
(2019) 04 MP CK 0107

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8342 Of 2019

Shyam Narayan Chouksey

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 26-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 13(3)(a), 19(1)(a), 19(2)

Citation : (2019) 04 MP CK 0107

Hon'ble Judges : S.K. Seth, CJ;Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : Shobha Menon, Rahul Choubey, Sandeep Kumar Shukla, Siddharth Seth

Final Decision : Disposed Of

Judgement

Vijay Kumar Shukla, J

The present petition is filed as pro bono publico seeking a direction to incorporate the suggestions made in representation regarding Flag hoisting on public buildings on all days in the Flag Code of India, 2002 [for short 'the Flag Code']. The grievance of the petitioner is that he has submitted a representation to the respondents in this regard but till date no heed has been paid to it.

2. The petitioner submits that he is a septuagenarian and a citizen of India. He served in the Central Government - Military Engineering Services (MES) and Central Warehousing Corporation. According to him, he has been espousing various social causes and national honour as well. Earlier, he had approached this Court in a public interest litigation in the year 2001 raising voice against disregard to National Anthem depicted in the movie "Kabhi Khushi Kabhi Gam". He also filed a PIL before the Apex Court pertaining to National Anthem. It is strenuously urged by him that the National Flag should be hoisted at all polling booths on the date of voting. He has made further suggestions that the National Flag should be hoisted on certain specific dates as well, i.e., 30th January - the

date when Mahatma Gandhi was assassinated; 13th April - when massacre of freedom-fighters took place at Jaliawala Bagh in which almost 379 people lost their lives; 23rd March - when three freedom-fighters Shahid Bhagat Singh, Sukhdev and Rajguru were hanged. Other suggestions for hoisting of the National Flag are, on the demises of constitutional dignitaries and eminent personalities in various fields of the society, at Schools and prominent government buildings etc. In substance, the petitioner's prayer is that these suggestions directed to be incorporated in the Flag Code by considering his representation.

3. The issue that whether flying of the National Flag is a fundamental right within the ambit and sweep Article 19(1)(a) of the Constitution of India, came up for consideration before the Apex Court in the case of Union of India vs. Naveen Jindal and another, (2004) 2 SCC 510. The matter pertaining to playing of National Anthem prior to display of movies is still pending for adjudication before the Supreme Court in the case of Shyam Narayan Chouksey vs. Union of India, (2018) 2 SCC 574. However, the Apex Court has modified the earlier interim order to the extent, that playing of the National Anthem is not mandatory before starting of a movie but if the National Anthem is played in the cinema halls prior to showing of films, it is mandatory for audience to stand up in respect. However, if the National Anthem is played as part of storyline of a feature film or newsreel or documentary, audience need not stand up.

4. In the case of Naveen Jindal and another (supra) the respondent-petitioner was stopped from flying the National flag atop of his factory. Before the High Court he contended that no law could prohibit flying of the National Flag by Indian citizens. Flying of National Flag with respect and dignity being a fundamental right, the Flag Code which contains only executive instructions of the Government of India and, thus, being not a law, cannot be considered to have imposed reasonable restrictions in respect thereof within the meaning of Clause (2) of Article 19 of the Constitution of India. The Apex Court held that right to fly the National Flag is a fundamental right but subject to restrictions. Paras 87, 89 and 90 of the judgment being relevant for the present purpose, are extracted hereunder:

"87. The right to fly the National Flag is a fundamental right but subject to restrictions. The right is not an unfettered, unsubscribed, unrestricted and unchannelled one. Even assertion of the right to respectfully fly the flag vis-a-vis the mere right to fly the flag is regulated and controlled by two significant parliamentary enactments, namely, the Emblem and Names (Prevention of Improper Use) Act, 1950 and the Prevention of Insults to National Honour Act, 1971.

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89. We, however, hope and trust that Parliament, keeping in view the importance of the question involved in this matter, shall make a suitable enactment for the

aforementioned purpose.

90. For the aforesaid reason, we hold that : (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 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."

5. A co-ordinate Bench of this Court in a public interest litigation in V.K. Naswa vs. Union of India and others [W.P. No.13829/2016] referring to the judgment passed in the case of Naveen Jindal and another (supra), by order dated 10-4-17 declined to issue mandatory directions for hoisting of the National Flag every day on the public buildings. The Court held that there is no mandate in the Flag Code that the National Flag should be hoisted on all days on the public buildings.

6. In view of the aforesaid premises, no directions can be issued as prayed for by the petitioner. However, the petitioner is at liberty to pursue his representation before an appropriate legal forum in accordance with law.

7. Accordingly, the present writ petition stands disposed of. There shall be no order as to costs.