
(2012) 01 MP CK 0081

In the Madhya Pradesh High Court

Case No : Writ Petition No. 692 of 2012

Valmik Sakargayen

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Constitution of India, 1950 — Article 13, 19

Citation : (2012) ILR (MP) 1536

Hon'ble Judges : S.S. Kemkar, J;S.K. Seth, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Seth, J

1. A practicing lawyer of this Court has filed this PIL petition on the eve of Republic Day. Petition is not directed any particular order but for a "probe" and "writ of mandamus".
2. We have heard the petitioner at length. Perused the material placed on record.
3. Basic grievance of the petitioner lie in rampant use of proscribed material for preparing the National Flag other than the material mentioned in the Flag Code 2002. According to him it should be stopped to prevent insult to National Flag. There are other vague averments, for example, "The national Flag is not only thrown after its use but also easily be found at every street of the towns"; "the public at large including children after celebrating the Republic Day and Independence Day drape the National Flag manufactured by the aforesaid materials on their vehicles and some even write slogans on it."
4. The right to fly National Flag respectfully is no longer res integra or malum in se. The law on this point is settled by the elaborate judgment of the Supreme Court in Union of India vs. Naveen Jindal AIR 2004 SCW 704. It is now recognised as a fundamental right of every Indian citizen. It is a part of the

fundamental right of "freedom of expression" enshrined in Article 19 of Part III of the Constitution of India. But that right is subject to restrictions. The right is not unfettered. Flag Code 2002 on flying the National Flag issued by Government of India is not a law within the meaning of Article 13 of the Constitution of India. However, in a given case, contravention of provisions of the "Emblems and Names (Prevention of Improper Use) Act, 1950 or "Prevention of Insults to National Honour Act, 1971" may constitute an offence and for that the machinery can be set in motion by taking appropriate steps in that direction. So long as that does not happen; we are of the opinion that present PIL based on vague allegations and inchoate right does not call for any ubiquitous action and direction.

5. We are conscious that our "National Flag" is a most solemn and secular symbol of the country. The distinctive design and colours of National Flag is intended to project the identity of our country and foster national spirit. It is proclamation of the country's separate and sovereign existence. It is definitely one of the most revered objects in our society. It must be treated with utmost respect and dignity because it represents collective expression of commitment and loyalty to nation as well patriotism for the country. All this may not be possible without imposing reasonable restrictions on its use. It is necessary to protect the National Flag against mutilation, destruction, misuse but that does not mean to prevent individuals from having access to the flag. A liberal use of National Flag would require greater civic awareness on the part of citizens. The desired enforceability can be better achieved by providing not merely legal sanctions but to facilitate performance of the task through example, role-model. The element of compulsion, in legal sanction when combined with natural urge for obedience of the norms to attract social approbation would make the citizens willing participants in the exercise. As regards the use of material, we can not resist the temptation of quoting Pandit Govind Malaviya who said, "The importance of a National Flag does not depend on its colour, its bands or its other parts. The Flag as a whole is important and other things the colours etc. that it contains are immaterial. The flag may be of a piece of white cloth or of any other insignificant material but when it is accepted as a National Flag, it becomes the emblem of national self-respect. It becomes an expression of the sense of freedom of a nation.

6. In this view of the matter we find no merit in the writ petition. Same is dismissed summarily.