

SUPREME COURT OF INDIA

Shyam Narayan Chouksey

Vs.

Union of India

WP(Civil)No.855 of 2016

(Dipak Misra,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud,JJ.,)

09.01.2018

JUDGMENT

Dipak Misra,CJI.,

1. The petitioner, a public spirited person, has approached this Court under Article 32 of the Constitution of India for issue of a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to take appropriate steps for inculcating in the public a proper sense for paying due respect to the National Anthem; to issue a writ, order or direction as to what is required to be done and not to be done when the National Anthem is being played or sung; to specify what will constitute disrespect and abuse of the National Anthem; and to restrain the use of the National Anthem for any commercial exploitation or to gain financial advantage in any manner.

2. Apart from the aforesaid prayers, there are many other prayers and one such prayer includes that no one should print the National Anthem on any undesirable object or display it in a manner and at such places which may be disgraceful and may tantamount to showing disrespect to the National Anthem.

3. After issue of notice, learned Attorney General for India entered appearance. On 30th November, 2016, taking note of the assertions made in the petition, this Court had passed an interim order, which reads thus:-

–Having heard the learned counsel for the parties and awaiting the reply from the Union of India, as an interim measure, it is directed that the following directions shall be scrupulously followed:-

(a) There shall be no commercial exploitation to give financial advantage or any kind of benefit. To elaborate, the National Anthem should not be utilized by which the person involved with it either directly or indirectly shall have any commercial benefit or any other benefit.

(b) There shall not be dramatization of the National Anthem and it should not be included as a part of any variety show. It is because when the National Anthem is sung or played it is imperative on the part of every one present to show due respect and honour. To think of a dramatized exhibition of the National Anthem is absolutely inconceivable.

(c) National Anthem or a part of it shall not be printed on any object and also never be displayed in such a manner at such places which may be disgraceful to its status and tantamount to disrespect. It is because when the National Anthem is sung, the concept of protocol associated with it has its inherent roots in National identity, National integrity and Constitutional Patriotism.

(d) All the cinema halls in India shall play the National Anthem before the feature film starts and all present in the hall are obliged to stand up to show respect to the National Anthem.

(e) Prior to the National Anthem is played or sung in the cinema hall on the screen, the entry and exit doors shall remain closed so that no one can create any kind of disturbance which will amount to disrespect to the National Anthem. After the National Anthem is played or sung, the doors can be opened.

(f) When the National Anthem shall be played in the Cinema Halls, it shall be with the National Flag on the screen.

(g) The abridge version of the National Anthem made by any one for whatever reason shall not be played or displayed.”

4. After issuing the directions, this Court noted the submissions of the learned Attorney General which were to the following effect:-

–We have so directed as Mr. Mukul Rohtagi, learned Attorney General for India submits with all humility at his command and recommend that National Anthem has to be respected. The directions are issued, for love and respect for the motherland is reflected when one shows respect to the National Anthem as well as to the National Flag. That apart, it would instill the feeling within one, a sense committed patriotism and nationalism.”

5. Thereafter, as the factual matrix would unfurl, two applications were filed seeking impleadment and recall of the interim order. They were taken up on 9th December, 2016, and on that day, the prayer for impleadment was allowed, but as far as the application for recall was concerned, the Court passed the following order:-

–As far as the recall of the order is concerned, the same has to be heard on merits when the matter is finally debated upon. Be it noted, Mr. Dinesh, learned counsel for

the applicant at the time of mentioning had submitted that there has to be some kind of exemption for the physically challenged persons or physically handicapped persons. Mr. Siddharth Luthra, learned senior counsel who was present in Court has referred to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Mr. Rohatgi, learned Attorney General for India submitted that how the physically challenged or physically handicapped persons shall show respect to the National Anthem, the Central Government will issue guidelines within ten days hence. As the guidelines are going to be issued, we clarify, if a physically challenged person or physically handicapped person goes to the Cinema hall to watch a film, he need not stand up, if he is incapable to stand, but must show such conduct which is commensurate with respect for the National Anthem. When we say physically challenged or physically 3 handicapped persons, it means persons with disability as defined under Sections 2(i) and 2(t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Another aspect needs to be cleared. When we said that the doors shall be closed, we did not mean that the doors shall be bolted as mentioned in the case of Municipal Corporation of Delhi, Delhi vs. Uphaar Tragedy Victims Association and Ors. [(2011) 14 SCC 481] but only to regulate the ingress and egress during the period while the National Anthem is played.”

6. On the next date of hearing i.e. 14th February, 2017, certain interlocutory applications were filed, which related to the difficulties faced by the disabled persons. Mr. Sidharth Luthra, learned senior counsel, who was appointed as the friend of the Court, had highlighted certain aspects and taking note of the same, the following order was passed:-

“Mr. Siddharth Luthra, learned amicus curiae, submitted that it may be clarified that the people are not expected to stand when the National Anthem is sung or played as a part of the storyline in the feature film or as a part of the newsreel or the documentary. Mr. Rohatgi, learned Attorney General accepted the said suggestion. In view of the aforesaid, it is clarified that when the National Anthem is sung or played in the storyline of a feature film or par of the newsreel or documentary, apart from what has been stated in the order dated 30.11.2016, the audience need not stand.

At this juncture, we may state that the Parliament has brought a new legislation called 'The Rights of Persons with Disabilities Act, 2016. Section 102 repeals 'The Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act, 1995. This Court on 9.12.2016 has modified the earlier order regard being had to the handicapped persons keeping in view the 1995 Act. On a query being made, Mr. Mukul Rohatgi, learned Attorney General for India submitted that the Union of India shall issue an appropriate notification/guidelines in view of the language employed in the Rights of Persons with Disabilities Act, 2016. The said notification/guidelines may be issued within a week hence.

Mr. Subhash Chandran, learned counsel submits that he may be permitted to file an application for intervention on behalf of the National Platform for the Rights of the Disabled. He is at liberty to file the application.”

7. On 18th April, 2017, dealing with I.A. No.15 of 2017, which also related to disabled persons, certain modifications were made. The said order is as follows:-

–This is an application filed by the NPRD to direct the respondent No.1 to exempt certain categories of disabled persons from the purview of the order of this Court dated 30th November, 2016 and 9th December, 2016. The categories of persons mentioned are:-

(i) Wheel chair users - can be cerebral palsy, Parkinsons, Multiple sclerosis, Muscular dystrophy or other conditions

(ii) Those with autism

(iii) Those with cerebral palsy

(iv) Intellectual disabilities

(v) Mental illness

(vi) Deaf blind

(vii) Multiple disabilities

(viii) Parkinsons, Multiple sclerosis

(ix) Leprosy cured

(x) Muscular dystrophy

Having heard learned counsel for the parties, we are inclined to modify the orders and direct that the persons who are wheel chair users, those with autism, persons suffering from cerebral palsy, multiple disabilities, parkinsons, multiple sclerosis, leprosy cured, muscular dystrophy and deaf and blind be treated not to be within the ambit of the orders passed by this Court. As far as the other categories, which we have not referred to mentioned in the application, are concerned, the same may be considered by the Union of India.”

8. On the previous occasion i.e. 23rd October, 2017, having heard learned counsel for the parties and the learned Attorney General for India, the following order came to be passed:-

–The submission of the learned Attorney General is that because of the vast diversity in the country based on religion, race, caste and even region, it becomes necessary to have uniformity which should be cultivated by playing the National Anthem so that when people come out from the cinema halls, instilling the belief that they are all Indians. Be that as it may. In this context, he has referred to Article 51A(a) of the Constitution of India. Having heard learned counsel for the parties for some time, we think it appropriate that the Central WP(C) 855/16 4 Government should take a call in this regard and, if necessary, as advised, may bring out the requisite notification or circular or rules. When we say 'take a call', needless to say, the discretion rests with the Central Government. The discretion has to be exercised without being influenced by our interim order. We may further emphasize that the discretion may be utilized to regulate in an inclusive manner or as the Central Government feels fit.”

9. In pursuance of our earlier order, an affidavit has been filed by the Union of India. It is submitted by Mr. K.K. Venugopal, learned Attorney General that the Central Government has constituted a Committee by a Notification/Order dated 5th December, 2017. We shall refer to the same at a later stage.

10. Mr. Abhinav Shrivastava, learned counsel appearing for the petitioner has raised the following contentions:-

(a) The Prevention of Insults to National Honour Act, 1971 (for short, ‘the 1971 Act’) vide Section 3 only deals with prevention of singing/playing of National Anthem, etc., but it does not deal fully as to how the respect is to be shown and, therefore, appropriate measures should be prescribed by law in that regard.

(b) Article 51A(a) of the Constitution which provides that every citizen of India is to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem, warrants that every citizen or person in this country has to show respect to the National Anthem wherever it is played.

(c) The Preamble of the Constitution uses the word –unity and integrity of the Nation” and the said words are required to be interpreted on a broad canvass so that honour and respect due to the National Anthem are maintained.

(d) The order passed by this Court sub-serves the cause of integrity of the Nation and, therefore, need not be recalled and should be made absolute.

(e) The instructions issued under the heading –Orders Relating to the National Anthem of India” are executive in nature as they relate to various aspects and are not binding and, therefore, there has to be an appropriate law in the field and in the absence of law, this Court may issue directions till the law is brought covering the said aspects.

11. Mr. K.K. Venugopal, learned Attorney General, referring to the affidavit and the Notification/Order would contend that the Committee constituted by the Notification shall look into every aspect including the amendment to the 1971 Act and formulation of further executive instructions and till then the mandatory order passed by this Court for playing/singing of the National Anthem before starting of feature films in cinema halls may be modified by making it directory. The suggestion given by him is that the word –shall” used in the order be substituted by –may” .

12. Mr. Sidharth Luthra, learned Amicus Curiae, has submitted that Article 51A of the Constitution has been brought when the 1971 Act was in force and, therefore, it has to be understood in the said perspective. He has also submitted that Section 2 of the 1971 Act was amended vide Act 31 of 2003 with effect from 8th May, 2003, as a consequence of which, respect to the National Anthem is a part of the statutory provision. To buttress the said submission, he has emphasized on the language employed in Section 2 which uses the words –or the Constitution of India or any part thereof” . To have a sense of completeness, we think it appropriate to reproduce Section 2 of the 1971 Act, which is as under:-

–2. Insult to Indian National Flag and Constitution of India.- Whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or *otherwise shows disrespect to or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Explanation 1.- Comments expressing disapprobation or criticism of the Constitution or of the Indian National Flag or of any measures of the Government with a view to obtain an amendment of the Constitution of India or an alteration of the Indian National Flag by lawful means do not constitute an offence under this section.

Explanation 2.- The expression, –Indian National Flag” includes any picture, painting, drawing or photograph, or other visible representation of the Indian National Flag, or of any part or parts thereof, made of any substance or represented on any substance.

Explanation 3.- The expression –public place” means any place intended for use by, or accessible to, the public and includes any public conveyance.

Explanation 4.- The disrespect to the Indian National flag means and includes–

- (a) a gross affront or indignity offered to the Indian National Flag; or
- (b) dipping the Indian National Flag in salute to any person or thing; or

- (c) flying the Indian National Flag at half-mast except on occasions on which the Flag is flown at half-mast on public buildings in accordance with the instructions issued by the Government; or
- (d) using the Indian National Flag as a drapery in any form whatsoever except in state funerals or armed forces or other para-military forces funerals; or
- (e) using the Indian National Flag:-
 - (i) as a portion of costume, uniform or accessory of any description which is worn below the waist of any person; or
 - (ii) by embroidering or printing it on cushions, handkerchiefs, napkins, undergarments or any dress material; or
- (f) putting any kind of inscription upon the Indian National Flag; or
- (g) using the Indian National Flag as a receptacle for receiving, delivering or carrying anything except flower petals before the Indian National Flag is unfurled as part of celebrations on special occasions including the Republic Day or the Independence Day; or
- (h) using the Indian National Flag as covering for a statue or a monument or a speaker's desk or a speaker's platform; or
- (i) allowing the Indian National Flag to touch the ground or the floor or trail in water intentionally; or
- (j) draping the Indian National Flag over the hood, top, and sides or back or on a vehicle, train, boat or an aircraft or any other similar object; or
- (k) using the Indian National Flag as a covering for a building; or
- (l) intentionally displaying the Indian National Flag with the –saffron” down.”

13. It is his further submission that once the words –or any part thereof” have been used in the 1971 Act, the same is bound to be read in consonance with Article 51A(a) of the Constitution and hence, it presently gets ingrained as a statutory command.

14. Dr. Rajeev Dhawan, learned senior counsel, who was permitted to intervene in-person, has supported the stand of the Union of India so far as the modification of the interim order is concerned.

15. Though Mr. Sajan Poovayya, learned senior counsel, has filed a separate writ petition relating to some other aspect, he submitted that the word “secular” that finds place in the Preamble is meant for integration of the diverse communities existing in India and the said principle has been recognized in the context of the Flag Code in the Union of India vs. Naveen Jindal and Another¹. He has drawn our attention to paragraph 27 of the judgment which we think it seemly to reproduce:

–Then the question arises, which view is to be accepted. National Anthem, National Flag and National Song are secular symbols of the nationhood. They represent the supreme collective expression of commitment and loyalty to the nation as well as patriotism for the Country. They are necessary adjuncts of sovereignty being symbols and actions associated therewith.”

16. Emphasizing on the aforesaid passage, he would contend that both the National Anthem and the National Flag and the National Song being secular symbols representing the nationhood command desired respect. He has also drawn our attention to the statement made by the President of the Constituent Assembly. It is as under:-

–Statement

Mr. President: There is one matter which has been pending for discussion, namely, the question of the National Anthem. At one time, it was thought that the matter might be brought up before the House and a decision taken by the House by way of a resolution. But it has been felt that, instead of taking a formal decision by means of resolution, it is better if I make a statement with regard to the National Anthem. Accordingly I make this statement. The composition consisting of the words and music known as Jana Gana Mana is the National Anthem of India, subject to such alterations in the words as the Government may authorise as occasion arises; and the song Vande Mataram, which has played a historic part in the struggle for Indian freedom, shall be honoured equally with Jana Gana Mana and shall have equal status with it. I hope this will satisfy the Members.”

17. We may hasten to add that we have reproduced the same to show the sanctity of the National Anthem and the respect it has to be given.

18. Mr. C.U. Singh, learned senior counsel appearing for the intervenor, which has filed an application for recalling the interim order contends that in the absence of any law, this Court should not have made the playing of National Anthem in cinema halls mandatory.

19. At this juncture, Mr. P.V. Dinesh, learned counsel assisting Mr. C.U. Singh, learned senior counsel would submit that if this Court thinks of continuing the interim order, it may at least modify the direction that whenever there is a film festival and more than five to six films are exhibited in a day, the audience should be permitted to stand only at the commencement of the first feature film.

20. Mr. V.K. Biju, learned counsel who has intervened in the writ petition has submitted that though the Committee has been constituted to look into the matter from various spectrums, the interim order should be allowed to continue.

21. Ms. Nanita Sharma, learned counsel, who is appearing for the respondent No.4 because of the application for intervention having been allowed, submitted that the said organization has submitted representations to the Government and they need to be considered as they are pending since 2014.

22. Mr. Sanjeev Bhatnagar, who has filed an application for intervention, appearing in-person has submitted that there can be no doubt that the National Anthem and the National Flag are to be respected and every citizen is obliged to show respect, but the cinema halls may not be the appropriate place.

23. To appreciate the submissions advanced at the Bar, it is necessary to refer to Section 3 of the 1971 Act. It reads as under:-

–3. Prevention of singing of National Anthem, etc..- Whoever intentionally prevents the singing of the Indian National Anthem or causes disturbances to any assembly engaged in such singing shall be punished with imprisonment for a term, which may extend to three years, or with fine, or with both.”

24. On a perusal of the said provision, it is clear as day that no one can intentionally prevent the singing of the National Anthem or cause any disturbance to an assembly engaged in such singing. It is a penal provision. The Orders relating to the National Anthem deal with playing of the anthem, mass singing of the anthem, playing of foreign anthems and general provisions. Clause III(4) of the orders reads as follows:-

–III(4). It is not possible to give an exhaustive list of occasions on which the singing (as distinct from playing) of the Anthem can be permitted. But there is no objection to the singing of the Anthem accompanied by mass singing so long as it is done with due respect as a salutation to the motherland and proper decorum is maintained.”

25. On a careful reading of the above provision, it is clear that the said Order states that it is not possible to give an exhaustive list of the occasions. It further lays down that there is no objection to the singing of the National Anthem accompanied by mass singing so long as it is done with due respect as a salutation to the motherland and maintenance of the proper decorum. Thus, three aspects are obvious: First the National Anthem is not only to be respected, but it is a respect as a salutation to the motherland; second, the list of occasions cannot be exhaustively stated; and, third, proper decorum has to be maintained when the National Anthem is played or sung.

26. At this stage, we may refer to the Order/Notification dated 5th December, 2017. It is as follows:-

–ORDER

Subject: Constitution of an Inter-Ministerial Committee on playing/singing of the National Anthem. It has been decided to constitute an Inter-Ministerial Committee under the Chairmanship of Additional Secretary (Border Management), Ministry of Home Affairs, with representatives (not below the rank of Joint Secretary) from the following Ministries/Departments to give recommendations regarding regulation of playing/singing of National Anthem and to suggest changes in the Prevention to Insults to National Honour Act, 1971 or in the Orders Relating to the National Anthem of India.

Sl. No. Ministry / Department

- 1 Additional Secretary (BM), MHA Chairman
- 2 Ministry of Defence Member
- 3 Ministry of External Affairs Member
- 4 Ministry of Culture Member
- 5 Ministry of Women and Child Development Member
- 6 Ministry of Parliamentary Affairs Member
- 7 Ministry of Information & Broadcasting Member
- 8 Ministry of Minority Affairs Member
- 9 Department of Legal Affairs Member
- 10 Department of School Education and Literacy Member
- 11 Department of Empowerment of Persons with Disability Member
- 12 Joint Secretary (Admn.), MHA Convenor recommendations in six months.

3. This issues with the approval of the Competent Authority.”

27. It is perceptible from the said order, that the inter-Ministerial Committee has been given the responsibility to make recommendations for regulating the playing/singing of the National Anthem and to suggest changes in the 1971 Act or in the Orders relating to the National Anthem of India.

28. We may presently travel to the past. This Court in *Bijoe Emmanuel and Others vs. State of Kerala and Others* (in paragraphs 9 and 10) has also emphasized on respect to the National Anthem. We may hasten to add that it sustained the right of the petitioner therein, but yet observed that a person who stands up respectfully when the National Anthem is sung, is showing proper respect. Thus, the stress is on respect when the National Anthem is sung or played.

29. We may at this stage reproduce the Statement of Objects and Reasons of the 1971 Act, as the same has been stressed by Mr. Abhinav Srivastava, learned counsel for the petitioner. It reads as under:-

–STATEMENT OF OBJECTS AND REASONS

Cases involving deliberate disrespect to National Flag, the National Anthem and the Constitution have come to the notice in the recent past. Some of these incidents were discussed in both the Houses of Parliament and members expressed great anxiety about the disrespect shown to the national symbols. Government were urged to prevent the recurrence of such incidents. Disrespect to the National Flag and the Constitution or the National Anthem is not punishable under the existing law. Public acts of insults to these symbols of sovereignty and the integrity of the nation must be prevented. Hence the Bill. The scope of the law is restricted to overt acts of insult to and attack on, the national symbols by burning, trampling defiling or mutilating in public. It is not intended to prohibit honest and bona fide criticism of the symbols, and express provisions to this effect have been made in the Bill.”

30. When we consider the perspectives put forth before us pronounced in their own way, we have no shadow of doubt that one is compelled to show respect whenever and wherever the National Anthem is played. It is the elan vital of the Nation and fundamental grammar of belonging to a nation state. However, the prescription of the place or occasion has to be made by the executive keeping in view the concept of fundamental duties provided under the Constitution and the law.

31. In view of the aforesaid, we think it appropriate that the Committee should comprehensively look into all the aspects. Mr. K.K. Venugopal, learned Attorney General for India has submitted in the course of argument that the petitioner can give suggestions by way of representation to the Committee. Mr. V.K. Biju and Ms. Nanita Sharma, learned counsel and Mr. Sanjeev Bhatnagar, the applicant in-person can also give suggestion in this regard. When we say suggestions, we mean that suggestions shall only relate to the National Anthem and nothing else.

32. Having said that, the issue remains for continuance of the interim order or modification of the same. As submitted by Mr. Venugopal, learned Attorney General, the playing of the National Anthem in the cinema halls on the screen may not be made mandatory and the word –shall” may be substituted with –may” until a final decision is taken by the Committee and, thereafter, by the Central Government. Needless to emphasize, the discretion vests with the Central Government and they shall take a decision uninfluenced by the interim order as clarified in our order dated 23rd October, 2017.

33. In view of the aforesaid, we do not intend to keep the writ petition pending and dispose of the same with the following directions:-

(i) The Committee appointed by the Union government shall submit its recommendations to the competent authority in terms of the Notification dated 5th December, 2017, for follow up action.

(ii) The order passed on 30th November, 2016, is modified to the extent that playing of the National Anthem prior to the screening of feature films in cinema halls is not mandatory, but optional or directory.

(iii) Since the Committee constituted by the Union government is looking into all aspects of the matter, it shall make its recommendations uninfluenced by the interim directions of this Court, as clarified in our order dated 23rd October, 2017. Similarly, the competent authority shall in taking its decision(s) not be constrained or influenced by any of the interim directions.

(iv) Citizens or persons are bound to show respect as required under executive orders relating to the National Anthem of India and the prevailing law, whenever it is played or sung on specified occasions.

(v) The exemption granted to disabled persons shall remain in force till the final decision of the competent authority with regard to each occasion whenever the National Anthem is played or sung.

34. The writ petition is, accordingly, disposed of. There shall be no order as to costs.

Judgment Referred.

¹(2004) 2 SCC 0510

²AIR 1987 SC 0748