

(1985) 10 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 7701 of 1985-D

Bijoe Emmanuel and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 07-10-1985

Acts Referred:

Constitution of India, 1950 — Article 25, 26, 51A
Kerala Education Act, 1958 — Section 36
Kerala Education Rules, 1959 — Rule 6

Citation : AIR 1986 Ker 32

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : S. Narayanan Poti, for the Appellant; A.G., P.G. Parameswara Panicker, S. James Vincent and K. Sudhakaran, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Radhakrishna Menon, J.—A short question, but of considerable national importance, is raised in this original Petition. The question :

Can the pupils in the 4th respondent's school belonging to the religious group known as "Jehovah's Witnesses" be compelled to sing the National Anthem contrary to their religious beliefs and faith, guaranteed under Articles 25 and 26 of the Constitution?

2. The answer to the question depends upon the interpretation of Articles 25 and 26 of the Constitution. Article 25 guaranteed to every person the freedom of conscience and the right to profess, practise and propagate religion subject to public order, morality and health and also the restrictions that may be imposed by the State, relying on the provisions contained in the Article itself. It is also subject to the other provisions of Part III of the Constitution. The freedom of the religious denomination to manage their religious affairs guaranteed under Article 26, however, is subject only to public order, morality and health. Yet another difference between Articles 25 and 26 is this. Article 25 extends to all persons

whereas Article 26 is confined to religious denomination only.

3. Now turning to Article 25, as already stated, the right of a person to freedom of conscience and religion is subject to the other provisions of Part III also. Sub-article 12 of Article 25 is one such provision and therefore the right of a person guaranteed under Article 25(1) is subject to Article 25(2) also. A law which falls under Article 25(2) thus would control the right of a person guaranteed under Article 25(1). (Vide *Sri Venkataramana Devaru and Others Vs. The State of Mysore and Others*,). The Supreme Court has stated thus:

".....But it has to be noticed that the limitation "subject to the other provisions of this Part" occurs only in Clause (1) of Article 25 and not in Clause (2). Clause (1) declares the rights of all persons to freedom of conscience and the right freely to profess, practise and propagate religion. It is this right that is subject to the other provisions in the Fundamental Rights Chapter. One of the provisions to which the right declared in Article 25(1) is subject is Article 25(2). A law, therefore, which falls within Article 25(2)(b) will control the right conferred by Article 25(1), and the limitation in Article 25(1) does not apply to that law."

4. The position deducible from the discussion above, is this. The religious freedom guaranteed under Article 25 is not unrestricted. It is not exempt from the compulsion of laws enacted by the Government to protect public order, health, welfare and morals and also laws which fall within Article 25(2). In other words, the religious rights guaranteed under Article 25(1) is subject to "the Secular Regulation Rule", a doctrine developed in America to achieve the neutrality of the State with respect to religion. C. Herman Pritchett in his "The American Constitution", 3rd edition, at page 39, has stated thus, about this doctrine :

"This rule holds that there is no constitutional right to an exemption, on free exercise of religion grounds from the compulsion of general regulations dealing with non-religious matters. The secular regulation rule is based on the distinction between belief and action. Religious beliefs admittedly must have absolute protection, but actions, even though purporting to be taken for religious reasons or as part of religious observances, must conform with the regulations established by the community to protect public order, health, welfare and morals."

The above limitations namely that "actions purported to be taken for religious reasons must conform to regulations established by the community to public order, health, welfare and morality," evolved by judicial pronouncements in America, have been incorporated in our Constitution itself as is seen from the language of Articles 25 and 26. The rights declared under Article 25(1) are as already stated, also controlled by laws falling within Article 25(2). It is thus clear from these provisions what matters come within the purview of religious belief or faith and what do not. The following dictum of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha*

Swamiar of Sri Shirur Mutt., , supports the above:

"It is to be noted that both in the American as well as in the Australian Constitution the right to freedom of religion has been declared in unrestricted terms without any limitation whatsoever. Limitations, therefore, have been introduced by Courts of law in these countries on grounds of morality, order and social protection

Our Constitution-makers, however, have embodied the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of Articles 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. As we have already indicated, freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down."

Briefly stated, the right guaranteed under Articles 25 and 26 is not absolute. This guaranteed religious right therefore must be reconciled with "the right of the State to employ the sovereign power to ensure peace, security and orderly living without which constitutional guarantee of civil liberty would be a mockery." (The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.,).

5. The Supreme Court in Swamiar's case has also held :

"What Article 25(2)(a) contemplates is not regulation by the State of religious practices as such, the freedom of which is guaranteed by the Constitution except when they run counter to public order, health and morality but regulation of activities which are economic, commercial or political in their character though they are associated with religious practices."

6. Decided cases however, would show that in India it would be incorrect to say that the framers of our Constitution have recognised Rone's views of his relation to his creator" as the essence of Religion, for here there are religions, like Buddhism and Jainism which do not believe in God or in "any intelligent First Cause". I shall in this connection refer to The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.,) again. There the Supreme Court has stated :

"What then are matters of religion? The word "religion" has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an American case -- "Vide Davis v. Beason" (1888) 133 US 333 , it has been said:

"that the term "religion" has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His will. It is often confounded with "cultus" of form or worship of a particular sect, but is distinguishable from the latter."

We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon Article 44(2), Constitution of Eire and we have great doubt whether a definition of "religion" as given above could have been in the minds of our Constitution-makers when they framed the Constitution.

Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause....."

The dictum laid down in *Swamiar's* case has been reiterated by the Supreme Court in later decisions including the decision in *Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another*,

7. By the Constitution (42nd Amendment) Act, 1976 the Preamble to the Constitution was amended and the words "socialist secular" have been inserted and the word "integrity" has been incorporated after the word "unity". By the same Amendment Act, Part IV-A containing Article 51A was newly added under the caption "Fundamental Duties".

8. These provisions would show that the Parliament was more concerned about the unity and integrity of India. By the introduction of the aforesaid changes in the Constitution I am of the view, that the Parliament has reasserted that it is the fundamental duty of every citizen to strive hard to uphold and protect the sovereignty, unity and integrity of our motherland. All such rights, fundamental or otherwise must therefore subserve the sovereignty, integrity and unity of this great nation. It should be remembered that every citizen is a member of the political society for the well-being of which, the people of this country gave the Constitution unto themselves and therefore the mere possession of religious convictions which run counter to the relevant concern of the political society, does not absolve the citizen from his political responsibility. To maintain the national unity and integrity and thereby uphold the sovereignty of the country, is the political responsibility of every citizen.

9. In *Chandra Bhavan Boarding and Lodging, Bangalore Vs. The State of Mysore and Another*, , the Supreme Court has stated thus :

"While rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country. We see no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other. The provisions of Part IV enable the legislatures and the Government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizen depend on the extent to which the directive principles are implemented. The mandate of the Constitution is to build a welfare society in which justice social, economic and political shall inform all institutions of our national life."

10. The "fundamental duties" as in the case of "directives", are, I would say, fundamental in the governance of the country and hence all the components of the State including the judiciary are bound to enforce them. Following the dictum of the Supreme Court in Chandra Bhawan's case, I would state that "they are complementary and supplementary to each other". They are the two sides of a coin. The learned counsel for the respondents therefore submit that a citizen cannot get his fundamental right enforced without adhering to the fundamental duties prescribed by Article 51A. I am of the view, that they are well-founded in the above submission. Here it is worth recalling the observation of the Supreme Court in Chandra Bhawan's case that "it is a fallacy to think that under our Constitution there are only rights and no duties."

11. It is in this backdrop, we have to consider the case, the petitioners have presented in the Original Petition.

12. Now what is the grievance of the petitioners. To appreciate it, we have to refer to the facts of the case which lie in a narrow compass : The petitioners are a body of Christians" called "Jehovah's Witnesses". The "Witnesses" are an association of persons who regard the literal interpretation of the Bible as fundamental to proper religious beliefs. Jehovah's Witnesses believe that the God, Jehovah, is the supreme ruler of the universe. The pleadings further disclose that the Jehovah's Witnesses would worship only Jehovah as their God and they will not participate in any ritual other than those involved in the worship of God. According to them, though the National Anthem "Jana Gana Mana" was being sung in the school on several occasions, the petitioners and the other pupils belonging to the "Witnesses" desist from the actual singing of the Anthem because of their belief and conviction that their religion "does not permit them to join any rituals except if it be in their prayers to Jehovah, their God" They conclude thus:

"It is humbly submitted that the religious precepts, doctrines and beliefs of the Jehovah's Witnesses, to whom Jehovah is the exclusive God and who alone should be the object of worship or the conferrer of blessings and that no other should be the object of worship or religious reverence, is that the singing of the National Anthem of any Nation will be an act contrary to their religious faith and contrary to their conscience. It is therefore a conscientious and religious objection to them to participate in singing the National Anthem and to the extent that they are prevented from participating in the benefits of education offered by the State in the manner in which it has been done in regard to the witness children there has been a violation of the right to freedom of conscience and of religion guaranteed by the Constitution."

13. The learned counsel for the petitioners submits that the right to freedom of religion guaranteed under Articles 25 and 26 can be subject only to public order, morality and health and to the other provisions of Part III and therefore legislations for the enforcement of public order, morality and health etc. restricting the said rights, alone can be taken note of by a Court while

considering issues similar to the one arising in this case. Freedom of religion guaranteed under our Constitution, according to him, is not confined only to religious belief but it extends to religious practice as well, but subject to the restrictions that may be brought about for the purpose of maintaining public order, morality and health etc. He therefore submitted that the non-participation by the petitioners in the singing of the National Anthem in the school fall well within the meaning of "the right freely to profess, practise and propagate the religion guaranteed under Article 25 of the Constitution." In support of the above proposition, the learned counsel cited certain judicial pronouncements including decisions of the Supreme Court of the United States. These decisions however, have no application here for the reason that in none of these decisions there was the opportunity to consider a provision similar to the provisions in Article 51A of the Constitution. I therefore do not wish to burden this judgment by citing those decisions. Whatever that be, how far can the above abstract proposition of law be applicable to a particular case, depends upon the peculiar facts of that case.

14. At this stage, it is relevant to refer to a Circular, No. H6-47833/69 dated 18-2-1970 (this Circular along with Code of Conduct for Teachers and Pupils was made available for reference by the learned Advocate-General issued by the Director of Public Instruction. Clause 2 of the Circular reads :

"It is compulsory that all schools shall have the morning Assembly every day before actual instruction begins. The whole school with all the pupils and teachers shall be gathered for the Assembly. After the singing of the National Anthem, the whole school shall in one voice, take the National Pledge before marching back to the classes."

The Code of Conduct mentioned above prescribes that (1) for national integration the basis must be the school and (2) as a rule, the whole school should participate in the singing of National Anthem.

15. Referring to the Circular the learned Advocate-General submitted that the circular issued by the Director of Public Instruction has made it imperative that all students must sing the National Anthem in chorus; the singing of National Anthem therefore is a fundamental duty, he submits. He has in this connection also referred to the "Code of Conduct for pupils and-Teachers in Schools", wherein it has been declared that ""As a rule, the whole school should participate in the singing of National Anthem". The Government issued this direction with a view to accomplish the objective of bringing up the future citizens who pledge to maintain the sovereignty, integrity and unity of this Great Nation, he further submitted.

16. Shri C. K. Sivasankara Panicker, the learned counsel for the 4th respondent, the Headmistress of the school, while adopting the arguments of the learned Advocate-General, raised an additional contention that "Witnesses" are not even a religious sect, leave alone a religious denomination, they are only an association of persons and hence they are not qualified for the rights guaranteed

under Articles 25 and 26 of the Constitution. He further submitted that Article 51A, enacted in 1976 by the 42nd Amendment of the Constitution, has made it clear that it shall be the duty of every citizen to abide by the Constitution and respect its ideal and institutions, the National Flag and National Anthem and also to uphold and protect the sovereignty, unity and integrity of India. He also submitted that no citizen can get his fundamental rights enforced through Court unless he is prepared to abide by the fundamental duties.

17. The learned counsel for the Additional 6th respondent, Sri James Vincent, with his usual thoroughness, contended that "the Bible", the Jehovah's Witnesses believe in, does not command that the believers of the said faith shall disobey the directions of Governmental Authorities. In fact they are bound by such directions. In support of this contention, he referred to various passages from the "Bible" as also from the writings of William Ebenstein namely ""Great Political Thinkers", Third Edition. He argues that the Jehovah's Witnesses not only are not patriots but in fact they are supporters of those who work against the sovereignty, integrity and unity of the Nation from within and without. To sustain this plea, he brought to the notice of the Court, by producing a copy of the daily "Malayala Manorama", the news flashed in it that in the "1985 Year Book of Jehovah's Witnesses" Kashmir has been shown as "Disputed territory". To verify this, I wanted the learned counsel for the petitioners to produce the said Year Book. On verification, I am satisfied that the above news flashed in Newspapers, is true. I do not propose to deal with this matter because this is not relevant to decide the issue before me. This is a matter to be probed into, if found necessary, by the Government. The learned counsel further submitted that "Public Order" includes "absence of all acts which are a danger to the security of the State". The petitioners in not singing the National Anthem, it is submitted, must be held to have refused to discharge their fundamental duty, and hence not eligible for the reliefs prayed for.

18. Sri K. Sudhakaran, the learned counsel for the additional 5th respondent in the course of his argument reiterated the above contentions.

19. I shall first deal with the question whether the Jehovah's Witnesses constitute a religious denomination. The pleadings in this connection are in these terms. The petitioners are a body of Christians called Jehovah's Witnesses. The witnesses are an unincorporated body teaching the obligation imposed that the law of God is superior to all other laws and their religious belief consists in strictly following the entire teaching of the Bible. One of their most fundamental religious tenets is that they should worship only Jehovah their God and they should not participate in any ritual other than functions which involve the worship of God". The additional 6th respondent has stated thus in his counter-affidavit : The Jehovah's Witnesses are not a body of Christians as claimed. They are only "members/collaborators" of a Charitable organisation functioning from the United States of America under the name and style of "Watch Tower Bible and Tract Society of Pennsylvania, incorporated in 1939 as a non-profit corporation

under the company law, and having one of its branches, at South Avenue Santa Cruz, Bombay-54. Branch Manager is an American National. Another branch is functioning at Sant Tulsidas Path, Lonavala, Maharashtra. The Jehovah's Witnesses therefore are only the members of a charitable society and not a religious denomination. They therefore are not entitled to the protection of Articles 25 and 26.

20. The 1985 Year Book of Jehovah's Witnesses supports the above contention of the additional 6th respondent. That means that petitioners are members of an incorporated body, having head office at 25, Columbia Heights, Brooklyn, New York 11201, U.S.A. One of its recognised branch offices as per the Year Book is the one functioning at Post Bag 10, Lonavala, Pune District, Maharashtra, 410401. Yet another association of the Jehovah's Witnesses is "The Watch Tower Bible and Tract Society of India, G-37, South Avenue, Santa Cruz (West) Bombay 400054", a Society registered under the Societies Registration Act, XXI of 1860. This was registered on 27-2-1978. As is seen from the Memorandum of Association, the main object for which the society is established is to disseminate in India Bible truths in various languages and to propagate religious and Biblical education etc. Yet another striking object with which the society is formed is "to act as the servant of and legal agency in India for that body of Christian persons known as "Jehovah's Witnesses" and to preach in India the Gospel of God's Kingdom under Christ Jesus as a witness to the name, word and supremacy of Almighty God."

21. No other materials have been placed before the Court to show that Jehovah's Witnesses are a denomination by itself. From the materials available it cannot be said that they are a denomination within the meaning of Article 26, They are only members of a corporate body. They basically subscribe to the fundamental notions of Christianity. If that be so, their relation to their creator cannot be said to be different from that of Christians who also believe in "Bible truths". Jehovah's Witnesses therefore cannot be said to constitute a "denomination" different from the believers of Christian religion.

22. Now turning to the other question as to what extent the Jehovah's Witnesses are bound to obey secular laws of the country, we have in this connection to see what are the commands of the Bible regarding "Civil and Social duties" of a Christian. The learned counsel for the petitioners referred to the following passages from "Holy Bible, Placed by the Gideons" :

Psalm 83 (18) "That men may know that thou, whose name alone is JEHOVAH, art the most high over all the earth."

Romans 13

"Let every soul be subject unto the higher powers. For there is no power but of God : the powers that be are ordained of God.

2. Whosoever therefore resisteth the power, resisteth the ordinance of God : and

they that resist shall receive to themselves damnation.

3. For rulers are not a terror to good works, but to the evil, Wilt thou then not be afraid of the power? do that which is good, and thou shall have praise of the same :

4. For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain : for he is the minister of God, a revenger to execute wrath upon him that doeth evil.

5. Wherefore ye must needs be subject, not only for wrath, but also for conscience sake.

6. For this cause pay ye tribute also; for they are God's ministers, attending continually upon this very thing.

7. Render therefore to all their dues : tribute to whom tribute is due; custom to whom fear; honour to whom honour."

23. Corresponding passages from the Holy Bible cited at the Bar by Sri James Vincent, learned counsel for the 6th respondent, read :

Psalms 83.".....

Let them know that thou alone, whose name is the LORD: art the Most High over all the earth."

Romans 13

"Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God. Therefore he who resists the authorities resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to bad. Would you have no fear of him who is in authority? They do what is good, and you will receive his approval, for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain; he is the servant of God to execute his wrath on the wrongdoer. Therefore one must be subject, not only to avoid God's wrath but also for the sake of conscience. For the same reason you also pay taxes, for the authorities are ministers of God, attending to this very thing. Pay all of them their dues, taxes to whom taxes are due, revenue to whom revenue is due, respect to whom respect is due, honour to whom honour is due."

24. A reading of the above passages, which alone are relevant for the present purpose, shows that the believers of Christianity whether he belongs to "Jehovah's Witnesses" or otherwise are "subject to the governing authorities." In this connection, it may not be out of context to refer to the writing of Martin Luther, a great political thinker. He has stated thus:

"Secular Authority : to what extent it should be obeyed :--

We must firmly establish secular law and the sword, that no one may doubt that it is in the world by God's will and ordinance. The passages which establish this are the following: Roman xiii, "Let every soul be subject to power and authority, for there is no power but from God The power that is everywhere is ordained of God. He then who resists the power resists God's ordinance. But he who resists God's ordinance shall bring himself under condemnation." Likewise, I Peter ii, "Be subject to every kind of human ordinance, whether to the king as supreme, or to the governors, as to those sent of Him for the punishing of the evil and for the reward of the good."" (Vide page 304, Great Political Thinker, Third Edition, By William Ebenstein.)

Jehovah's Witnesses therefore are bound to obey the directions issued by the Government and Governmental Authorities. The "Jehovah's Witnesses" however, believe that it is their religious duty to ignore the laws of the civil Government that run counter to their belief that Jehovah is the only God and hence His laws should prevail over the civil laws. This belief, it is submitted, has made them desist from singing the National Anthem in the school contrary to the directions contained in the Circular issued by the Director of Public Instruction and the Code of Conduct of Teachers and Students issued by the Government. These documents as also the provisions contained in Article 51A of the Constitution make it abundantly clear that the petitioners though believers of the tenets of Jehovah's Witnesses, are bound to sing the National Anthem as a political duty, along with other students, in chorus. This kind of inconsistency between religious and political duty has many a time appeared in human history. In such cases the States/the Nations have consistently held the view that the ceremonies like respecting the Anthem, flag etc. made obligatory, are merely political in character. As held by Latham C.J. in *Adelaide Company of Jehovah's Witnesses Inc. v. The Commonwealth*. (1943) 67 CLR 116, held thus:

"In each case the State view is that the ceremony which has been made obligatory is merely political in character -- a form of "saluting the flag" but the other view of the question is that it is something which requires a true believer to abjure part of his cherished faith."-----

25. The above principle of law forms part of the law, the Australian High Court laid down while interpreting S. 116 of the Australian Constitution guaranteeing religious freedom. Latham C.J. has observed :

"It has already been shown that beliefs entertained by a religious body as religious beliefs may be inconsistent with the maintenance of civil government. The complete protection of all religious beliefs might result in the disappearance of organized society because some religious beliefs, as already indicated, regard the existence of organized society as essentially evil."

26. As observed by the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, the limitation imposed on the otherwise absolute religious rights guaranteed

under the American and Australian Constitution by judicial pronouncements, have been embodied in Articles 25 and 26 of our Constitution guaranteeing Religious Freedom. To put it briefly : Freedom of religion guaranteed under our Constitution therefore is not absolute to be exercised independently of the Fundamental Duty prescribed by the same organic instrument. In short, the religious beliefs, must reconcile with the right of a State to employ the sovereign power to ensure orderly living "without which constitutional guarantees of civil liberties would be a mockery". I would in this connection refer to the decision of the Supreme Court in *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, The Supreme Court has held that The expression includes absence of all acts which are a danger to the security of the State and also acts which are comprehended the expression "order publique" explained above but not acts which disturb only the serenity of ethers.'"

The conduct of the members of Jehovah's Witnesses in not showing unqualified respect to Constitution, the National Anthem etc. would endanger the security of the Nation in that the same will develop, among the citizens a tendency to ignore the mandates of the Constitution thereby defeating the object "discernible from the Preamble and other provisions of the Constitution), to accomplish which, the people gave the Constitution to themselves. It therefore follows that if religious practices based on religious faith and belief protected by the State, run counter to public order, morality, health or a policy of the Government to uphold the sovereignty, integrity and unity of the nation or social welfare embarked upon, then the said religious practice must give way for the benefit of the people and the nation as a whole. The Code of Conduct for Teachers and Students in the school issued by the Government and the Circular issued by the Director of Public Instruction, according to me, are issued with the high objectives of maintaining the integrity, unity and sovereignty of the nation.

27. The learned counsel then submitted that neither the provisions of the Kerala Education Act nor the Kerala Education Rules confer any authority on the educational authorities to prevent students from attending classes for the sole reason that they do not join in the singing of the National Anthem. There is no substance in this submission. I may in this connection repeat that, where there is a mandatory duty cast on the citizens that they should show respect to the National Flag and National Anthem, the citizens are bound to, show unqualified respect to them notwithstanding any special rights, they may claim under the Constitution. Article 51A of the Constitution contains such a mandate. It is by now well-established that such Constitutional provisions must be read into every enactment or in any event must be deemed to be there by implication because "the Constitution is the paramount law of the country to which all other laws are subject". I am fortified in this view, by a decision of the Supreme Court, in *Bharat Kala Bhandar Ltd. Vs. Municipal Committee, Dhamangaon*, If that be so. Article 51A must be deemed to be there in the Kerala Education Act. This Article read along with Chapter IX of the K.E.R. containing the relevant rules pertaining to the " maintenance of discipline in the school, sets at naught the above

contention of the petitioners.

28. Article 51A commands that every citizen shall respect the National Anthem and therefore it is expected of every citizen to show unqualified respect to it. The Circular and the Code of Conduct mentioned above insist that the students must sing National Anthem in chorus. Alongside, the scope of Rule 6, Chapter IX, K.E.R. also should be considered.

29. Rule 6 reads:

"Any pupil who is deliberately insubordinate or mischievous or guilty of fraud or malpractice in connection with examinations or who is found guilty of any other offence under these rules or who by his proved conduct is in the opinion of the Headmaster likely to cause an unwholesome influence on other pupils, may be, according to the degree of offence censured suspended or dismissed by the Headmaster. The Headmaster of a Secondary" School may also for adequate reasons impose fines on pupils studying in Standards VIII to X. In case of dismissal, a report shall be sent to the Educational Officer. An appeal from the dismissed pupil shall be made to the Educational Officer."

This rule provides that if the Headmaster is of opinion that a pupil by his proved conduct is likely to cause an unwholesome influence on other pupils, the said pupil can be prohibited from attending the school. The facts of the case do establish that the petitioners by their conduct have proved that they will not participate in the singing of the National Anthem. This conduct may have a very bad influence on the other pupils. The Headmistress therefore is well within her right not to permit the petitioners to attend the class until they give in writing that they will participate in the singing of the National Anthem in the school.

The Original Petition accordingly is without merits. The same is dismissed.