

(2017) 10 DEL CK 0286

In the Delhi High Court

Case No : Civil Writ Petition No. 10867 Of 2016

Gautam R Morarka

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 17-10-2017

Acts Referred:

Constitution Of India, 1950 — Article 51A, 51A(a)

Citation : (2017) 10 DEL CK 0286

Hon'ble Judges : GITA MITTAL, J;C.HARI SHANKAR, J

Bench : Division Bench

Advocate : Pravin H. Parekh, Sumit Goel, Ritika Sethi, Rashmi Gupta, Suparna Srivastava, Sanjna Dua , Alinda Bhdwal

Final Decision : Dismissed

Judgement

Gita Mittal, J

1. The petitioner contends that song "Vande Mataram" has been given a equal status as the "Jana Gana Mana" by the Constituent

Assembly of India which met to sign the Constitution on the 24th of January 1950. It is submitted before us by Mr. Pravin H. Parekh, Id. Senior

Counsel for the petitioner that even the Constituent Assembly acknowledged that the song "Vande Mataram" had played a historic part in

the struggle for India's freedom movement and has to be honoured equally as the National Anthem. Contending that no set

of rules regarding its rendition as well as the protocols to be followed regarding its singing have been framed, the writ petitioner has submitted that

appropriate statutory recognition requires to be given to the song "Vande Mataram" under the Prevention of Insults to National Honour Act,

1971 which was enacted to prevent disrespect and insults to National Symbols.

Premised on these assertions, the writ petitioner seeks the following prayers :

â??(a) Issue appropriate writ or order quashing the order No.19/6/2014 â?? Public dated 30.05.2016 passed by the Ministry of Home

Affairs, Government of India;

(b) Issue writ of Mandamus or any other appropriate writ diring the respondents to issue appropriate orders/instructions with respect to the

National Song â??Vande Mataramâ?? and the courtesies to be observed when the same is being sung/played to ensure the respect and

dignity, which the National Song deserves, on the lines of the Orders and Instructions already issued by the respondent no.1 (Annexure P-5)

with respect to the National Anthem â??Jana Gana Manaâ??.

(c) Issue writ of mandamus or any other appropriate writ directing that the respondents to consider moving an appropriate bill for

amendment in the Prevention of Insults to National Honour Act, 1971 to incorporate provisions with respect to the National Song â??Vande

Mataramâ?? to ensure the respect and dignity which the National Song deserves ; AND

(d) Pass such and further orders as may be deemed just and necessary in the facts and circumstances of the present case and in the interest

of justice.â??

2. It is trite that this court cannot issue a writ of mandamus to the respondents to enact and effectuate legislation. Therefore, prayer (c) is untenable

and no directions as have been sought can be passed.

3. Notice stands issued to the respondents, who in response thereto, have filed a detailed affidavit dated 2nd February, 2017. This court has been

informed that the petitioner had made the representations dated 6th February, 2013 and 20th November, 2013 which were in terms of the submissions

and prayers made in the writ petition requesting for amendments in the aforesaid legislation and also seeking framing of guidelines regarding the

singing and playing of the song â??Vande Mataramâ??.

4. We are also informed that the writ petitioner had earlier filed writ petition being WP(C)No.662/2014 before this court. In these proceedings, the

order dated 29th January, 2014 was passed directing the Ministry of Home

Affairs to consider the representations dated 6th February, 2013 and 20th November, 2013 in accordance with law and to pass appropriate orders.

5. Pursuant to the above directions, a Committee was constituted premised on the representations of the petitioner which held a meeting on 29th

March, 2016 and considered the petitioner's representation.

Recommendations were made by this Committee resulting in the order dated 30th May, 2016 which was issued by the respondents inter alia noting as

follows :

8. Whereas, after a detailed discussion, the Committee in its meeting held on 29th March, 2016 recommended that status quo may be

maintained in this regard for the present, hoping that every citizen of India should remember the historic role of the song in our freedom

struggle and show due respect to the song when it is played or sung ;

9. Whereas, protection under the law is not the only way to show respect to a creative work. Billions of Indians have the deepest respect and

unabiding faith in the Ramcharitmanas and the Mahabharat. Christians across the world similarly have faith in the Bible; the works of

Kalidas and Shakespeare are and have been revered across the world, and across centuries; and Aartis are sung with utmost devotion and

respect. Yet none of these have, indeed none of them require, the protection of law. In fact, such work of creativity and/or of religious

nature can be said to be beyond and above law. A nation has only one flag and one anthem; that does not mean that any less respect is

meant to other songs or prayers, or that the citizens are prevented from loving respecting, singing and being emotionally attached to other

songs, books or symbols;

10. Whereas, the evocative 'Vande Mataram' inseparably linked with our freedom struggle, is an eternal song which commands

respect and love, without it being mandated, or enforced by the long arm of the law. It has become synonymous with valour, and dedication,

and love for one's motherland, and does not require any crutches to hold its own in the heads and hearts of India's citizenry;

11. Whereas, while being the authoritative symbols of Indian State and national flag and the anthem, equally loved and

respected, need codification, Vande Mataram occupies a unique and special place in the emotions and psyche of the people of India, that

requires no formal support, or codification.

12. Therefore, the request of the applicant cannot be accepted. The applicant would be well advised to translate his obvious love and

respect for Vande Mataram to promoting and popularizing it amongst the young, explaining its meaning and significance; that may be a

greater contribution by him to â??Vande Mataramâ??.â??

6. It needs no elaboration that the â??Vande Mataramâ?? is inseparably linked with the freedom struggle as is noted by the committee and the

respondents as an eternal song which commands respect and love without it being managed or enforced by the long arm of the law. It is

acknowledged that this song has become synonymous with valour and dedication and love for oneâ??s motherland.

7. Ms. Suparna Srivastava, Id. CGSC for the respondents has informed this court that a prayer, which was similar in terms to the one prayer pressed

by the writ petitioner, was made before the Supreme Court of India in WP(C)No.98/2017 Ashwini Kumar Upadhyay vs. Union of India & Ors. This

prayer was considered by the Supreme Court of India on 17th February, 2017 when it was ordered as follows :

â??Heard Mr. Vikash Singh, learned senior counsel along with Ms. Asha Upadhyay, learned counsel for the petitioner.

In the present writ petition, prayer (a) is to the following effect : -

â??a) frame a National Policy to promote and propagate the National Anthem, National Song and National Flag in spirit of the Article 51A

to achieve the great golden goals, as set out in Preamble of the Constitution of India.â??

Mr. Vikas Singh, learned senior counsel submitted that it is similar to writ petition no.855 of 2016.

On a perusal of the order passed therein, we do not find that it relates in entirety to prayer (a), for our earlier order does not relate to

â??National Songâ??or â??National Flagâ??. Be it clearly noted, Article 51A(a) of the Constitution of India does not refer to â??National

Songâ??. It only refers to National Flag and National Anthem. The said Article reads as follows :

51A. Fundamental duties it shall be the duty of every citizen of India

(a) to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem.

Therefore, we do not intend to enter into any debate as far as the National Song is concerned.

8. In view of the above, though there can be no dispute with the writ petitioner that the song "Vande Mataram" deserves the regard and respect

which has been recognized by the respondents and has been noted by the Supreme Court of India in the aforesaid order, we are unable to grant the

prayers made in the writ petition.

This writ petition is accordingly dismissed.