
(2001) 02 AP CK 0042
In the Andhra Pradesh High Court
Case No : TWP No. 284 of 2001

A. Satya Phaneendra

APPELLANT

Vs

S.H.O. Kodad (PS), Nalgonda District and Others

RESPONDENT

Date of Decision : 12-02-2001

Acts Referred:

Constitution of India, 1950 — Article 51
Emblems and Names (Prevention of Improper Use) Act, 1950 — Section 3, 5
Prevention of Insults to National Honour Act, 1971 — Section 2

Citation : AIR 2001 AP 247 : (2001) 2 ALD 264 : (2001) 2 ALT 141

Hon'ble Judges : Satyabrata Sinha, C.J; S.R. Nayak, J

Bench : Division Bench

Advocate : Government Pleader for Home, for the Respondent

Judgement

S.B. Sinha, CJ.

1. A letter written by one A. Satya Phaneendra, dated 15-12-2000 enclosing therewith a tri-coloured cloth resembling the National Flag which is sold as handkerchief for a sum of Rs. 10/- everywhere in Kodad and other places in the district of Nalgonda has been treated to be a public interest litigation.

2. The cloth which is sent along with the letter indeed resembles our National Flag and in one of the borders thereof the words "India" and in another "Mera Bharat Mahan" have been inscribed. Misuse of National Flag is covered by two Parliamentary Acts viz., the Prevention of Insults to National Honour Act, 1971 (Act No.69 of 1971) (hereinafter referred to as "National Honour Act") and the Emblems and Names (Prevention of Improper Use) Act, 1950 (Act No.12 of 1950) (hereinafter referred to as "Emblems Act") apart from the Flag Code of India. Section 2 of the "National Honour Act" reads thus:

"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 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."

3. Three explanations have been appended to Section 2 of the said Act and Explanation 2 which is relevant for the purpose of this case reads as under:

"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."

4. In the Emblems Act the word "emblem" has been defined in Section 2(a) thereof to mean "any emblem, seal, flag, insignia, coat-of-arms or pictorial representation specified in the Schedule". Section 3 provides for prohibition of improper use of certain emblems and names in the following terms:

"Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use or continue to use for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, any name or emblem specified in the schedule or any colourable imitation thereof without the previous permission of the Central Government or such officer of Government as may be authorised in this behalf by the Central Government".

5. Section 5 of the Emblems Act contains a penal provision which reads thus:

"Any person who contravenes the provisions of Section 3 shall be punishable with fine which may extend to five hundred rupees."

6. Keeping in view the fact that the aforementioned Act contains penal provisions there cannot be any doubt whatsoever that the same are mandatory in nature.

7. Item 3 of the schedule refers to the Indian National Flag. The Flag Code of India contains various provisions as regards improper use, incorrect display and misuse. The relevant provisions of Paragraph 5 of Flag Code of India are as follows:

"5.1:- The flag shall not be used as a drapery in any form whatever except in State Military funerals hereinafter provided.

5.4: When the Flag is in a damaged or soiled condition, it may not be cast aside or disrespectfully disposed of but shall be destroyed as a whole in private, preferably by burning or by any other method consistent with the dignity of the Flag.

5.5: The Flag shall not be used as a covering for a building.

5.6: The Flag shall not be used as a portion of a costume uniform of any description. It shall not be embroidered upon cushions or handkerchiefs or

printed on napkins or boxes.

5.9: The Flag shall not be used as a receptacle for receiving, covering, holding or carrying anything."

8. The provisions of the said Act, in no uncertain terms demonstrate as to how the National Flag should be honoured and steps be taken to prevent all types of misuse.

9. The aforementioned provisions, having regard to the purpose and object thereof, must be given strict construction. They also must be construed in the context of Article 51-A(1) of the Constitution of India.

10. The provisions of the aforementioned Acts and the Flag Code of India clearly stale the reasons as to why the same had to be enacted by the Parliament inasmuch as it is expected to every citizen of India to pay respect to the National Flag, National anthem and the Constitution of India they deserve and any case involving deliberate disrespect thereto must be seriously dealt with. The petitioner has done a yeomen service in bringing to the notice of this Court the misuse of the Indian National Flag in the manner as has been done.

11. The appropriate authorities including the Collector of Nalgonda district and the Superintendent of Police, Nalgonda should have taken all steps to prevent the misuse of the Indian National Flag.

12. They evidently have failed to perform their statutory duties.

13. Having regard to the fact that it has been stated in the letter dated 15-12-2000 that the writer thereof is not aware of the name(s) of the person(s) manufacturing the same, we direct the State and in particular the District Collector and the Superintendent of Police, Nalgonda district to take steps to conduct investigation with regard to the misuse of the National Flag and see to it that the offenders are brought to book. Let a copy of this order be sent to the Chief Secretary to the Government of Andhra Pradesh so that necessary directions to all concerned may be issued so as to prevent such misuse of the Indian National Flag. Accordingly, we dispose of this writ petition. No costs.