
(2015) 11 KL CK 0105
In the High Court Of Kerala
Case No : WP(C) No. 23497 of 2015 (S)

Nimisha K.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Constitution of India, 1950 — Article 51A, 51A(a)(b)

Citation : (2016) 1 ILR (Ker) 173 : (2015) 5 KHC 838

Hon'ble Judges : Ashok Bhushan, C.J. and A.M. Shaffique, J.

Bench : Division Bench

Advocate : P.K. Sebastian, Advocate, for the Appellant; P.I. Davis, Senior Government Pleader, for the Respondent

Judgement

Ashok Bhushan, C.J.

1. This Public Interest Litigation has been filed by the petitioner, a social worker raising concern regarding non-participation of large number of government employees in Independence day and Republic day celebrations. The petitioner submits that the State Government having not issued any Circular making participation in above national events compulsory for government servants, they are treating these national holidays as any other holiday. The petitioner in the writ petition prays for the following prayers:

"i) direct the 1st respondent to issue a circular/order compelling the Government servants and staff of public sector units, colleges, Universities and Local Self Government Institutions under the control of the State Government to participate in the National Holiday ceremony in the respective offices and mark attendance in the attendance register on the days of National holidays - August 15 (Independence Day) and January 26 (Republic Day);

ii) direct the 1st respondent to dispose of Exhibit P7 representation;

iii) direct the 1st respondent to file a detailed statement before this Hon"ble Court with regard to the steps taken by the Government in accordance with

Exhibit P3 judgment of this Hon"ble Court and Exhibit P4 affidavit;"

2. This writ petition was heard by this Bench on 12.08.2015 on which day the following order was passed:

"This writ petition is filed as a Public Interest Litigation praying for a direction to the 1st respondent to issue Circular/Order compelling the Government servants and staff of public sector units, Colleges, Universities and Local Self Government Institutions under the control of State Government to participate in the National Holiday ceremony in the respective offices and mark attendance in the attendance register on the days of National Holidays.

2. Learned Senior Government Pleader has placed before us a Circular dated 20.07.2015 issued by the 1st respondent regarding the National Day Celebrations and Independence Day Celebrations which are to be adhered to the guidelines. Though the Circular directs holding of Independence Day Celebrations at different levels including public offices, there is no compulsion to any public servant to attend the ceremony. He submits that though in the Circular it is provided that the Heads of Department/Offices/Institutions should ensure participation of the maximum number of staff and students in this endeavour with due regard to the provisions of the Flag Code 2002. But there is no direction to attend the ceremony compulsorily. It is submitted by learned counsel for the petitioner that Government should have considered issuance of appropriate directions to assure participation of public servants.

3. It is submitted that Government of India had issued a Circular wherein it has been advised and cautioned that those who did not attend the function would be viewed seriously. But the said Circular is with regard to the flag hoisting ceremony at the Red Fort which is an important historic function. Learned Government Pleader submitted that Government had already issued a Circular regarding the same and all steps shall be taken to ensure strict compliance of the Circular by all concerned. However, the Government has to ensure whether the Government servant is attending the function at any place including their office compulsorily or not. Let appropriate affidavit be filed by the Government."

3. The writ petition was heard again on 27.10.2015 on which date the learned Senior Government Pleader, Sri.P.I. Davis submitted that the State Government has issued various Circulars from time to time and has issued various guidelines in connection with the national day celebrations. Reference has been made to the Government Order dated 08.01.2015 and another Government Order dated 20.07.2015. The State Government has come up with another Government Order dated 05.11.2015 which shall be referred to hereinafter.

4. The petitioner's case in the writ petition is that Government servants, Staff of public sector undertakings, Universities and Local Self Government Institutions under the control of State Government have to participate in the National day celebrations in their respective offices and they should mark their attendance on the above national holidays i.e. Republic day (26th January) and Independence

Day (15th August). Petitioner's case is that on account of there being no order of the State Government making it compulsory for participation by the Government servant on the national day celebrations, no government servant or other employees feel bound to attend these national celebrations. Petitioner submits that it is the obligation of the State Government to make participation in the National Day celebrations compulsorily and issue necessary instructions to that effect. Petitioner refers to an incident in which a "Watcher" in the P.W.D. office hoisted the national flag in the absence of any other member of the staff, who having not hoisted the flag properly, criminal proceedings had been initiated against such Class IV employee. The petitioner relies on the order of this Court dated 22.01.2008 passed in B.A. No. 5255 of 2007[G.Surya Muthu v. State of Kerala] in the above context.

5. We have considered the submissions of learned counsel for the parties and perused the record.

6. The Independence Day is one of the most significant day in the Indian history. After a freedom struggle of almost 100 years, India could attain freedom and to commemorate the above day it is declared as national holiday. Similarly, 26th January is another significant day for the country on which day the people of India have resolved to constitute India as a sovereign democratic republic on which day the constituent assembly adopted, enacted and gave to the people of India, the Constitution of India.

7. It is useful to refer to the observations made by this Court in its order dated 02.01.2008 in B.A. No. 5255 of 2007 (supra), wherein this Court observed that the National holidays are days not merely to sit at home idle, rather these days be treated as opportunities to kindle the flame of nationalism, patriotism and constitutional idealism. Following was observed by this Court in paragraph 3 :

"3. National days are occasions not merely to sit at home and idle. They must be reckoned as opportunities to kindle the flame of nationalism, patriotism and constitutional idealism and as occasions to introspect and rededicate to the ideals that India stands for. They must be occasions when Indians think of their great good fortune of being Indians. They must look around in the neighbourhood and realise their great advantage of remaining citizens of a democratic country. These are occasions to be proud that we are Indians. Introspection must help us to realise and identify how and where we have erred and to contemplate; how the polity can be enthused to do better in the future years. Good must and shall certainly come out of such celebrations. The State should not let go such opportunities without realising their potentiality."

8. In the above case this Court noticed that there is no express expectation for the Government servant as to how the national days must be celebrated in the office. The Court also noticed that the Circular dated 16.01.2008 was issued by the Government which stated that the Head of the Department "should ensure participation of the maximum number of staff in the endeavour." The court in

paragraph 5 further observed as follows:

"5..... National days, I do hope, shall hereafter be occasions for serious observance and celebration in the government offices and establishments in the State. Participation must be insisted. It must be a different type of holiday and not merely an idle holiday to sit at home. Even the order that is issued does not insist on participation specifically, but only says that the heads of departments "should ensure participation of the maximum number of staff in the endeavour" with due regard to the provisions of the Flag Code, 2002. I assume that the message will properly reach the target and national days shall hereafter be an occasion for sublime activity and celebration in the offices and establishments of the State. Ext. R1(b) order, it is hoped, shall be observed properly and the indiscretion which has taken place in this case will not hereafter occur in any office of the Government in the State."

9. It is submitted before us that even after the order of this Court there are no clear directions by the State for the Government servant or other public servant including the employees of Local authorities and other bodies under the control of the State to compulsorily participate in the national day celebrations. In the above context it is relevant to refer to Article 51A of the Constitution of India by which provision fundamental duties have been incorporated in the Constitution by the Constitution(42nd Amendment) Act, 1976. Article 51A(a)(b) reads as under:

"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;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;"

10. One of the fundamental duties as noted above is to "cherish and follow the noble ideals which inspired our national struggle for freedom". What else can be most important days than the above national days to cherish the noble ideals which inspired our national struggle for freedom. The above fundamental duty is cast upon every citizen of India. We are thus of the view that participation in the national day celebrations is expected not only from the Government servant and other public servant, local authorities, institutions, but it should be a spirit of every citizen of India to participate and cherish the memory of above important days in the history of India.

11. The Circular dated 20.07.2015, which has been placed by learned Senior Government Pleader for perusal of the Court relates to the national day celebrations i.e. Independence day celebration, 2015 where the Government has directed that the Head of the Departments/District Collectors of the State should ensure maximum participation of the government staff during the celebration of Independence day/Republic day, 2015. The celebrations were to be held at State

Capital, District level, Sub-divisional Level/Block Level, Panchayat Head Quarters, Public Offices/Schools/Colleges. The last paragraph of the order reads as follows:

"Ceremonial Hoisting of the National Flag after 8.30 AM (preferably by 9.30 am) by the Heads of Department/Offices/educational institutions accompanied by the singing of the National Anthem, speech by the Heads of the Department/Offices/Educational Institutions explaining the significance of 15th August and exhorting the audience to work for the unity and integrity of the country, singing of patriotic songs etc. The Heads of Department/Offices/Institutions should ensure participation of the maximum number of staff and students in this endeavor with due regard to the provisions of the Flag Code 2002.

The audience will stand in attention when the National Anthem is sung.

All officers in uniform will salute when the National Salute is given.

The above instructions will be followed scrupulously while celebrating Independence Day."

12. The latest Circular issued by the State of Kerala was Circular dated 05.11.2015, which has also been placed before us by the learned Senior Government Pleader which has been issued regarding the national day celebrations in pursuance of the order passed by this Court on 12.08.2015 in the present writ petition. It is useful to extract the above Government Order dated 05.11.2015 which is to the following effect:

"GOVERNMENT OF KERALA

GENERAL ADMINISTRATION (POLITICAL) DEPARTMENT

No. 54814/Pol-5/2015/GAD

Dated Thiruvananthapuram 05.11.2015

CIRCULAR

Sub:-- National Day Celebrations-Interim judgment of Hon''ble High Court of Kerala in WP(C) No. 23497/2015-Independence Day/Republic Day Celebrations-Further Guidelines-Reg.

Every year Government celebrates the National Days such as Independence Day and Republic Day in a colourful and most befitting manner. Kerala Government have issued circulars every year and instructions have been issued to all Heads of Departments/District Collectors/Sub-Divisional and Block Level Officers/Panchayat Head Quarters/All Public Offices/Schools/Colleges of the State for ensuring the maximum participation of the staff during the Independence Day/Republic Day Celebrations.

The Hon''ble High Court of Kerala in their interim Judgment dated 12.08.2015 in WP(C) No. 23497/2015, directed Government to ensure whether the Government Servants are attending the Independence Day/Republic Day functions at any

place including their office compulsory or not and file appropriate affidavit before the Hon"ble High Court.

In the Circumstances, as directed by the Hon"ble High Court, the following directions are issued.

When days of National importance like Independence Day and Republic day are celebrated in the State of Kerala, all officers, members of staff of State Government offices/Public Sector Undertakings/Autonomous Bodies/Universities/Colleges/Local Self Government Institutions and teachers under the control of State Government must attend the National Day functions. The Heads of Departments/Offices/Institutions should ensure participation of all the staff under them.

K.R. JYOTHILAL Secretary, GAD"

13. The above Government Order thus clearly stipulate that all officers, members of staff of State Government offices/Public Sector Undertakings/Autonomous Bodies/Universities/Colleges/Local Self Government Institutions and teachers under the control of State Government must attend the national day functions. The Head of the Departments/Institutions were to ensure that there is participation of all the staff under them. The above Circular thus now clearly oblige the above mentioned staff, employees and officers to attend the national day celebrations and the Head of the Department has been entrusted with the duties to ensure participation. Normally the Head of the Departments should not exempt any officer or staff from participating in the national day celebrations except for valid reasons with prior information. In the event the Head of the Departments/Officer of the employee issues instructions that all the officers and staff has to attend the national day celebrations, it becomes part of duty of the staff. Rule 3 of the Government Servants' Conduct Rules, 1960 requires every government servant to maintain all times devotion to duty. When an instruction is issued by the Head of the Departments under Circulars of the State Government, that becomes part of duty of the particular officer or staff and the Head of the Departments does not lack competence to take appropriate action in the event the staff or officer does not show devotion to duty by breaching the instructions issued by the Head of the Department.

In view of the foregoing discussions, the ends of justice be served in disposing the Writ Petition with the following directions:

"1. Government servant/staff of public sector institutions/staff of educational institutions and Local Self Government institutions under the control of the State Government shall adhere to the Circulars issued by the State Government including the Circular dated 05.11.2015 as extracted above and the Head of the Department/Officers of various institutions should ensure participation of the officers and staff in the above National day celebrations.

2. The Head of the Departments/Officers shall not excuse attendance of officers

and staff in the above National day celebrations except on valid reasons.

3. The State Government shall also ensure that Circulars and directives issued by it regarding participation in National day celebrations are implemented in its true spirit and appropriate measures for non-compliance be taken."