

(2001) 09 BOM CK 0076
In the Bombay High Court
Case No : Writ Petition No. 50 of 2001

Sarvadnya D. Patil and another	Vs	APPELLANT
State of Goa and others		RESPONDENT

Date of Decision : 10-09-2001

Acts Referred:

Constitution of India, 1950 — Article 49
Prevention of Insults to National Honour Act, 1971 — Section 2

Citation : (2001) 09 BOM CK 0076

Hon'ble Judges : P.S. Patankar, J;A.S. Aguiar, J

Bench : Division Bench

Advocate : S. Vahidulla, Addl. Govt. Advocate for respondents No. 1 to 3 and J.E. Coelho Pereira with S. Karpe, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Aguiar, J.—The petitioners, public spirited citizens, apparently inspired by patriotic zeal have approached this Court for necessary action against the respondent No. 4 for failing to hoist the National Flag on 19th December, 2000 (Liberation Day of Goa). It is prayed that Respondent No. 4, Headmistress of Lourdes Convent High School, Saligao, Bardez, Goa be punished with imprisonment for three years and that flag hoisting be made mandatory to Government servants and Semi-Government Organizations on 15th August, 26th January and 19th December (Goa Liberation Day). Action is sought under Article 49 of the Constitution and under the Prevention of Insult to National Honour Act, 1971.

2. It is submitted that as soon as the reports appeared in the newspaper "Gomantak" dated 21-12-2000 and 22-12-2000 the respondents No. 1, 2 and 3 proceeded against the Headmistress (Respondent No. 4) and issued a letter of censure by way of punishment.

3. On filing of this petition, notices were issued to the respondents including respondent No. 4, Headmistress who has filed her affidavit-in-reply stating that

on 19th December, 2000 the Physical Education teacher through whom all programmes such as Independence day, Goa Liberation Day, Republic Day and all such other school functions were coordinated and organized was not available as she had proceeded on leave on voluntary retirement. As such Flag Hoisting ceremony could not be organized on that day. Respondent No. 4 has further stated on oath that every year in the past, since her appointment as Headmistress of the School since 1993, she has been organizing the Flag Hoisting ceremony on the said days, including Goa Liberation day, and has not missed organizing the Flag Hoisting ceremony in any year. It is further stated that the Department of Education issued a notice to the School and accordingly the management held an inquiry and she has been censured by censure order date 3-4-2001. The Headmistress, Respondent No. 4 has tendered an unconditional apology and further stated that omission to hold the Flag Hoisting ceremony on 19th December, 2000 was not deliberate but due to circumstances beyond her control.

4. The only question for consideration that arises before us is whether the omission on the part of the Respondent No. 4 to hold the Flag Hoisting ceremony on 19th December, 2000 would come within the ambit of Section 2 of the Prevention of Insults to National Honour Act, 1971. Section 2 of the said Act reads as follows :

"2. Insult to Indian National Flag and Constitution of India.- 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."

5. It is doubtful whether omission to hoist the National Flag or hold the Flag Hoisting ceremony on the aforesaid days of national importance would fall within the ambit of "or otherwise brings into contempt". The definition clearly indicates positive acts such as burning, mutilating, defacing, defiling, etc. In order to be liable for punishment u/s 2, it is necessary that the act complained of must be intentional. The omission to hold the flag hoisting ceremony cannot be said to be sui generis with the positive acts mentioned preceding the words "or otherwise". Even otherwise, there is no statutory provision making it mandatory to hold the flag hoisting ceremony on 19th December, 2000 i.e. Goa Liberation Day and other days of national importance.

6. Our attention is drawn to Circular dated 22nd January, 1982 from the Director of Education making it obligatory on the part of every employee to attend the public function held by the Government and Schools for celebrating 15th August, 26th January and also 19th December. The Circular further reads as follows :

"In view of the above, the following instructions are issued for strict compliance :

(1).....

(2) All the teachers are expected to be present for the function. Refusal of any teacher to be present on the pretext that it is a Public Holiday, is to be considered as an offence and suitable warnings can be issued by the school in this regard. Persistent refusal to attend the function can be taken as misconduct and the schools are free to take necessary disciplinary action against such teachers, under intimation to this Department."

7. It will be noted that this is the only Circular from the Department concerning the hoisting of the National Flag by Schools and Educational Institutions, according to which failure to attend the flag hoisting ceremony would amount to misconduct and necessary disciplinary action can be taken against the teachers under intimation to the Department.

8. In the present case, the Department of Education has taken necessary action by issuing a censure letter. The said letter in our opinion is sufficient compliance with the provisions of the Circular.

9. As stated above, there is no statutory provision making it mandatory to hold the flag hoisting ceremony on 19th December, 2000 (Goa Liberation day) and hence no offence can be said to be committed. Furthermore, the respondent No. 4 has on oath stated that there was no intention on her part to cause in any manner insult or dishonour to the national flag. We accept her apology. The omission to hold the flag hoisting ceremony on 19th December, 2000 was on account of circumstances beyond her control. The censure issued by the Education Department is sufficient compliance with the requirements of the Circular dated 22-1-1982 and no further action is called for. In view thereof, the petition is dismissed and disposed of.