

(2017) 1 Supreme Court Cases 421*(Record of Proceedings)*

- a* (BEFORE DIPAK MISRA AND AMITAVA ROY, JJ.)[§]
Writ Petition (C) No. 855 of 2016, decided on October 28, 2016
SHYAM NARAYAN CHOUKSEY . . . Petitioner;
Versus
UNION OF INDIA . . . Respondent.
- b* *With*
(BEFORE DIPAK MISRA AND AMITAVA ROY, JJ.)[§]
Writ Petition (C) No. 855 of 2016, decided on November 30, 2016
SHYAM NARAYAN CHOUKSEY . . . Petitioner;
Versus
UNION OF INDIA . . . Respondent.
- c* *With*
(BEFORE DIPAK MISRA AND AMITAVA ROY, JJ.)[§]
IA Nos. ... of 2016 in Writ Petition (Civil)
No. 855 of 2016, decided on December 9, 2016
d SHYAM NARAYAN CHOUKSEY . . . Petitioner;
Versus
UNION OF INDIA . . . Respondent.
Writ Petition (C) No. 855 of 2016, decided on October 28, 2016
With
e Writ Petition (C) No. 855 of 2016, decided on November 30, 2016
With
IA Nos. ... of 2016 in Writ Petition (Civil)
No. 855 of 2016, decided on December 9, 2016
- f* **Constitution of India — Art. 51-A(a) — Duty to respect ideals and institutions, the National Flag and National Anthem — Clarifications, regarding what would constitute disrespect and abuse to National Anthem and directions to avoid such disrespect and abuse — Interim directions issued — Application for recall of said directions also directed to be registered, and to be disposed of with main matter on merits (Paras 9 to 21)**
g *MCD v. Uphaar Tragedy Victims Assn.*, (2011) 14 SCC 481 : (2013) 1 SCC (Civ) 897 : (2013) 2 SCC (Cri) 555 : (2013) 1 SCC (L&S) 305, *referred to*
SS-D/57930/C

h § **Ed.:** Given the nature of these orders, they have been published in SCC, together, in chronological order, by the date of the order, as one combined report with the citation: (2017) 1 SCC 421. This is to facilitate a holistic view of the matters decided in such orders. Furthermore, to make it possible to search for a particular order by date as well, in SCC Online, each order has been reported separately with an independent citation with reference to the page on which it falls in SCC, in the combined report of all the orders i.e. (2017) 1 SCC 422; (2017) 1 SCC 423 and (2017) 1 SCC 425.

Advocates who appeared in this case :

Abhinav Shrivastava (Advocate-on-Record), Rituvendra Singh and Harneet Singh Ruprah, Advocates, for the Petitioner;

Mukul Rohatgi, Attorney General, Ashok Kr. Panda, Sidharth Luthra and C.U. Singh, Senior Advocates [Avijit Prasad, Ms Movita, B.K. Prasad, R.K. Rathore, B. Krishna Prasad (Advocate-on-Record), Tara Narula, Gargi Khanna, Siddhartha Mehta, Supriya Juncja, P.V. Dinesh, Sinha T.P., R. Beniwal, Namit Saxena, Biresh K. and Arushi Singh, Advocates] for the Respondent.

Chronological list of cases cited

on page(s)

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| 1. (2011) 14 SCC 481 : (2013) 1 SCC (Civ) 897 : (2013) 2 SCC (Cri) 555 : (2013) 1 SCC (L&S) 305, <i>MCD v. Uphaar Tragedy Victims Assn.</i> | 426b |
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(2017) 1 SCC 422

ORDER dated 28-10-2016

(DIPAK MISRA AND AMITAVA ROY, JJ.)

Writ Petition (Civil) No. 855 of 2016

1. The petitioner, a public-spirited person, has preferred this writ petition under Article 32 of the Constitution of India for issuance of a writ of mandamus or any other appropriate writ, order or direction commanding the respondent to take appropriate steps to specify what would be constituting disrespect and abuse of the National Anthem.

2. In the petition, reference has been made to the Prevention of Insults to National Honour Act, 1971. It is averred in the petition that sometimes the National Anthem is sung in various circumstances which are not permissible and cannot be legally countenanced regard being had to the national honour. Two examples cited in the petition may be stated for the present. It is averred that on one occasion, during an interview, the National Anthem was played to test the behavioural pattern of the candidate. It is contended that the National Anthem cannot be sung or played by way of surprise. The other example that has been cited is that on certain occasions, the same is played in a variety show to dramatise the whole thing.

3. Mr Abhinav Srivastava, the learned counsel appearing for the petitioner would submit that the National Anthem is to be respected and shown due honour by everyone in this country. Certain suggestions have been given to avoid the abuses. The said suggestions are:

(a) There should be no commercial exploitation to gain financial advantage or any kind of benefit.

(b) There should be no interruption in between till the completion of National Anthem and no abridged version of National Anthem shall be sung at any point of time.

(c) There should not be dramatisation of the National Anthem and it should not be sung in an entertainment programme.

a (d) It should not be sung before the people who do not understand it unless they are properly apprised that when the National Anthem of India is to be played, they are required to show respect.

(e) It should not be printed on undesirable objects and should not be displayed in such a manner and at such places which may be disgraceful to its status and may tantamount to disrespect.

b Apart from the aforesaid suggestions, it has also been prayed that directions should be issued that the National Anthem should be played in the cinema theatres across the country before the feature film and proper norms and protocols should be fixed with regard to playing or singing of National Anthem in an official function and the functions where certain constitutional dignitaries are present in strict compliance.

4. There are certain other prayers. We need not refer to them at present.

c 5. Issue notice returnable within three weeks. In addition, a copy of this petition be served on the office of the Central Agency so that it can make arrangements for engaging a counsel to represent before this Court. That apart, a copy of the petition be served on Mr B.K. Prasad, the learned counsel who ordinarily appears for the Central Agency of the Union of India.

d 6. Let the matter be listed on 30-11-2016.

(2017) 1 SCC 423

ORDER dated 30-11-2016

(DIPAK MISRA AND AMITAVA ROY, JJ.)

Writ Petition (Civil) No. 855 of 2016

e 7. We have heard Mr Abhinav Srivastava, learned counsel for the petitioner and Mr Mukul Rohatgi, learned Attorney General for India along with Mr A.K. Panda, learned Senior Counsel for the Union of India.

f 8. This Court on 28-10-2016¹ while entertaining the writ petition under Article 32 of the Constitution of India had noted the submissions advanced by the learned counsel for the petitioner, made reference to the enactment, namely, Prevention of Insults to National Honour Act, 1971. It had also taken note of the averments in the petition. It has been averred in the petition that sometimes the National Anthem is sung in various circumstances which are not permissible and can never be countenanced in law. The emphasis is on showing requisite and necessary respect when the National Anthem is sung or played.

g The assertion is that it is the duty of every person to show respect when the National Anthem is played or recited or sung.

9. Having heard the learned counsel for the parties and awaiting the reply from the Union of India, as an interim measure, it is directed that the following directions shall be scrupulously followed:

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¹ Set out in paras 1 to 6, above.

9.1. There shall be no commercial exploitation to give financial advantage or any kind of benefit. To elaborate, the National Anthem should not be utilised by which the person involved with it either directly or indirectly shall have any commercial benefit or any other benefit. a

9.2. There shall not be dramatisation of the National Anthem and it should not be included as a part of any variety show. It is because when the National Anthem is sung or played it is imperative on the part of everyone present to show due respect and honour. To think of a dramatised exhibition of the National Anthem is absolutely inconceivable. b

9.3. National Anthem or a part of it shall not be printed on any object and also never be displayed in such a manner at such places which may be disgraceful to its status and tantamount to disrespect. It is because when the National Anthem is sung, the concept of protocol associated with it has its inherent roots in national identity, national integrity and constitutional patriotism. c

9.4. All the cinema halls in India shall play the National Anthem before the feature film starts and all present in the hall are obliged to stand up to show respect to the National Anthem.

9.5. Prior to the National Anthem being played or sung in the cinema hall on the screen, the entry and exit doors shall remain closed so that no one can create any kind of disturbance which will amount to disrespect to the National Anthem. After the National Anthem is played or sung, the doors can be opened. d

9.6. When the National Anthem shall be played in the cinema halls, it shall be with the National Flag on the screen.

9.7. The abridged version of the National Anthem made by anyone for whatever reason shall not be played or displayed. e

10. We have so directed as Mr Mukul Rohatgi, learned Attorney General for India submits with all humility at his command and recommend that National Anthem has to be respected. The directions are issued, for love and respect for the motherland is reflected when one shows respect to the National Anthem as well as to the National Flag. That apart, it would instil the feeling within one, a sense of committed patriotism and nationalism. f

11. In this regard, we may refer to clause (a) of Article 51-A, fundamental duties occurring in Part IV-A of the Constitution. It reads as follows:

“51-A. *Fundamental duties*.—It shall be the duty of every citizen of India — g

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;”

From the aforesaid, it is clear as crystal that it is the sacred obligation of every citizen to abide by the ideals engrafted in the Constitution. And one such ideal is to show respect for the National Anthem and the National Flag. Be it stated, a time has come, the citizens of the country must realise that they live in a nation h

a and are duty-bound to show respect to National Anthem which is the symbol of the constitutional patriotism and inherent national quality. It does not allow any different notion or the perception of individual rights, that have individually thought of have no space. The idea is constitutionally impermissible.

b **12.** Mr Rohatgi has submitted that the Union of India shall circulate this order to the Chief Secretaries of all the States and Union Territories. That apart, Mr Rohatgi submits that the order shall be shown in the electronic media and published in the print media so that everyone knows that such an order has been passed and follow the same in letter and spirit.

13. This order shall be given effect to within a period of 10 days. Let the matter be listed on 14-2-2017 for further hearing.

(2017) 1 SCC 425

c **ORDER dated 9-12-2016**

(DIPAK MISRA AND AMITAVA ROY, JJ.)

LA Nos. ... of 2016 in Writ Petition (Civil) No. 855 of 2016

14. These two applications have been filed, one seeking impleadment in the writ petition and the other for recall of the order dated 30-11-2016².

d **15.** On being mentioned by Mr P.V. Dinesh, learned counsel, the IAs are taken on board. Registry is directed to register the IAs.

e **16.** Heard Mr C.U. Singh, learned Senior Counsel along with Mr P.V. Dinesh, learned counsel for the applicants, Mr Mukul Rohatgi, learned Attorney General for India, and Mr Sidharth Luthra, learned Senior Counsel who has sought leave of the Court to assist.

17. The prayer in the application is for recall of our order dated 30-11-2016². When it was brought to the notice of Mr C.U. Singh, learned Senior Counsel, about the grounds urged, we must fairly state that Mr Singh submitted that he will have a relook at the grounds and will amend the same.

f **18.** As far as the recall of the order is concerned, the same has to be heard on merits when the matter is finally debated upon. Be it noted, Mr Dinesh, learned counsel for the applicant, at the time of mentioning, had submitted that there has to be some kind of exemption for the physically challenged persons or physically handicapped persons. Mr Sidharth Luthra, learned Senior Counsel who was present in Court, has referred to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

g **19.** Mr Rohatgi, learned Attorney General for India submitted that how shall the physically challenged or physically handicapped persons show respect to the National Anthem; the Central Government will issue guidelines within ten days hence. As the guidelines are going to be issued, we clarify, if a physically challenged person or physically handicapped person goes to the

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² Set out in paras 7 to 11, above.

cinema hall to watch a film, he need not stand up, if he is incapable to stand, but must show such conduct which is commensurate with respect for the National Anthem. When we say physically challenged or physically handicapped persons, it means persons with disability as defined under Sections 2(i) and 2(t) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

20. Another aspect needs to be cleared. When we said that the doors shall be closed, we did not mean that the doors shall be bolted as mentioned in *MCD v. Uphaar Tragedy Victims Assn.*³ but only to regulate the ingress and egress during the period while the National Anthem is played.

21. Let the matter be listed on the date fixed i.e. 14-2-2017.

Court Masters

³ (2011) 14 SCC 481 : (2013) 1 SCC (Civ) 897 : (2013) 2 SCC (Cri) 555 : (2013) 1 SCC (L&S) 305