

SANJEEV BHATNAGAR

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v.

UNION OF INDIA AND ORS.

MAY 13, 2005

[R.C. LAHOTI, CJ. AND P.K. BALASUBRAMANYAN, J.]

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Constitution of India 1950—Article 32—Public Interest Litigation—Seeking deletion of word 'Sindh' from the National Anthem as 'Sindh' no longer part of India post partition—Held: National Anthem is song expressing patriotic feelings and not a chronicle defining territory of nation which has adopted the anthem—'Sindh' is not just a geographical region, it refers to place and to its people spread throughout the country—Further, issue raised neither constitutional nor there is enforcement of any fundamental right—Also petition not in public interest—Hence, petition rejected—Article 51A.

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The question which arose for consideration in this writ petition was whether the text of National Anthem could be rectified and the word 'Sindh' be deleted therefrom since the geographical region 'Sindh' does not form part of India post partition.

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Dismissing the Writ Petition, the Court

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HELD: 1.1. A National Anthem is a hymn or song expressing patriotic sentiments or feelings. It is not a chronicle which defines the territory of the nation which has adopted the anthem. A few things such as - a National Flag, a National Song, a National Emblem and so on, are symbolic of our national honour and heritage. The National Anthem did not, and does not, enlist the states or regional areas which were part of India at the point of time when it was written nor is it necessary that the structure of the National Anthem should go on changing as and when the territories or the internal distribution of geographical regions and provinces undergoes changes. Recently Uttarakhand, Chhattisgarh and Jharkhand have been carved out by reorganizing certain states but that does not mean that the National Anthem should be enlarged, re-written or modified to include the names of these new states. [377-C-D, D-E, E-F]

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1.2. The National Anthem is our patriotic salutation to our motherland, nestling between the Himalayas and the oceans and the seas

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A surrounding her. The mention of a few names therein is symbolic of our recollection of the glorious heritage of India. 'Sindh' is not just a geographical region. It refers to the place and to its people. Sindhis are spread throughout the country and they derive their such name as having originated and migrated from Sindh. 'Sindh' also refers to the river 'Sindhu' or 'Indus'. It also refers to a culture, one of the oldest in the world and even modern India feels proud of its having inherited the Indus Valley Civilisation as an inalienable part of its heritage. River Indus (*Sindhu*) finds numerous references in the Indian Classical Literature including Rig Veda.

[377-E-F-G]

C 1.3. The National Anthem is the poem written by Rabindranath Tagore. He himself had said that the five stanzas in which the poem was written is addressed to God. The poem is a reflection of the real India as a country - a confluence of many religions, races, communities and geographical entities. It is a message of unity in diversity. It is a patriotic song. It has since the decades inspired many by arousing their patriotic sentiments when sung in rhythm. It is the representative of the ethos of the country. Any classic, once created, becomes immortal and inalienable; even its creator may not feel like making any change in it. Any tampering with the script of the poem would be showing disrespect to the great poet-Rabindranath Tagore. [377-G-H; 378-A-B]

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E 1.4. The issue raised does not amount to raising any constitutional issue or canvassing any fundamental right for the enforcement of which the jurisdiction of this Court under Article 32 of the Constitution can be invoked. The petition is not in public interest but more of the publicity interest litigation. It is a petition which should never have been filed.

F [378-B-C; 380-D-E]

'Indian National Anthem' by Prabodhchandra Sén Vishvā Bharti, Calcutta May 1945, referred to.

G 2. The Prevention of Insults to National Honour Act, 1971 enacted by the Parliament makes it an offence for whoever intentionally prevents the singing of the Indian National Anthem or causes disturbance to any assembly engaged in such singing. Article 51A of the Constitution inserted by Forty-second Amendment, provides for it being the fundamental duty, amongst others, of every citizen of India to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. The Constitution of India, its ideals and institutions, the National

Flag and the National Anthem have been treated almost on par. From the A language of clause (a) of Article 51A, it is clear that the National Anthem is an ideal and an institution for the Indian citizens. [375-F-G-H]

Re: Kerala Education Bill, [1959] SCR 995, referred to.

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 16 of 2005. B

(Under Article 32 of the Constitution of India.)

Petitioner-in-person.

Milon K. Banerji, Attorney General for India, A. Sharan, Additional C Solicitor General, M.R. Calla, Ram Jethmalani, Amit Anand Tiwari, Samir Ali Khan, Amit Kumar, Navin Prakash, Gaurav Aggarwal, Dewashish Bharuka, Mrs. Sushma Suri, Ms. Ranjeeta Rohatgi, Ms. Lata Krishnamurthy, R.L. Panjwani, Ms. P.R. Mala, Mushtaq Ahmad, Vijay Panjwani, Dr. Natis A. Siddiqui, R.N. Keshwani and Ms. Priya Hingorani with them for the appearing D parties.

The Judgment of the Court was delivered by

R.C. LAHOTI, CJ. On 24th January 1950, the Constituent Assembly E of India finally met to sign the Constitution. The question of having a National Anthem for India as a free country and a nation was under consideration. The Constituent Assembly had appointed a Committee to make recommendations about the final selection of a National Anthem.

After deliberations it was considered desirable to leave it with the F President to make a declaration in the Assembly on the question of adopting a National Anthem for India. In the Constitution Hall, on 24th January 1950, where the Constituent Assembly of India finally met to sign the Constitution, President Dr. Rajendra Prasad declared his decision on the matter relating to National Anthem in his opening statement in the following words:-

“There is one matter which has been pending for discussion, G namely the question of the National Anthem. At one time it was thought that the matter might be brought up before the House and a decision taken by the House by way of a resolution. But it has been felt that, instead of taking a formal decision by means of a resolution, it was better if I make a statement with regard to the National Anthem.

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A Accordingly I make this statement.

B The composition consisting of the words and music known as Jana Gana Mana is the National Anthem of India, subject to such alterations in the words as the Government may authorise as occasion arises; and the song Vande Mataram, which has played a historic part in the struggle for Indian freedom, shall be honoured equally with Jana Gana Mana and shall have equal status with it. I hope this will satisfy the Members."

—*Constituent Assembly Debates, XII.*
(24th January, 1950)

C After the Constitution had been signed by all the members of the Assembly, the President, on the request of Shri M. Ananthasayanam Ayyangar permitted all members of the House to sing Jana Gana Mana in chorus. Then led by Shrimati Purnima Banerji all of them sang it in chorus for the first time after its formal adoption as our National Anthem.

D The following is the transliteration i.e. the text of the National Anthem in Hindi:

"Jana-gana-mana-adhinayaka, jaya he

Bharata-bhagya-vidhata.

Punjab-Sindh-Gujarat-Maratha

Dravida-Utkala-Banga

Vindhya-Himachala-Yamuna-Ganga

Uchchala-Jaladhi-taranga.

Tava shubha name jage,

Tava shubha asisa mange,

Gahe tava jaya gatha,

Jana-gana-mangala-dayaka jaya he

Bharata-bhagya-vidhata.

Jaya he, jaya he, jaya he

Jaya jaya jaya, jaya he!"

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H (Source—India 2004, A Reference Annual, published by Publications Division,

Ministry of Information and Broadcasting, Government of India, p.22)

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The great poet Rabindranath Tagore had himself rendered the English translation of his poem which reads as under:-

“Thou art the ruler of the minds of all people, dispenser of India’s destiny.

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Thy name rouses the hearts of Punjab, Sind, Gujarat and Maratha,
Of the Dravida and Orissa and Bengal;

It echoes in the hills of the Vindhya and Himalayas, mingles in the
music of Jamuna and Ganges and is chanted by the waves of the
Indian Sea.

C

They pray for thy blessings and sing thy praise.

The saving of all people waits in thy hand, thou dispenser of India’s
destiny.

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Victory, victory, victory to thee.”

(Source, India 2004, ibid, p.22)

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The song was first sung on December 27, 1911 at the Calcutta session of the Indian National Congress. Ever since the date of its being adopted by the Constituent Assembly of India, the National Anthem has been sung throughout the length and breadth of India, by every patriot, every citizen and all people of this country. It has been sung even in places beyond India.

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The Prevention of Insults to National Honour Act, 1971 (Act No. 69 of 1971) enacted by the Parliament makes it an offence for whoever intentionally prevents the singing of the Indian National Anthem or causes disturbance to any assembly engaged in such singing. Article 51A of the Constitution of India, inserted by Forty-second Amendment, provides for it being the fundamental duty, amongst others, of every citizen of India to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. The Constitution of India, its ideals and institutions, the National Flag and the National Anthem have been treated almost on par. From the language of Clause (a) of Article 51A, it is clear that the National Anthem is an ideal and an institution for the Indian citizens. In *Re: Kerala Education Bill*, [1959] SCR 995, S.R. Das, Chief Justice, quoted a stanza from the National Anthem as India sending out its message of goodwill to the

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A world and thus the genius of India finding unity in diversity by assimilating the best of all creeds and cultures.

The petitioner is an advocate. He has filed this petition, claiming to be in public interest, invoking the extraordinary jurisdiction of this Court under Article 32 of the Constitution of India seeking a direction to the Union of

B India to rectify the text of National Anthem and delete the word 'Sindh' therefrom. Earlier too, he had filed a similar petition, registered as W.P.(C) No.506/2004. When the matter came up for hearing on 20.9.2004, the Court was not inclined to entertain the petition. However, the petitioner insisted that the Government of India had the authority to alter the text of National

C Anthem and therefore, a direction by the Court in that regard was called for. The petition was dismissed though the petitioner was allowed liberty of inviting the attention of the Central Government to the facts stated in the writ petition and such other material as may be with the petitioner. The petitioner did make a representation on 24.9.2004. On 3.12.2004, he once again filed this writ petition seeking the very same and the only relief as was sought for

D earlier. The Court directed a notice to be issued to the respondent-Union of India for having its response.

While the Union of India has filed its response opposing the prayer made by the petitioner, there are a number of applicants seeking intervention in the hearing so as to oppose the writ petition. Some of the intervenors are

E All India Sindhu Culture Society headed by a former Judge of the High Court, Rashtriya Sindhu Parishad headed by an Advocate, Sindhi Council of India A Registered Society, International Sindhi Forum, Sindhi Jagriti Sabha, Delhi Pradesh Sindhi Samaj and a few other similar institutions and representative bodies. A few individuals belonging to Sindhi or non-Sindhi

F community have also sought for intervention. In substance, all the intervenors have offered their vehement opposition to the petition submitting that their feelings, first as an Indian and then as members of Sindhi community who love Sindhi as a language and also as a culture, have been hurt by the move of the petitioner. They have sought for the petition being dismissed.

G The stand taken by the Union of India is that the National Anthem is a highly emotive issue; any alteration/substitution in the National Anthem will distort the National Anthem and may give rise to several unnecessary controversies, while no fruitful object will be served. The National Anthem is not open to mutilation. The song is a literary creation which cannot be changed. The National Anthem reflects our culture spread throughout the

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length and breadth of India whether it is North, South, East or West. A

Having heard the petitioner appearing in-person, the learned Attorney General for the Union of India and the several counsel for intervenors led by Mr. Ram Jethmalani, Senior Advocate, and a few intervenors appearing in-person, we are satisfied that the petition is wholly devoid of any merit and is liable to be dismissed. The main plank of the *petitioner's* case is that the geographical region known as 'Sindh', was a part of India pre-partition (i.e. before 15th August, 1947) and ever since then it is not a part of India, and therefore, the use of the word 'Sindh' in the National Anthem is misplaced and deserves to be deleted. for which an appropriate direction needs to be issued to the Union of India. In our opinion, the submission is misconceived for very many reasons which we proceed to summarize herein below. C

A National Anthem is a hymn or song expressing patriotic sentiments or feelings. It is not a chronicle which defines the territory of the nation which has adopted the anthem. A few things such as—a National Flag, a National Song, a National Emblem and so on, are symbolic of our national honour and heritage. The National Anthem did not, and does not, enlist the states or regional areas which were part of India at the point of time when it was written. Nor is it necessary that the structure of the National Anthem should go on changing as and when the territories or the internal distribution of geographical regions and provinces undergoes changes. Very recently Uttarakhand, Chhattisgarh and Jharkhand have been carved out by reorganizing certain states. Does it mean that the National Anthem should be enlarged, re-written or modified to include the names of these new states? The obvious answer is - no. The National Anthem is our patriotic salutation to our motherland, nestling between the Himalayas and the oceans and the seas surrounding her. The mention of a few names therein is symbolic of our recollection of the glorious heritage of India. 'Sindh' is not just a geographical region. It refers to the place and to its people. Sindhis are spread throughout the country and they derive their such name as having originated and migrated from Sindh. 'Sindh' also refers to the river 'Sindhu' or 'Indus'. It also refers to a culture, one of the oldest in the world and even modern India feels proud of its having inherited the Indus Valley Civilisation as an inalienable part of its heritage. River Indus (Sindhu) finds numerous references in the Indian Classical Literature including Rig Veda. F G

The National Anthem is the poem as it was written by Rabindranath Tagore. He himself had said that the five stanzas in which the poem was H

A written is addressed to God. The poem is a reflection of the real India as a country—a confluence of many religions, races, communities and geographical entities. It is a message of unity in diversity. It is a patriotic song. It has since the decades inspired many by arousing their patriotic sentiments when sung in rhythm. It is the representative of the ethos of the country. Any classic, once created, becomes immortal and inalienable; even its creator may not feel like making any change in it. Any tampering with the script of the poem would be showing disrespect to the great poet—Rabindranath Tagore.

The hue and cry raised by the petitioner in his petition and also during the hearing at the Bar does not amount to raising any constitutional issue or canvassing any fundamental right for the enforcement of which the jurisdiction of this Court under Article 32 of the Constitution can be invoked. The issue is puerile. Shri Milon Banerjee, the learned Attorney General for India, submitted that the Union of India, a democratically elected popular Government is not in favour of making any alteration in or any tampering with a finely structured poem or song, which is the National Anthem. Every word placed therein is carefully in position in the whole composition. A suggestion seeking a substitution of words in the National Anthem would be “a bid to rob Tagore of his greatness”. He further submitted that in any poetry the structure has some purpose other than to clarify the content. Poetry is more structured than prose. It is the structure which forces the author to be more creative; to find ways of saying things which do not disrupt the flow. The choice of words and the structure often provide a path for the reader to follow outside the flow of the theme and a good poet achieves interesting things by playing the flow through the content and off the content. The fabric of words is the creation of the author. A poem once popular, more so if adopted as a National Anthem, becomes symbolic of the feelings, ideas and images that have come to be associated in our minds with the words used by the author in structuring the poem and then the meaning of a word or a group of words reaches far beyond its dictionary definition. The learned Attorney General invited our attention to the book, “India’s National Anthem” by Prabodhchandra Sen, published by Vishva Bharti, Calcutta in May 1949, wherein Mahatma Gandhi, the Father of the Nation, has been quoted as having said in a prayer discourse on 8th May, 1946 on the occasion of Rabindranath Tagore’s Birth Anniversary about Jana Gana Mana—“It is not only a song but is also like a devotional hymn”. The National Anthem has been given a tune. Its singing or playing takes 52 seconds.

H The learned Attorney General read out the following passage from

“India’s National Anthem” (ibid) which we feel inclined to quote verbatim for its value: A

“THE MORNING SONG OF INDIA”

In the year 1919, during his tour of South India, Rabindranath spent five days at the Theosophical College, Madanapalle, at the invitation of Principal James H. Cousins. There he sang the song ‘Janaganamana’ at some function. The audience was very much moved by the tune and at their request he made an English translation of the song and called it ‘The Morning Song of India’. The college authorities, greatly impressed by the tune and the lofty ideals of the song, selected it as their prayer song to be sung every morning before the day’s work commenced. In a letter (23.7.34) Principal Cousins writes: B

Every working morning Janaganamana is sung by hundreds of young people in our big hall. We want to extend its purifying influence by sending copies of it to other schools and colleges in India and by making it known abroad. C D

Later, in the year 1936, the translation mentioned above was printed in the Poet’s own handwriting in the College Commemoration Volume and distributed widely, with a note that this ‘would become one of the world’s most precious documents.....From Madanapalle Janagna has spread all over India, and is admired in Europe and America.’ E

In the next year (1937), when a bitter controversy was raging throughout the whole country over the selection of India’s National Anthem, Principal Cousins issued a statement to the Press (3.11.37) in which he stated: F

My suggestion is that Dr. Rabindranath’s own intensely patriotic, ideally stimulating, and at the same time world-embracing Morning Song of India (Janaganamana) should be confirmed officially, as what it has for almost twenty years been unofficially, namely, the true National Anthem of India.” G

Mr. Ram Jethmalani, the learned senior counsel leading the intervenors, severely criticized the conduct of the petitioner who has mentioned in the writ petition that the continued use of the word ‘Sindh’ in the National H

A Anthem offends patriotic sentiments of the citizens of India and is offensive of sovereignty of the neighbouring country. He goes on to allege that the sentiments of 100 crore Indians can be soothened by correcting and updating the "National Anthem". The learned senior counsel posed the questions—Whose cause the petitioner is pleading of the citizens of India or of a neighbouring country? Wherefrom does the petitioner gather an impression and plead that he is espousing the cause of more than one billion people of India? The learned senior counsel was at pains to point out that ever since this petition was filed in the Court and notice was directed to be issued the Indian newspapers have been flooded with editorials and hundreds of 'letters to the editor' highlighting the sentiments of the people of India, and in

B C particular of *Sindhis* who have felt hurt by the move of the petitioner. There are several oppositions filed in the Court. There is not even one who may have spoken in support of the petitioner.

We find merit in the submissions made by the learned Attorney General for India and Mr. Ram Jethmalani, the learned senior counsel appearing for

D the intervenors, and agree with the same.

We are satisfied that the petitioner is not entitled to the relief prayed for. The petition is wholly devoid of any merit. The petition is not in public interest. It is a petition which should never have been filed. It is more of the publicity interest litigation wherein the petitioner seems to have achieved his purpose. To discourage the filing of such like petitions which result only in wasting the valuable time of this Court, we direct the petition to be dismissed with costs quantified at Rs. 10,000.

N.J.

Writ Petition dismissed.