

(1999) 08 KL CK 0021

In the High Court Of Kerala

Case No : O.P. No's. 17745 and 17747 of 1999

Eby J. Jose

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Prevention of Insults to National Honour Act, 1971 — Section 2

Citation : AIR 2000 Ker 79 : (2000) 1 ILR (Ker) 650 : (2000) 1 RCR(Criminal) 54

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : K. Ramakumar SCGSC, General and State Public Prosecutor, for the Appellant; K. Gopalakrishna Kurup, for the Respondent

Judgement

K.S. Radhakrishnan, J.—National Flag represents the spirit of the nation, Its tradition and culture and at the same time it always adapts the new tradition, development and well-being of the humanity. Uninterrupted continuity is its character. It also represents the spirit of renunciation. National Flag reminds every Indian the sacrifices made by our men and women in the freedom struggle and the symbol of hopes and dreams of millions of Indians. It symbolises nation's ideals and aspirations. Our soldiers really around this Flag to uphold Indian sovereignty, integrity and unity of the nation. It is a symbol of nonviolence and peace to mankind.

2. Pandit Jawaharlal Nehru while moving the resolution to adopt the Flag in the Constituent Assembly on 22nd July, 1947 said as follows:

"Therefore this Flag that I have the honour to present to you is not, I hope and trust, a Flag of Empire, a Flag of Imperialism, a Flag of domination over anybody, but a Flag of freedom not only for ourselves, but a symbol of freedom to all people who may see it. And wherever it may go - and I hope it will go far, - not only where Indians dwell as our ambassadors and ministers but across the far seas where it may be carried by Indian ships, wherever it may not it will bring a message, I hope, of freedom to those people, a message of comradeship, a

message that India wants to be friends with every country of the world and India wants to help any people who seek freedom."

3. The motion made was adopted by the Constituent Assembly standing. Our National Flag which was presented to the Constituent Assembly was hoisted on 15th August, 1947 in the Secretariat building. New Delhi. Flag displayed in the Constituent Assembly is now preserved in the National Museum. It will always remain as a symbol of universal love, peace, progress and prosperity.

4. Ministry of Home Affairs, Government of India, published a Flag Code to make every Indian aware of correct usage regarding the display of the National Flag. I find that there is not much awareness among the people with regard to the instructions given in the said Code. It is the bounden duty of the Government to make people aware of its importance. Wherever the National Flag is flown, it should occupy the position of honour and be distinctly placed. When the Flag is flown on any public building, it shall be flown on that building on all days including Sundays and holidays and it shall be flown from sun-rise to sun-set, irrespective of weather conditions, except otherwise provided in the Code. The Flag may be flown on such a building at night also and this should be only on very special occasions. The Flag shall always be hoisted briskly and lowered slowly and ceremoniously. When the hoisting and the lowering of the Flag is accompanied by appropriate bugle calls, the hoisting and lowering should be simultaneous with the bugle calls. When the Flag is displayed from a staff projecting horizontally or at an angle from a windowsill, balcony, or front of a building, the saffron band shall be at the top end of the staff. When the Flag is displayed flat and horizontal on a wall, the saffron band shall be upper most and when displayed vertically, the saffron band shall be to the right with reference to the Flag, i.e., it may be to the left of a person facing it. When displayed over the middle of a street, running east-west or north-south, the Flag shall be suspended vertically with the saffron to the north, or to the east, as the case may be. When used on occasions like the unveiling of a statue, the Flag shall be displayed distinctly and separately. The Flag shall not be used as a covering for the statue or monument. When the Flag is displayed alone on a motor car, it shall be flown from a staff which should be affixed firmly to the car in the middle front of the bonnet. When the Flag is carried in a procession or a parade, it shall be either on the marching right, that is the Flag's own right, or if there is a line of other Flags, in front of the centre of the line.

5-6. Code deals with misuse of Flag also. It says that a damaged or dishevelled Flag shall not be displayed. The Flag shall not be dipped in salute to any person or thing. No other flag or bunting shall be placed higher than or above, or, except otherwise provided in the Code, side by side with the National Flag, nor shall any object including flowers or garlands or emblem be placed on or above the Flag-mast from which the National Flag is flown. The flag shall not be used as a festoon, rosette or bunting or in any other manner for decoration, nor shall other coloured pieces of cloth be so arranged as to give the appearance of the National

Flag. The Flag shall not be used as a drapery in any form whatsoever, except in State/Military funerals except otherwise provided in the Code. The Flag shall not be draped over the hood, top, sides, or back of a vehicle or a train or a boat. The Flag shall not be used or stored in such a manner as may damage or soil it. 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. The Flag shall not be used as a covering for a building. The Flag shall not be used as a portion of a costume or uniform of any description. It shall not be embroidered upon cushions or handkerchiefs or printed on napkins or boxes. Lettering of any kind shall not be put upon the Flag. The Flag shall not be used in any form of advertisement nor shall be advertising sign be fastened to the pole from which the Flag is flown. The flag shall not be used as a receptacle for receiving, delivering, holding or carrying anything.

7. The display of the National Flag shall be unrestricted throughout the country on (1) Republic Day during the period from the commencement to the close of the celebrations; (2) National week 6th April to 13th April in memory of the martyrs of Jallianwala Bagh; (3) Independence Day; (4) Mahatma Gandhi's birthday; and (5) any other particular day of national rejoicing as may be specified by the Government of India.

8. "The display of National Flag shall be unrestricted in a State on the anniversary of the formation of that State. Government of India may authorise the unrestricted display of the National Flag on any specified day in any local area on account of local celebrations. Even on the occasions mentioned above, the provisions of the Code regarding the display of National Flag on motor cars shall not be regarded as relaxed.

9. During the ceremony of hoisting or lowering the Flag or when the Flag is passing in a parade or in a review, all persons present should face the Flag and stand at attention. Those present in uniform should render the appropriate salute. When the Flag is in a moving column, persons present will stand at attention or salute as the Flag passes them. A dignitary may take the salute without a head dress.

10. National Flag is normally flown only on important public buildings such as High Courts, Secretariat, Commissioner's Offices, Collectorates, Jails and offices of the District Boards, Municipalities, Zilla Parishads and Departmental/Public Sector Undertakings. In frontier areas the National Flag may be flown on the border customs posts, check posts, out posts, and at other special places where the flying of the Flag takes on special significance. In addition, it may be flown on the camp sites of border patrols. The National Flag should also be flown on the official residences of the President, Vice-President, Governors and Lieutenant Governors when they are at Headquarters and on the building in which they stay during their visits to places outside the Headquarters. The Flag flown on the official residence should, however, be brought down as soon as the dignitary

leaves the Headquarters and it should be rehoisted on that building as he enters the main gate of the building on return to the Headquarters. The National Flag should also be flown on the residence at Headquarters of the Heads of Missions/ Posts abroad in the countries where it is the custom for diplomatic and consular representatives to fly their National Flags over their official residence. Usage of National Flag is also restricted to a few dignitaries.

11. National Flag may be hoisted in Schools, colleges, sports, camps, scout camps, etc. on special occasions and also Inspire respect for the Flag. Instructions have also been given with regard to hoisting, saluting and giving pledge to the Flag in Schools, etc. The School will assemble in open square formation with the pupils forming the three sides and the Flag-staff at the centre of the fourth side. The Headmaster, the pupil leader and the person unfurling the Flag will stand three paces behind the Flag-staff. The pupils will fall (in) according to classes and in squads often. These squads will be arranged one behind the other. The pupil leader of the class will stand to the right of the first row of his class and the form master will stand three paces behind the last row of his class, towards the middle. The classes will be arranged along the square in the order of seniority with the senior most class at the right end. The distance between each row should be at least one pace, 30 inches, and the space between Form and Form should be the same. When each Form or Class is ready the Class leader will step forward and salute the selected school pupil leader. As soon as all the Forms are ready, the school pupil leader will step up to the Headmaster and salute him. The Headmaster will return the salute. Then the Flag will be unfurled. The school pupil leader may assist. The School pupil leader in charge of the parade or Assembly will call the parade to attention, Just before the unfurling, and he will call them to the salute when the Flag flies out. The parade will keep at the salute for brief interval, and then on the command "order" the parade will come to the attention position. The Flag Salutation, will be followed by the National Anthem. The parade will be kept at the attention during this part of the function. On all occasions when the pledge is taken, the pledge will follow the National Anthem. When taking the pledge the Assembly will stand to attention and the Headmaster will administer the pledge ceremoniously and the Assembly will repeat it after him.

12. Parliament had occasion to note the cases involving deliberate disrespect to National Flag, the National Anthem and the Constitution in the past. Some of those incidents were discussed in both Houses of Parliament and the members expressed great anxiety about the disrespect shown to the national symbols. Disrespect to the National Flag and the Constitution or the National Anthem was not punishable under then existing law. Public acts of insults to these symbols of sovereignty and the integrity of the nation must be prevented. Therefore, a bill was introduced, and the Parliament passed the Prevention of Insults to National Honour Act, 1971. As per Section 2 of the Act, 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. Explanation 1 to Section 2 says that 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 the Section. Explanation 2 says that 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.

12A. A registered organisation by name Desiya Aikya Vedi, represented by its Chairman, Aby J. Jose as well as one K. Rajesh from Puthoor brought to the notice of this Court about the misuse of National Flag as well as the discourtesy shown to it in various parts of the State by certain service organisations. Sri K. Rajesh appeared in person. When the matter came up for hearing, I issued notice to the learned Advocate General as well as to the Senior Central Government Standing Counsel. Sri. Gopalkrishna Kurup appeared for the State Government. Petitioners pointed out that there is lack of awareness of proper use of National Flag among general public , and therefore, they wanted this Court to direct the State Government to highlight its importance to the general public and to take adequate measures for preventing its misuse due to ignorance or otherwise. They brought to the notice of this Court some of such instances. Various news papers recently pointed out its misuse at various places. A leading Malayalam daily published a photograph of carry bag used in a grocery shop for sale of its items and by certain shops in the Kollam District. It was pointed out that such carry bags were printed inscribing National Flag. Cover was noticed somewhere at Puthoor, Kottarakkara. It was also noticed that the cover depicting National Flag was found mutilated and in a defaced manner in and near the Puthoor market after use. After getting information that those covers were printed at Sivakasi, police have started investigation. Complaints have also been raised that some of the organisations are also using National Flag during their private functions along with their institutional flags, giving importance to their flags than the National Flag.

13. I am of the view that various instances occurred in and near Kottarakkara should be taken serious note of. If the allegations raised are correct, they are in clear violation of the Flag Code, as well as the provisions of the Prevention of Insults to National Honour Act, 1971 and the Emblems and Names (Prevention of Improper use) Act, 1950. Section 2 of Act 69 of 1971 specifically says that 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. The expression "public place" means any place intended for use, by or accessible to, the public and includes any public conveyance. Report shows that the carry bag inscribing National Flag is used as a receptacle for receiving, delivering, holding or carrying anything, in a grocery shop, is punishable under Act 69 of 1971. Flag Code also says that the use of the National Flag or any colourable imitation thereof for the purpose of any trade, business, calling or profession or in the title of any patent or in any trade mark or design without the prior permission of the Central Government is an offence under the Emblems and Names (Prevention of Improper Use) Act, 1950. Section 3 of the above mentioned Act deals with the prohibition of improper use of certain Emblems and Names for the purpose of any trade, business, calling or profession in Emblem specified in the Scheduled therein. Emblem has been defined u/s 2(a) of the Act meaning emblem, seal, flag insignia, etc. scheduled therein. Schedule Includes Indian National Flag also. Section 5 of the Act says that any person who contravenes the provisions of Section 3 shall be punishable with fine which may extend to Rs. 500/-. Therefore, the carry bag manufactured and used in the grocery shop with Inscribing National Flag is also punishable under the Emblems and Names (Prevention of Improper Use) Act, 1950 as well.

14. I am of the view that petitioners, have brought before this Court a very Important matter of considerable public importance. Their national spirit should be appreciated. Complaint is that there is lack of awareness in the public with regard to the importance of our National Flag and its use. Instances quoted about misuse have to be taken serious note of by the Government and also police. Authorities should take speedy steps to conduct investigation with regard to misuse of our National Flag noted at Puthoor, Kollam, and complete the same at the earliest.

15. The National Flag was first presented to the Constituent Assembly. As I have already mentioned, it was on 15th August, 1947. We are to celebrate our Independence Day on 15th August, 1999, the last in this millenium. It is an apt occasion for Press electronic medium etc. to highlight its importance to each and everyone and to every home in the State and elsewhere in the country. State Government should take urgent steps to make the people aware of the importance of our National Flag, and its proper use.

Original Petitions are disposed of as above.