel for the petitioners that the challenge in these writ petitions pertains to the prevalent practice of polygamy including *Nikah Halala*; *Nikah Mutah*; and *Nikah Misyar* as they are unconstitutional. Various grounds have been urged in support of the stand as to how these practices, which come within the domain of personal law, are not immune from judicial review under the Constitution. It is urged by them that the majority opinion of the Constitution Bench in the case of *Shayara Bano etc. v. Union of India & Ors. etc.* (2017) 9 SCC 1 has not dealt with these aspects. They have drawn our attention to various paragraphs of the judgment to buttress the point that the said issues have not been really addressed as there has been no delineation on these aspects.

On a perusal of the judgment, we find the submission of the learned counsel for the parties / petitioners is correct that these concepts have not been decided by the Constitution Bench.

Issue notice to the respondents in W.P. (C)No.227 of 2018. We have said so, as they are the real parties who can take a stand and assist the Court. We may further state, in other writ petitions, the Law Commission of India has been made a party. Since we do not think that the Law Commission of India should be made a respondent, we have confined issuance of notice to the parties which have been arrayed as respondents in this writ petition. Learned counsel for the petitioners shall take steps within three days.

Dasti, in addition, is permitted.

In addition to the aforesaid, a copy of the writ petitions be served on the Central Agency so that it can apprise the office of the learned Attorney General for India.

Mr. V.K. Biju, learned counsel appearing for one of the applicants, viz., Muslim Women Resistance Committee, Kolkata submitted that he may be permitted to file an application for impleadment in any of the writ petitions. He is at liberty to do so.

At this juncture, a submission has been advanced at the Bar that keeping in view the importance of the issue, the matter should be placed before the Constitution Bench. Accepting the said submission, it is directed that the matter be placed before Hon'ble the Chief Justice of India for constitution of appropriate Constitution Bench for dwelling upon the issues which may arise for consideration from the writ petitions.

(Subhash Chander)
AR-cum-PS

(H.S. Parasher)
Assistant Registrar

