

(2014) 08 KAR CK 0026

In the Karnataka High Court

Case No : Writ Petition No. 34427/2014 (GM-RES)

H.R. Vishwanath

APPELLANT

Vs

Registrar General

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Constitution of India, 1950 — Article 13(3)(a), 19, 19(1)(a), 226
Emblems and Names (Prevention of Improper Use) Act, 1950 — Section 1

Citation : (2014) 4 AKR 329 : (2014) ILR 5671

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : Shashidhar S. Karmadi, HCGP, Advocate for the Respondent

Judgement

A.N. Venugopal Gowda, J.—This writ petition was filed asking for a mandamus against the Registrar General, High Court of Karnataka, not to allow Sri Ravivarma Kumar, Advocate General, High Court of Karnataka, 2nd respondent herein, hoisting Indian National Flag at the Office of Advocate General, High Court of Karnataka i.e., parallel to the Advocates" Association, Bangalore and to ensure enough solidarity, unity and integrity of the Advocates" Association and for a mandamus to the 2nd respondent, to participate in the Flag hoisting ceremony of the Advocates" Association, on the eve of Independence Day.

2. The petitioner, an advocate, appeared in person. On being asked by the Court, as to whether he had represented to the 1st respondent, to redress the grievance as against the intended action of the 2nd respondent, who is also a member of the 3rd respondent - Association, petitioner submitted that for want of time, he did not submit any representation and filed this petition because of urgency and also in view of the violation of the fundamental and statutory rights.

3. According to the petitioner, 2nd respondent violated the established norm of celebration of Independency Day and Republic Day, by the Advocates" Association. He submitted that a parallel function is being organized by the 2nd respondent, since, a Circular has been issued to all the Law Officers of the

Government, to participate in the function, wherein, he would hoist the National Flag. Petitioner submitted that the 2nd respondent by hoisting the National Flag, by organizing a separate function, than participating in the Flag hoisting ceremony of the Advocates' Association, has destroyed the unity and integrity of the Association. The petitioner submitted that he is astonished by the silence of the 3rd respondent, Sri K.N. Subba Reddy, the President of the Advocates' Association. Petitioner submitted that when there was a dispute between two communities in the matter of hoisting the National Flag at a place in Hubli, he had filed a writ petition and the dispute was resolved amicably.

4. The 2nd respondent is the Advocate General of Karnataka. He, in the said capacity has hoisted Indian National Flag separately on the previous Independence Day and Republic Day.

5. The question that arises for consideration is, whether a mandamus can lie against the 1st respondent, not to allow the hoisting of Indian National Flag near the Advocate General's office by the 2nd respondent?

6. In Union of India (UOI) Vs. Naveen Jindal and Another, , Mr. Naveen Jindal, being a Joint Managing Director of a public limited company incorporated under the Companies Act and in charge of the factory situated at Raigarh in Madhya Pradesh, was flying the National Flag at the office premises and that he was not allowed to do so by the Government officials on the ground that the same is impermissible under the Flag Code. Questioning the said action, a writ petition filed in the High Court, inter alia, on the ground that no law could prohibit flying of National Flag by Indian citizens, was allowed. Feeling aggrieved, the Union of India having filed the special leave petition, Apex Court held as follows:

"90. (i) Right to fly the National Flag freely with respect and dignity is a fundamental right of a citizen within the meaning of Article 19(1)(a) of the Constitution of India being an expression and manifestation of his allegiance and feelings and sentiments of pride for the nation, (ii) The fundamental right to fly the National Flag is not an absolute right but a qualified one being subject to reasonable restrictions under clause (2) of Article 19 of the Constitution of India, (iii) The Emblems and Names (Prevention of Improper Use) Act, 1950 and the Prevention of Insults to National Honour Act, 1971 regulate the use of the National Flag, (iv) Flag Code although is not a law within the meaning of Article 13(3)(a) of the Constitution of India for the purpose of clause (2) of Article 19 thereof, it would not restrictively regulate the free exercise of the right of flying the National Flag. However, the Flag Code to the extent it provides for preserving respect and dignity of the National Flag, the same deserves to be followed, (v) For the purpose of interpretation of the constitutional scheme and for the purpose of maintaining a balance between the fundamental/legal rights of a citizen vis-a-vis, the regulatory measures/restrictions, both Parts IV and IV-A of the Constitution of India can be taken recourse to."

7. Flag Code of India, 2002, contains under what circumstances and in what

manner the National Flag can be hoisted. The Flag Code is divided into three parts. Part I contains general description of the National Flag. Part II provides for the mode and manner of Hoisting/Display/Use of National Flag by members of Public, Private Organizations, Educational Institutions etc. Part III relates to Hoisting/Display of the National Flag by Central and State Governments and their Organizations and Agencies.

8. Clause 2.1 of Section 1, appearing in Part II of the Flag Code, being relevant, reads as follows:

"2.1. There shall be no restriction on the display of the national Flag by members of general public, private organisations, educational institutions, etc., except to the extent provided in the Emblems and Names (Prevention of Improper Use) Act, 1950 and the Prevention of Insults to National Honour Act, 1971 and any other law enacted on the subject."

Clause 2.2 is relevant and the same reads as follows:

"2.2. A member of public, a private organization or an educational institution may hoist/display the National Flag on all days and occasions, ceremonial or otherwise."

Clause 3.39 of Section VIII appearing in part III, under the heading, Display over Public Buildings/Official Residences, being relevant, reads as follows:

"3.39. Normally the National Flag should be flown only on important public buildings such as High Court, Secretariats, Commissioners' Offices, Collectorates, Jails and offices of the District Boards, Municipalities and Zilla Parishads and Departmental/Public Sector Undertakings."

Flag Code provides guidelines to be observed for preservation of dignity and respect to the National Flag.

9. Thus, from Clause 2.1 of Section 1, it is now clear that there shall be no restriction on display of National Flag by members of general public, private organizations, educational institutions etc., except to the extent provided in the 1950 Act and 1971 Act and any other law enacted on the subject. Section III of Part III of the Code lays down the manner in which correct display of the National Flag should be made and in contrast thereto Section IV provides for various factors that would lead to incorrect display. Section V provides for prevention of misuse of National Flag. Section VI provides for the manner of appropriate salutation to the Flag. Section VII provides for the manner in which Indian National Flag should be displayed along with Flags of other nations and of United Nations.

10. Thus, it is clear that Right to fly the National Flag freely with respect and dignity is a fundamental right of a citizen within the meaning of Article 19(1)(a) of the Constitution of India, subject to reasonable restrictions under clause (2) of Article 19 of the Constitution of India.

11. What the petitioner wants is that a writ of mandamus be issued to the 1st respondent, not to allow 2nd respondent, to fly the Indian National Flag at the Office of the Advocate General, housed within the premises of High Court and to direct the 2nd respondent to participate in the flag hoisting ceremony of the Advocates' Association, Bangalore.

12. In *Oriental Bank of Commerce Vs. Sunder Lal Jain and Another*, , regarding the prerequisite for issuance of writ of mandamus, it has been stated as follows:

"11. The principles on which a writ of mandamus can be issued have been stated as under in *The Law of Extraordinary Legal Remedies* by F.G. Ferris and F.G. Ferris, Jr.:

Note 187--Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

* * *

Note 192--Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and Tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

* * *

Note 196--Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the Court, subject always to the well-settled principles which have been established by the Courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and Judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the Court may, and should, look to the larger public interest which may be concerned - an interest which private litigants are apt to over-look when striving for private ends. The Court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion

dependent upon all the surrounding facts and circumstances.

* * *

Note 206.--..... The correct rule is that mandamus will not lie

where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action.

12. These very principles have been adopted in our country. In *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, , after referring to the earlier decisions in *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, , *Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College*, and *Dr. Umakant Saran Vs. State of Bihar and Others*, , this Court observed as follows in paragraph 15 of the reports (SCC) : *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, :

"15. ... There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. ... In the instant case, it has not been shown by Respondent No. 1 that there is any statute or rule having the force of law which casts a duty on Respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that Respondent No. 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. The respondents have not been able to show that there is any statute or rule having the force of law which casts a duty on the appellant Bank to declare their account as NPA from 31-3-2000 and apply RBI Guidelines to their case."

13. Thus, it is clear, that for issue of a writ of mandamus, there must be a legal right with the petitioner, to compel the performance of statutory duty cast upon the 1st respondent. The petitioner is not able to show that there is any statute or rule having the force of law which casts a duty on respondent No. 1, not to allow

respondent No. 2, hoist the National Flag near the Office of the Advocate General and to ensure his participation in the Flag hoisting ceremony organized by the 3rd respondent, as the President of the Advocates' Association.

14. The difference/controversy, if any, amongst the members of the 3rd respondent - Association, should be sorted out in the domestic forum in conformity with the Articles of the Association. The petitioner, instead of seeking sorting out of the dispute and controversy between the 2nd respondent and the 3rd respondent, in the domestic forum, hastily has filed this writ petition, seeking intervention of the 1st respondent, who has no statutory duty in the matter of domestic affairs of 3rd respondent - Association. Therefore, as the petitioner has no legal right and the 1st respondent has no corresponding duty, no mandamus can be issued.

15. It is trite that no mandamus can lie against an Authority, to act in contravention of provisions of a statute occupying the field, as it would amount to compelling the Authority to violate the law, which would result in destruction of law.

16. Right to fly National Flag freely with respect and dignity being a fundamental right of a citizen and in view of the ratio of law in the decision in Naveen Jindal (supra), there is no scope to issue mandamus as against the 1st respondent.

In the result, this petition being devoid of merit, is rejected.