

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.6545 OF 2008

Laxminarayan s/o Chotelal Ladhoriya
(Rathod), Age-Major, Occu:Social Worker,
R/o-B-9, Thakur Niwas,
Giriraj Housing Society,
Kamgar Chowk, Pandharpur-Waladgaon,
Tq. & Dist-Aurangabad.

...PETITIONER

VERSUS

- 1) The Union of India,
Through the Secretary,
Home Department, Raksha Bhavan,
New Delhi,
- 2) The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai-400 032,
- 3) The Secretary,
Adivasi Vikas Sachivalaya,
Mantralaya, Mumbai-400 032,
- 4) The Divisional Commissioner,
Aurangabad Division,
Aurangabad,
- 5) The Assistant Commissioner and
Vice President, Scheduled Caste
and Scheduled Tribes Caste
Validity Committee, Aurangabad.

...RESPONDENTS

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Mr.A.S. Bayas Advocate for Petitioner.
Mr.S.B. Deshpande, Assistant Solicitor
General, for Respondent No.1.
Mr.S.B. Yawalkar, Additional Government
Pleader for Respondent Nos.2 to 5.

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**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE : 25TH JANUARY, 2018

JUDGMENT [PER S.S. SHINDE, J.] :

1. This Petition under Article 226 of the
Constitution of India, is filed with following
prayers:

"B. To hold and declare that while not
performing the Flag Hoisting on the
specified dates as per the Flag Code of
India, the respondent No.5 has shown
disregard to the National Flag and the
officer in charge be punished according
to law and suitable departmental action
be ordered to be initiated as against
the erring officers for this omission
for not doing the Flag hoisting since

2001 till 2008 and here onwards, by issuance of a writ of Mandamus and or any other appropriate Writ, Orders or directions in the like nature.

C. To direct the respondent authorities to issue necessary directions to the respondent No.5 to do the Flag hoisting on the specified dates in future by issuance of an appropriate writ, orders or directions in the like nature."

2. The Petitioner claims that he is a social worker. It is the case of the Petitioner that Respondent No.5 - Scheduled Castes and Scheduled Tribes Caste Validity Committee, Aurangabad is a State Government establishment. As per the provisions of the Flag Code of India, it is the statutory and moral duty of every Government officer to show due regard and respect to the National Flag and National Anthem. The Petitioner submits that since 2001 till 2008 Respondent No.5 Committee has not performed the Flag hoisting

ceremony at its office on the specified dates like 26th January, 15th August and other such dates as may be notified by the State Government like Marathwada Mukti Sangram Din, Maharashtra Day etc. Hence this Petition.

3. Learned counsel appearing for the Petitioner submits that Respondent No.5 is the office of the State Government, which is established in Aurangabad since 2001. Learned counsel submits that since its establishment, Respondent No.5 is not performing Flag hoisting ceremony in its office premises. He submits that, in this respect, the Petitioner has filed several representations to various authorities but no cognizance was taken. He therefore prays that the Petition may be allowed.

4. On the other hand, learned Additional Government Pleader, referring to the earlier affidavit-in-reply filed on behalf of Respondent

No.5 by one Devdatta Digambarshastri Mayee, serving as Joint Commissioner and Vice Chairman of Scheduled Tribe Certificate Scrutiny Committee, Aurangabad, submits that as per Clause 3.39 of the Flag Code of India, 2002, normally the National Flag should be flown only on important public buildings, such as High Courts, Secretariats, Commissioners' offices, Collectorates, Jails and offices of the District Boards, Municipalities and Zilla Parishad and Departmental/ Public Sector Undertakings. In view of the fact that the office of Respondent No.5 Scrutiny Committee, Aurangabad was established in the year 2001 and situate in the tenanted premises, there is no practice of Flag hoisting at the office of Respondent No.5. It is submitted that as per Clause 3.5 of the Flag Code of India, wherever the Flag is flown, it should occupy the position of honour and be distinctly placed. In view of the fact that the office of Scrutiny Committee is situated at Ground Floor of a tenanted building, having occupied the

front open space by large number of vehicles parked by the family members and owners of said building, it is difficult to follow the mandate of Clause 3.5 of the Flag Code of India. It is submitted that all the officers and staff members of Respondent No.5 have a highest regard to the National Flag. In the honour of National Flag at the specified days for hoisting of National Flag i.e. on 26th January, 1st May, 15th August, every year all the officers and staff members of Respondent No.5 Committee, Aurangabad used to attend Flag hoisting ceremony at the office of Superintendent, State Excise Department, Aurangabad, which is in the same premises and covered by one compound wall.

5. Learned Additional Government Pleader referring to the additional affidavit-in-reply filed on behalf of Respondent No.5 on 23rd January, 2018, submits that in the year 2014 Respondent No.5 office has been shifted from the

previous premises to new premises i.e. Plot No.10, Sector F1, near St. Lawrence School, CIDCO, Aurangabad. It is submitted that after the transfer of the office in new premises, Respondent No.5 office the officers and employees are performing Flag hoisting ceremony in the office premises. It is submitted that Respondent No.5 office is performing the Flag hoisting every year and hence forth would perform the same on every specified day.

6. Learned Additional Government Pleader further submitted that the Petitioner has not approached this Court with clean hands. The caste validity claim of wife of the Petitioner was rejected by Respondent No.5 Committee vide its order dated 19th October, 2010. It is submitted that the Petitioner has also filed complaint against the officers of Respondent No.5 Committee to the police station, Kranti Chowk, Aurangabad. It is further submitted that inspite of pendency

of this Petition, the Petitioner has also filed an application under Right to Information Act on 22nd January, 2018 seeking information with respect to Flag Hoisting. It is submitted that Respondent No.5 Committee is under obligation and it is its boundant duty to perform the Flag hoisting. Respondent No.5 Committee was performing Flag hoisting and would also performing Flag hoisting in future. It is therefore submitted that there is no substance in the Writ Petition and the same deserves to be rejected.

7. We have carefully considered the submissions of the learned counsel appearing for the Petitioner, learned Assistant Solicitor General appearing for Respondent No.1 and learned Additional Government Pleader appearing for Respondent Nos.2 to 5. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, and the affidavits in reply filed on behalf of the Respondents.

8. Upon careful perusal of the affidavit in reply filed on behalf of the Respondent No.5, it is specifically stated by Respondent No.5 that since 2001 till 2014 the office of Respondent No.5 was in a tenanted premises. In the said premises there is office of the State Excise Department, Aurangabad. On the specified days i.e. on 26th January, 1st May, 15th August, and 17th September, every year all the officers and staff members of Respondent No.5 Committee used to attend Flag hoisting ceremony at the office of State Excise Department. In the further affidavit-in-reply filed on behalf of Respondent No.5, it is stated that in the year 2014 office of the Respondent No.5 has been shifted from previous premises to new premises at Cidco, Aurangabad and since then every year the office of Respondent No.5 is performing the Flag hoisting ceremony on the specified days such as 26th January, 1st May, 15th August and 17th September. Further, there is no

denial to the averments in the additional affidavit-in-reply filed by Respondent No.5 that caste validity claim of the wife of the Petitioner was pending before Respondent No.5 Committee and vide order dated 19th October, 2010 the said caste validity claim came to be rejected.

9. In the facts of this case, it would be useful to refer to the exposition of law by the Supreme Court in the case of Sarvadnya D. Patil and another vs. State of Goa and others¹. In Para 9 of the Judgment, it is observed that:

"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

¹ [2002 (5) Mh.L.J. 430]

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."

10. In the present case, it is specifically stated by Respondent No.5, on oath, that henceforth every year they will perform the Flag hoisting ceremony on the specified days. In the peculiar facts and circumstances of this Case, keeping in view the reply filed by Respondent No.5, we are of the opinion that this Petition can be conveniently disposed of with a note of caution to Respondent No.5.

11. The explanation offered by Respondent No.5 in the affidavit-in-reply appears to be plausible. We do accept the same. However, we issue a note of caution to Respondent No.5 not to

discontinue the Flag hoisting ceremony in future on specified dates which they are following.

12. With the above observations and directions, the Writ Petition stands disposed of. Rule made absolute on above terms. No order as to costs.

[S.M. GAVHANE, J.]

asb/JAN18

[S.S. SHINDE, J.]