

(1995) 09 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Petition No. 420 of 1995 and Civil Miscellaneous Appeal No. 5418 of 1995

Naveen Jindal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 22-09-1995

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Citation : (1995) 4 AD 273 : (1995) 60 DLT 516 : (1995) 35 DRJ 598 : (1996) 112 PLR 3

Hon'ble Judges : Dr. M.K. Sharma, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Shanti Bhushan, Mukul Rohatagi, Jayant Bhushan, M. Rao, K.T.S. Tulsi, Meera Bhatia and Gajendra Kumar, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) By this petition under Article 226 of the Constitution the petitioner has challenged the restriction contained in the Flag Code-India relating to flying of the National Flag by private citizens and seeks to have the same quashed being illegal and invalid with a further prayer restraining the respondents from interfering with his right to fly the National Flag on his premises in a respectful manner.

(2) Petitioner has done his M.B.A. from the U.S.A. and is presently working as a Joint Managing Director of Jindal Strips Limited, a public limited company incorporated under the Companies Act, 1956. Petitioner says he has been looking after the factory of this company at Raigarh in Madhya Pradesh. He started flying the National Flag at his office premises. To his rude shock he was told by certain Government officials of the State of Madhya Pradesh that flying of the National Flag by an ordinary citizen was not permitted under the law and was an offence and that the petitioner was liable to be prosecuted for flying the National Flag on his premises. Petitioner says that there is no law prohibiting the flying of National

Flag by private individuals and restraint on him from flying the National Flag is put only because of Flag Code. It is stated that the Flag Code contained executive instructions of the Government of India 599 and has not been issued under any law. Petitioner says prohibition imposed upon him by virtue of the Flag Code is in infringement of his fundamental right guaranteed under Article 19(I) (a) of the Constitution. Under this Article, all citizens shall have the right to freedom of speech and expression. This right is, however, subject to certain reasonable restrictions as contained in clause (2) of Article 19, which is as under "(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

(3) Petitioner says even if it is assumed that Flag Code contained instructions and is law the restrictions could not be said to be reasonable under clause (2) of Article 19 of the Constitution. He says that he is not aware if any such restriction on flying the National Flag of the country exists in any other country and in this connection he referred to the instructions applicable to flying of flag in the United States of America. The petitioner has also referred to a decision of the U.S. Supreme Court in *Texas v. Gregory Lee Johnson* (1989) 491 Us 397 105 L Ed 2nd 342 109 S Ct 2533, where, he said, it has been held. that even the burning of a flag to express protest over some action of the Government was protected by the right to freedom of speech and expression and any law restricting such a right and permitting prosecution for burning the flag in these circumstances would be unconstitutional. Petitioner says he, however, does not subscribe to the correctness of whole of the decision rendered by the U.S. Supreme Court and he says his grievance is that no restraint be put on him from flying the National Flag of his own country.

(4) The second respondent is the Commissioner, Bilaspur Division, Bilaspur in Madhya Pradesh, where the factory of the petitioner is located. The Commissioner said while he was on visit to Raigarh in September 1994 he found the National Flag was flown on the building of the factory of the petitioner and on his making enquiry from the local police he was told that that was being done under the instructions of the petitioner. The Commissioner says that as per provisions contained in the Flag Code the petitioner was told not to fly the National Flag on his private resident/factory building. It would appear that there was some correspondence on the subject between the petitioner and the second respondent which, we find, is not quite relevant for our purposes. However, the petitioner was informed by the Commissioner, the second respondent that he could not fly the National Flag in the premises of Jindal Strips Limited which was not in accordance with the Flag Code as published by the Government of India in the Ministry of Home Affairs.

(5) The first respondent has raised a preliminary objection that the petitioner did not approach this Court with clean hands as he did not state in the petition that he had tried to hoist the National Flag at his factory premises, i.e., a commercial place, and that it was apparent that the petitioner had the motive to take commercial advantage by hoisting National Flag at his factory premises. The return Filed by the First respondent is more of argumentative nature. It is admitted by the First respondent that the Flag Code contains only executive instructions and that the Flag Code is intended for general guidance. It is stated that the Flag Code contains instructions issued from time to time by the Government of India to ensure that correct usage regarding display of the National Flag is understood. Then it is stated that it is the Ministry of Home Affairs which is competent to issue the instructions contained in the Flag Code and that all matters relating to National Flag of India are an item of business allocated to this Ministry by the President under the Government of India (Allocation of Business) Rules, 1961, framed by the President in exercise of the powers conferred on him by Article 77(3) of the Constitution. It is, thus, submitted that for all practical purposes the Flag Code is the law on the subject and that it is the fundamental duty of the citizens to follow these instructions. That the Flag Code contains instructions which are violative of Article 19(1)(a) of the Constitution has been denied. Reference has also been made to two enactments, namely, The Emblems and Names (Prevention of Improper Use) Act, 1950 (for short "the Emblems Act"), and The Prevention of Insults to National Honour Act, 1971. The First Act prohibits the use of the Indian National Flag for the purpose of any trade, business, calling or profession, etc., except with the previous permission of the Central Government. The second Act, as the title would show, prohibits insult to the Indian National Flag and the Constitution of India. Any infraction of the provisions of these two Acts is punishable in law.

(6) The "Preamble" of the Flag Code - India states as under:- "The National Flag is flown at different places on various occasions. To ensure that the correct usage regarding the display of the National Flag is well understood, the instructions issued from time to time on the subject have been embodied in this Code for general guidance,"

(7) The Flag Code has been divided into twelve sections. Sections I to V prescribe the specifications of the flag as laid down by the Indian Standards Institution and as to what is the correct and incorrect display of the flag or the misuse of the flag. Section VI prescribes that the display of the National Flag shall be unrestricted throughout the country on certain occasions and apart from that empowers the Government of India to authorise the unrestricted display of the National Flag on any specified day in any local area on account of local celebrations. Though u/s VI display of National Flag on certain occasions has been relaxed that, however, does not mean that the provisions contained in the Code for display of National Flag on motor cars would also stand relaxed. Section VII provides for salute to the National Flag and section VIII provides as to how the National Flag is to be displayed with flags of other nations and of United Nations

when such an occasion arises. Section IX provides for use of the National Flag in educational institutions, sports camps, etc. Section X provides for rules for official display of the National Flag on public buildings, official residences of certain persons, institutions when those are visited by the President, Vice-President or the Prime Minister, and also on motor cars, trains, aircrafts.

(8) We may note that display of the National Flag on motor cars by the Judges of the High Court has been the subject-matter of a Bench decision of the Allahabad 601 High Court In Re: Scope and Extent of applicability of Flag Code and use of National Flags on the cars by the Puisne Judges of the High Court, , where the court held that Judges of the High Court were entitled to fly National Flags on their motor cars. This decision was rendered as it would appear that it was held that persons who were lower in the order of precedence than Judges of the High Court were allowed to fly the National Flag on their motor cars and also the Chief Justice of the High Court who was only the first among equals was also allowed to fly the National Flag and not the Judges of the High Court. During the course of hearing of this petition we were told that perhaps a SLP against the judgment of the Allahabad High Court was filed in the Supreme Court and that has not so far come up for admission. Be that as it may, the question that has been raised in the present petition was not considered in the judgment of the Allahabad High Court.

(9) Proceeding further with other sections of the Flag Code, section XI provides as to when the National Flag shall be half-masted and on what premises. Section XII provides that the provisions of the Flag Code would not be applicable to defense installations who have their own rules for the display of the National Flag. The Flag Code also contains directions for hoisting of the National Flag and giving the pledge to the flag.

(10) Mr. K.T.S. Tulsi, learned Additional Solicitor General, who appeared for the respondents, gave us a list of countries which allowed free use of National Flag and which did not. We do not think that is relevant in the context of the freedom guaranteed to a citizen of this country under Article 19(1) of the Constitution, and the provisions of the two enactments mentioned above. Similarly, we do not find decision of the U.S. Supreme Court in *Texas v. Johnson* (supra) to be of any relevance. In that case the U.S. Supreme Court was concerned with the Federal Constitution's First Amendment and it was held by majority of 5:4 judges that conviction of a protester for burning an American flag, as part of political demonstration, violated Federal Constitution's First Amendment. That decision was rendered in the circumstances of that case and particularly with reference to the violation of the State statute of Texas.

(11) Mr. Shanti Bhushan, learned counsel for the petitioner, submitted that the Flag Code was not a law and fundamental right of a citizen could not be subjected to any restriction by administrative instructions. In this connection he referred to a decision of the Supreme Court in *Bijoe Emmanuel and Others Vs. State of Kerala and Others*, , where the court held that "executive" instructions

were not law justifying the restriction on fundamental rights. It was, thus, submitted that Flag Code not being a law could not impose any restriction on the right of the petitioner guaranteed under Article 19(1)(a) of the Constitution. Mr. Shanti Bhushan said that it was rather paradoxical that a citizen in this country could fly the flag of any other country and not of his own country because of the restrictions imposed by the Flag Code.

(12) In *State of Madhya Pradesh and another v. Thakur Bharat Singh* AIR 1967 S C 1170, the court said that State or its officers in exercise of executive authority could not infringe rights of citizens merely because Legislature of State had power to legislate in regard to subject on which executive order was issued.

(13) It could not be disputed that right to fly the National Flag at the premises of a person, whether at his residence, factory or office, is a part of his fundamental right of freedom of expression and that right can be restricted only by Parliament in the circumstances mentioned in clause (2) of Article 19 of the Constitution. In answer to the arguments of the petitioner, Mr. Tulsi had three submissions to make :-

1. That the Central Government is authorised to impose restrictions on the use of National Flag at any public place or building and can regulate the same by the authority vested in it u/s 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950; 2. That the restriction imposed by the Act and orders issued by the Government are constitutionally valid being reasonable restrictions on the Freedom of Speech and Expression under Article 19(2) of the Constitution; 3. That the question of permitting free use of National Flag or to restrict its use is a matter of policy option available to the Parliament and to the Government. Since it is a policy option constitutionally permissible, the courts ought not to interfere in the same.

(14) We do not find any of these submissions has any merit. Whether provisions of Emblems Act have been violated or not, it is for the court to decide. The executive cannot say that provisions of the Emblems Act would stand infringed under certain circumstances and particularly if there is violation of any of the guidelines laid down in the Flag Code. It is for the courts to judge. The restrictions imposed by the Flag Code on flying the National Flag have not been authorised by any law framed under clause (2) of Article 19 of the Constitution. Instructions contained in Flag Code cannot stand in view of the decisions of the Supreme Court in *State of Madhya Pradesh and another v. Thakur Bharat Singh* AIR 1967 S.C. 1170 and *Bijoe Emmanuel and Others Vs. State of Kerala and Others*, . The Central Government can certainly frame guidelines as to when, how, where and in what circumstances the National Flag can be flown, but any infraction of guidelines cannot result in any punishment and these guidelines cannot also be enforced unless restrictions imposed by the guidelines are in contravention of the provisions of the Emblems Act and the Prevention of Insult to National Honour Act. It was faintly argued by Mr. Tulsi that the petitioner was using the National Flag by flying it over his factory premises for the purpose of

his trade or business. We do not think that is any body's case. The second respondent the Commissioner, does not say so and there is nothing on record to hold that the petitioner was flying the National Flag improperly or that he contravened section 3 of the Emblems Act.

(15) Though we have held that instructions or guidelines contained in the Flag Code - India are not law, yet if contravention of any of those instructions/guidelines is an offence under the Emblems Act or under the Prevention of Insult to National Honour Act, that would certainly be a different matter. It has been rightly pointed out by the respondents that for the purpose of giving due honour to the National Flag these guidelines had been framed. "A National Flag", as pointed by Lt. Cdr. K.V. 603 Singh in his book "Our National Flag" "is the most solemn symbol of a country. Even a Head of the State, be it King or President, salutes it. A piece of cloth called the National Flag stands for the whole nation, its honour and glory. When it goes up the flag-mast, the heart of a true citizen is filled with pride." In his foreword to this very book, Mr. R. Venkataraman, former President of India, referred to the struggle for independence and said as under :- "Our flag, Therefore, is both a benediction and a beckoning. It contains the blessings of all those great souls who brought us to freedom. But it also beckons us to fulfill their vision of a just and united India. As we confront crucial challenges to our security, our unity and integrity, we cannot but heed to the call of this flag to rededicate ourselves to the establishment of that peaceful and just order wherein all Indians irrespective of creed, caste or sex will fulfill themselves."

(16) We have been taken through the debates on the Constituent Assembly of India on the Resolution adopting the National Flag. That would show how the National Flag was adopted. The Resolution which was adopted, we may reproduce as under:- "Resolved that the National Flag of India shall be a horizontal tricolor of deep Saffron (Kesari), white and dark green in equal proportion. In the centre of the white band, there shall be a Wheel of navy blue to represent the Charkha. The design of the Wheel shall be that of the Wheel (Chakra) which appears on the abacus of the Sarnath Lion Capital of Asoka."

(17) We are, thus, of the view that though citizens need to be educated by issue of Flag Code as to how to fly the National Flag; when it is to be flown half-mast; and how it is to be honoured. The National Flag is to be revered by all the citizens and its proper use cannot be over emphasised. Flag Code - India is not law and its contravention cannot be enforced unless of course the contravention of any instructions/guidelines of the Flag Code comes within the purview of the Emblems Act or the Prevention of Insult to National Honour Act. It is also the fundamental duty of every citizen of India to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. This is clause (a) of Article 51A of the Constitution.. Petitioner wishes to fly the National Flag in a respectful manner and he cannot be prohibited from doing that on the basis of instructions contained in the Flag Code - India when no law of the

land is infringed.

(18) This petition is allowed. A mandamus is issued to the respondents restraining them from interfering with the right of the petitioner to fly the National Flag on his premises and we hold that any restriction contained in the Flag Code - India relating to the flying of National Flag by the citizens cannot be enforced except when contravention of those restrictions come within the purview of any law in force. Rule is made absolute. There will be no order as to costs.