
(2005) 08 AHC CK 0133
In the Allahabad High Court
Case No : Writ Petition No.4858 (M/B) of 2005

Ashok Pandey

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 08 AHC CK 0133

Hon'ble Judges : Jagdish Bhalla, J and Rajiv Sharma, J

Final Decision : Dismissed

Judgement

Jagdish Bhalla, J.—Twice the petitioner had made unsuccessful attempts for change of Independence Day from 15th August, 1947 to 21st June, 1948. The Petitioner had earlier filed writ petition No.3162 (MB) of 2003; Ashok Pandey v. Union of India and others praying inter alia for a direction to the respondents to declare 21st June 1948 as the Indian Independence and derecognizing 15th August, 1947. This writ petition was rejected on merits by a Division Bench comprising of Hon'ble Tarun Chatterjee, C.J. (as His Lordship then was) and Hon'ble U.K. Dhaon, J. The order dated 21.7.2003 dismissing the writ petition reads as under:

¶ Heard the petitioner in person, Sri Q.H. Rizvi, Standing counsel for the Central Government for the opposite parties 1 to 3 and the learned Standing Counsel.

This is a Public Interest Litigation in which a practicing Advocate of this Court has filed this writ application for a direction to the respondent to declare 21st June 1948 as the Indian Independence Day by derecognizing 15th August 1947 and other sequel reliefs. The India has acquired its independence about 55 years back and at this time he has come forward to challenge the independence day. In any view, this is not the Court to decide such questions. Accordingly we do not find any merit in this writ application and the writ application is rejected. No order as to costs. However, this order shall not refrain the writ petitioner from approaching any other appropriate forum, in accordance with law, by a

comprehensive application.?

2. It is said that consequent to the order dated 21.7.2003, the petitioner made representations to the various authorities and brought in their notice the incorrect celebration of 'Independence Day' on 15th August. From the pleadings, it comes out that when no action was taken on the representations so moved by the petitioner, he had no option but to file fresh writ petition which was registered as Writ Petition No.5532 (MB) of 2003. The Coordinate Bench of this Court again refused to entertain the writ petition and the relevant portion of the orders runs as under:

'Learned Counsel for the petitioner submits that when the Court required him to approach the appropriate forum, it impliedly meant that there was substance in his contention raised in the writ petition (which is identical to the question raised in the Writ Petition).

We are not in agreement with his contention and find it fallacious.

Further, we are also not sitting in appeal or supposed to interpret it in this writ petition over that order of the Division Bench.

If so advised, learned Counsel for the petitioner may seek clarification of that order before the appropriate forum,

The writ petition is clearly not maintainable as the petitioner is pursuing Alternative Remedy and, therefore, it is dismissed subject to above?.

3. Now again, the petitioner, who is an Advocate, has filed this petition, claiming to be in public interest, invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution and seeking a direction to the respondents i.e. Union of India and the State Government to derecognize 15th August, 1947 as the date of Independence and to recognize 21st June, 1948. The logic put forward by the petitioner for change of date of Independence is that the British National worked as Executive Head of India upto 20th June 1948 as such any date prior to it cannot and should not be recognized as the day of Indian Independence. According to him the appropriate day for celebrating Independence Day is the 21st June 1948.

4. The countdown for free India had started much earlier. It was on February 26, 1947, when the British Government made an important announcement of policy and declared, its intention to quit India by June 1948, and appointed Lord Mount Batten, Viceroy of India to arrange for the transfer of authority for British to Indian hands.

5. The Special Session of the Constituent Assembly was held in New Delhi on the 14th August, 1947. As the midnight approached on August 14, 1947, the whole nation had geared up to greet the glorious moment of their nation's history. The "Independence Meeting" began at the Council Chamber of Parliament building in New Delhi at 11 PM on August 14th, 1947 with the opening song "Vande

Mataram". Late Pt. Jawaharlal Nehru moved the resolution on behalf of the Congress, which was seconded by Chaudhuri KhaliquuzZaman, Member of Muslim League Party. It was resolved in the meeting that "After the last stroke of midnight, all members of the Constituent Assembly dedicate themselves to the service of Indian and the People." As the 15th dawned on the subcontinent, India woke up to freedom. The new chapter began, and a new sovereign nation was born on this day i.e. 15th August 1947. The dawn of Independence day began at 8.30 AM with the swearing in ceremony at the viceregal Lodge (Now known as the "Rashtrapati Bhawan"). The Tricolour Proudly went up for the first time against a free sky of Independent India at 10.30 AM, symbolically marking the end of 300 years British colonial rule.

6. It would be apt to mention that the British Parliament enacted Indian Independence Act, 1947, which was enacted in the House of Commons on 4th July, 1947, was passed on 15th July, 1949. The next day, it was approved by the House of Lords and finally it received the Royal Assent on 18th July. Section 1 of the Indian Independence Act, 1947, lays down that as from the fifteenth day of August, nineteen hundred and forty seven, two independent Dominions shall be set up, to be known respectively as India and Pakistan. Subclause (2) of Section 1 prescribed the fifteenth day of August as "the appointed day". From the perusal of Section 7 of the Act it is clearly established that from the appointed day i.e. 15th August, 1947 His Majesty's Government in the United Kingdom have no responsibility as respects the Government of any of the territories which, immediately before that day, were included in British India. Perusal of subsection (4) of Section 18 further establishes that from the appointed day i.e. 15th August, 1947 the Instruments of Instructions issued before the passing of this Act by His Majesty to the Governor General and the Governors of Provinces had lapsed.

7. Petitioner in person has stated that it was Mount Batten who chose 15th August, 1947 as it was the second anniversary of surrender of Japan but in the report on the Last Viceroyalty submitted to His Majesty's Government in September 1948, Lord Mountbatten had summarized the five reasons for selecting 15th August, but those reasons make no reference to 2nd Anniversary of the Japanese surrender as alleged by the petitioner. (e.s.) The "fifteenth day of August 1947" is the "appropriate day" as also established from the Notification dated 14th August, 1947. By the said notification No.GGO14 dated 14th August, 1974 (sic1947) the order known as "the India (provisional constitution) Order 1977 (sic1947) was issued. In subClause (2) of Clause 1 it was provided that it shall come into force on the fifteenth day of August 1947, which day has been referred to as "the appointed day". Clause 2(1) has provided that in this order "India" means the Dominion of India.

8. Union of India and the State Government opposed the prayer made by the petitioner for derecognizing 15th August as the day of Independence and invited our attention towards the recent decision of Hon"ble Supreme Court in Sanjeev

Bhatnagar v. Union of India and others, (2005) 5 SCC 330 in which the Hon'ble Supreme Court refused to interfere for rectifying the text of the National Anthem and delete the word 'Sindh' therefrom. The Supreme Court in its judgment observed that few things such as a National Flag, a National Song, a National Emblem and so on, are symbolic of our national honour and heritage.

9. For the reasons aforesaid, it is amply clear that the 15th Day of August, 1947 has great significance in our country; it is the date on which the country became a geographical entity. The patriotic fervour of the people on this day brings the whole country together even in her essential diversity. Every part of the country is represented on this occasion, which makes the Independence Day one of the most popular of all national holidays in India. Any attempt of alteration in the date of Independence will open Pandora's box and may give rise to several unnecessary controversies, without achieving any fruitful object. In our opinion, the issue is puerile.

10. Learned Counsel appearing for the Union of India has further stated that the present writ petition is not maintainable as the identical writ petitions have been dismissed by this Court on merits. Moreover, in view of the law laid down in Sanjeev Bhatnagar and Ashok Kumar Pandey v. State of W.B., (2004) 3 SCC 349, the present writ petition in the nature of Public Interest litigation is not maintainable. Reliance has also been placed on paragraph 15 of Ashok Kumar's case (supra), which runs as under:

'Courts must do justice by promotion of good faith, and prevent law from crafty invasion. Courts must maintain the social balance by interfering where necessary for the sake of justice and refused to interfere where it is against the social interest and public good. (See State of Maharashtra v. Prabhu and A.P. State Financial Corpn. v. Gar ReRolling Mills). No litigant has a right to unlimited draught on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petition. (See Buddhi Kota Subbarao (Dr.) v. K. Parasaran). Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.'

11. It has been held in catena of cases that PIL is meant for extending help to the poor, the ignorant and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed or unheard. In other words the PIL is not meant for personal satisfaction or political motive. Thus, the present petition is wholly devoid of any merit.

12. The petitioner has failed to canvass any fundamental right for the enforcement of which, the jurisdiction of this Court under Article 226 of the Constitution can be invoked.

13. Above are the reasons for dismissing the writ petition.

(Petition dismissed)