

No. 14/6/2016-Public  
Government of India  
Ministry of Home Affairs  
(Public Section)  
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North Block, New Delhi  
Dated the 18<sup>th</sup> January, 2018

18 JAN 2018

To,

The Chief Secretaries of all State Governments,  
The Chief Secretaries/Administrators of all Union Territories.

**Subject: Orders relating to the National Anthem of India-reg.**

Sir/Madam,

I am directed to refer to this Ministry's letters of even number dated 06.12.2016, 21.12.2016, 23.03.2017 and 12.05.2017 on the above mentioned subject. The Hon'ble Supreme Court vide its Order dated 09.01.2018 (copy enclosed) in the Writ Petition (Civil) No. 855 of 2016 has disposed of the Writ Petition and directed as follows:-

- a) The Committee appointed by the Union Government shall submit its recommendations to the competent authority in terms of Notification dated 5<sup>th</sup> December, 2017, for follow up action.
- b) The order passed on 30<sup>th</sup> 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.
- c) 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 dated 23<sup>rd</sup> October, 2017. Similarly, the competent authority shall in taking its decision(s) not be constrained or influenced by any of the interim decisions.
- d) 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.
- e) 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.

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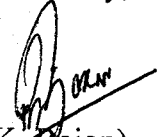
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2. The above directions of Hon'ble Supreme Court are conveyed to you for compliance and necessary action in this regard.

3. The receipt of this letter may please be acknowledged and action taken in the matter be communicated to this Ministry.

Encl.: As above

Yours faithfully,



(V.K. Rajan)

Deputy Secretary to the Govt. of India

☎: 2309 4376

Copy to:-

1. All Ministries/Departments of Government of India.
2. President's Secretariat, Rashtrapati Bhawan, New Delhi.
3. Vice-President's Secretariat, New Delhi.
4. Prime Minister's Office, South Block, New Delhi.
5. Cabinet Secretariat, New Delhi.
6. Election Commission of India, New Delhi.
7. Lok Sabha Secretariat, New Delhi.
8. Rajya Sabha, Secretariat, New Delhi.
9. Registrar, Supreme Court of India, New Delhi.
10. All High Courts.
11. Office of Comptroller and Auditor General of India,
12. The Union Public Service Commission,
13. Central Vigilance Commission,
14. NITI Aayog, Yojana Bhawan,
15. All attached & Subordinate Offices of the Ministry of Home Affairs.
16. 20 Spare copies.

## IN THE SUPREME COURT OF INDIA

## CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.855 OF 2016

SHYAM NARAYAN CHOUKSEY

... Petitioner(s)

Versus

UNION OF INDIA &amp; OTHERS

... Respondent(s)

J U D G M E N TDipak Misra, CJI.

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 30<sup>th</sup> 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

(5)

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:-

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“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 9<sup>th</sup> 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. 14<sup>th</sup> 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 part 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 18<sup>th</sup> 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. 23<sup>rd</sup> 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 5<sup>th</sup> 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 8<sup>th</sup> 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

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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 Another*<sup>1</sup>. 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

<sup>1</sup> (2004) 2 SCC 510