

(1/15)

No. 14/6/2016-Public
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
Public Section

North Block, New Delhi-1
Dated the 11 May, 2017

To,

The Chief Secretaries of all State Governments,
The Chief Secretaries/Administrators of all Union Territories.
The Directors General of Police of State Governments/Union Territories.

12 MAY 2017

Subject:- Orders relating to the National Anthem of India.

Sir/Madam,

In continuation of this Ministry's letter of even number dated 23.03.2017(copy enclosed), I am directed to state that the Hon'ble Supreme Court in its order dated 18.4.2017(copy enclosed) in Writ Petition(Civil) No. 855 of 2016 in respect of I.A. No.15 of 2017, has observed the following:-

"This is an application filed by the NPRD to direct the respondent No. 1 to exempt certain categories of disabled persons from the purview of the order of this Court dated 30th November, 2016 and 9th December, 2016. The categories of persons mentioned are:-

- (i) *Wheel chair users – can be cerebral palsy, Parkinsons, Multiple sclerosis, Muscular dystrophy or other conditions*
- (ii) *Those with autism*
- (iii) *Those with cerebral palsy*
- (iv) *Intellectual disabilities*
- (v) *Mental illness*
- (vi) *Deaf blind*
- (vii) *Multiple disabilities*
- (viii) *Parkinsons, Multiple sclerosis*
- (ix) *Leprosy cured*
- (x) *Muscular dystrophy*

Having heard learned counsel for the parties, we are inclined to modify the orders and direct that the persons who are wheel chair users, those with autism, persons suffering from cerebral palsy, multiple disabilities, parkinsons, multiple sclerosis, leprosy cured, muscular dystrophy and deaf and blind be treated not to be within the ambit of the orders passed by this Court.

As far as the other categories, which we have not referred to mentioned in the application, are concerned, the same may be considered by the Union of India."

3. The above is conveyed to you in compliance of the Orders of the Hon'ble Supreme Court quoted above and subsequent necessary action in this regard. You are also

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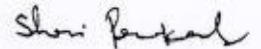
requested to give wide publicity in the local print and electronic media so that the above Order is followed in letter and spirit.

4. The Central Government has also notified the Rights of Persons with Disabilities Act, 2016 on 28.12.2016 which recognizes 21 categories of disabilities. The Central Government is in the process of framing guidelines for assessment and certification of new categories of disabilities which were not included in the Persons with Disabilities Act, 1995. The Department of Empowerment of Persons with Disabilities (Divyangjan) will suggest further modification in the guidelines as and when the said guidelines for assessment of new categories of disabilities are framed and notified by them. In such eventualities, these guidelines will be further amended or modified or expanded.

5. The receipt of this letter may please be acknowledged and action taken in the matter be communicated to this Ministry.

Encl.: As above.

Yours faithfully,



(Shri Prakash)

Joint Secretary to the Government of India

Tel. 2309 2962

Copy to:-

1. All Ministries/Departments of Government of India.
2. President's Secretariat, Rashtrapati Bhawan, New Delhi.
3. Vice-President's Secretariat, New Delhi.
4. Prime Minister's Office, South Block, New Delhi.
5. Cabinet Secretariat, New Delhi.
6. Election Commission of India, New Delhi.
7. Lok Sabha Secretariat, New Delhi.
8. Rajya Sabha Secretariat, New Delhi.
9. The Registrar, Supreme Court of India, New Delhi.
10. The Registrar, All High Courts.
11. Office of Comptroller and Auditor General of India, New Delhi.
12. The Union Public Service Commission, New Delhi.
13. Central Vigilance Commission, New Delhi.
14. NITI Aayog, Yojana Bhawan, New Delhi.
15. All attached & Subordinate Offices of the Ministry of Home Affairs.
16. 20 Spare copies.

(5)

No. 14/6/2016-Public
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
Public Section

North Block, New Delhi-1
Dated the 23rd March, 2017

To,

The Chief Secretaries of all State Governments,
The Chief Secretaries/Administrators of all Union Territories.
The Directors General of Police of State Governments/Union Territories.

Subject:- Orders relating to the National Anthem of India.

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Sir/Madam,

In supersession of this Ministry's letter of even number dated 21.12.2016(copy enclosed), I am directed to state that the Hon'ble Supreme Court in its Order dated 9.12.2016 in the Writ Petition (Civil) No. 855 of 2016(copy enclosed) had directed as follows :-

".... Learned Attorney General for India submitted that how the physically challenged or physically handicapped persons shall 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 persons goes to the 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...."

2. Subsequently, the Hon'ble Supreme Court in its order dated 14.2.2017 has observed the following:-

".... At this juncture, we may state that the Parliament has brought a new legislation called 'The Rights of Persons with Disabilities Act, 2016'. Section 102 repeals 'The Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995.' This Court on 9.12.2016 has modified the earlier order regard being had to the handicapped persons keeping in view the 1995 Act...."

3. Accordingly, the following guidelines are prescribed for persons with disabilities as defined under Section 2(s) read with Section 2(zc) of the Rights of Persons with Disabilities Act, 2016 for showing respect to the National Anthem :-

(i) The persons with locomotor disabilities and other wheel chair users having affected lower limbs shall position himself/herself to the extent of maximum attentiveness and alertness with or without the help of appropriate aids and appliances. For example a wheel chair bound person with disability shall make the wheel chair static, position himself/herself maintaining the maximum possible alertness physically.

(ii) If the person with disability is on crutch, he/she become stable(non-mobile) to the extent of maximum alertness.

(iii) The person with hearing disability (deaf or hard of hearing) if capable to stand, shall stand with attentiveness. However, there must be appropriate indication on the screen that the

National Anthem is being played or sung as the persons with hearing disability are likely to miss the auditory cues. Suitable instructions may be given in the form of captioning as well as in sign language on the screen so that the persons with hearing impairment are well informed that the National Anthem is being played.

- (iv) The person with blindness and low vision shall stand up in respect to National Anthem.
- (v) The escorts of the persons with disabilities shall stand-up when National Anthem is played.

4. Further in case of person with intellectual disabilities (mental retardation), it is stated that such disability is associated with a condition of arrested or incomplete development of mind, especially characterized by impairment of skills manifested during developmental period, skills which contribute to the overall level of intelligence- cognitive, language, motor and social abilities. Mental retardation is a challenging-problem, a multi-dimensional phenomenon, involving bio-psycho-social factors. The following characteristics may hamper in showing respect to the National Anthem by these class of persons with disabilities :-

- (a) Lack of understanding and comprehension.
- (b) Associated conditions like epilepsy, Attention Deficit, Hyperactive Disorder, Sensor impairments, Psychiatric illness, motor problems etc.
- (c) Most of them will have behavioural problems like flapping of the hands, screaming, shouting, abnormal body movements, difficulty in performing practical task etc.

4.1. While the persons with mild intellectual disability without associated conditions can be trained to understand and respect National Anthem, the same may not hold good in other cases. Relaxation to such class of person with disabilities may be considered. Wide publicity may be given to generate public awareness in this regard so as to avoid any unwarranted incident against persons with intellectual disabilities as some of the person with intellectual disabilities may not exhibit physical disabilities.

5. The Central Government has notified the Rights of Persons with Disabilities Act, 2016 on 28.12.2016 which recognizes 21 categories of disabilities. The Central Government is in the process of framing guidelines for assessment and certification of new categories of disabilities which were not included in the Persons with Disabilities Act, 1995. The Department of Empowerment of Persons with Disabilities (Divyangjan) will suggest further modification in the guidelines as and when the said guidelines for assessment of new categories of disabilities are framed and notified by them. In such eventualities, these guidelines will be further amended or modified or expanded.

6. The above is conveyed to you in compliance of the Orders of the Hon'ble Supreme Court quoted above.

7. The receipt of this letter may please be acknowledged and action taken in the matter be communicated to this Ministry.

Encl.: As above.

Yours faithfully,


(V.K. Rajan)


Deputy Secretary to the Government of India
Tel. 2309 4376

(5)

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Copy to:-

1. All Ministries/Departments of Government of India.
2. President's Secretariat, Rashtrapati Bhawan, New Delhi.
3. Vice-President's Secretariat, New Delhi.
4. Prime Minister's Office, South Block, New Delhi.
5. Cabinet Secretariat, New Delhi.
6. Election Commission of India, New Delhi.
7. Lok Sabha Secretariat, New Delhi.
8. Rajya Sabha Secretariat, New Delhi.
9. The Registrar, Supreme Court of India, New Delhi.
10. The Registrar, All High Courts.
11. Office of Comptroller and Auditor General of India, New Delhi.
12. The Union Public Service Commission, New Delhi.
13. Central Vigilance Commission, New Delhi.
14. NITI Aayog, Yojana Bhawan, New Delhi.
15. All attached & Subordinate Offices of the Ministry of Home Affairs.
16. 20 Spare copies.


(V.K. Rajan)

Deputy Secretary to the Govt. of India
Tel. 2309 4376

WP(C) 855/2016

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3376/16 (12)

ITEM NO.16

COURT NO.2

SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.855/2016

SHYAM NARAYAN CHOUKSEY

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(With appln. (s) for directions and exemption from filing O.T. and impleadment and impleadment as party respondent and intervention and recalling the Court's order and office report)

WITH W.P. (C) No.98/2017
(With office report) ✓

Date : 18/04/2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

Mr. Sidhartha Luthra Sr. Adv. (A.C.)
Ms. Tara Narula, Adv.
Ms. Gargi Khanna, Adv.
Mr. Sidharth Malhotra, Adv.

For Petitioner(s)

Mr. Rakesh Dwivedi, Sr. Adv.
Mr. Abhinav Shrivastava, AOR
Mr. Harmeet Singh Ruprah, Adv.
Ms. Sansriti Pathak, Adv.
Ms. Priyanka Garg, Adv.
Mr. Harsh Goel, Adv.

WP 98/17

Mr. Vikas Singh, Sr. Adv.
Mr. Girdhal Upadhyay, Adv.
Mr. A.K. Upadhyay, Adv.
Ms. Asha Upadhyay, Adv.
Mr. R. D. Upadhyay, AOR

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08/04/2017 17:56
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Rajesh

Respondent(s)

Mr. Tushar Mehta, ASG
Ms. Binu Tamta, Adv.
Mr. Rajat Nair, Adv.
Mr. R.K. Rathore, Adv.
Mr. Arijit Prasad, Adv.
Mr. B. Krishna Prasad, AOR

Mr. Tushar Mehta, ASG
Mr. Nishant Ramakand Katneshwarkar, AOR

Mr. Tushar Mehta, ASG
Mr. Shiv Mangal Sharma, AAG
Mr. Shrey Kapoor, Adv.
Ms. Ruchi Kohli, Adv.

Applicant-in-person

Mr. Raju Ramachandran, Sr. Adv.
Mr. Biju P Raman, AOR

Mr. A. Subba Rao, AOR

Mr. Lakshmi Raman Singh, AOR

Mr. C.U. Singh, Sr. Adv.
Mr. P. V. Dinesh, AOR
Ms. Sindhu T.P., Adv.
Mr. Rajendra Beniwal, Adv.
Ms. Arushi Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Mr. Rakesh Dwivedi, learned senior counsel appearing for the petitioner submits that he has filed an interlocutory application seeking permission to urge additional grounds and prayers.

Regard being had to the grounds urged, the interlocutory application stands allowed. Mr. Abhinav Shrivastava, learned counsel assisting Mr. Rakesh Dwivedi, shall file the amended writ petition within two weeks hence and serve copies thereof on the learned counsel for other sides.

Mr. Tushar Mehta, learned Additional Solicitor General appearing for the Union of India has submitted that he has filed two interlocutory applications for impleadment on behalf of the States of Maharashtra and Rajasthan. The said two States be impleaded as respondents in the petition.

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The interlocutory applications stand allowed accordingly.

I.A. No.14 of 2017

This is an application for impleadment filed on behalf of the National Platform for the Rights of the Disabled (NPRD).

Having heard Mr. Raju Ramachandran, learned senior counsel for the applicant, the prayer stands allowed.

I.A. No.15 of 2017

This is an application filed by the NPRD to direct the respondent No.1 to exempt certain categories of disabled persons from the purview of the order of this Court dated 30th November, 2016 and 9th December, 2016. The categories of persons mentioned are:-

- (i) Wheel chair users - can be cerebral palsy, Parkinsons, Multiple sclerosis, Muscular dystrophy or other conditions
- (ii) Those with autism
- (iii) Those with cerebral palsy
- (iv) Intellectual disabilities
- (v) Mental illness
- (vi) Deaf blind
- (vii) Multiple disabilities
- (viii) Parkinsons, Multiple sclerosis
- (ix) Leprosy cured
- (x) Muscular dystrophy

Having heard learned counsel for the parties, we are inclined to modify the orders and direct that the persons who are wheel chair users, those with autism, persons suffering from cerebral palsy, multiple disabilities, parkinsons, multiple sclerosis, leprosy cured, muscular dystrophy and deaf and blind be treated not to be within the ambit of the orders passed by this Court.

As far as the other categories, which we have not referred to mentioned in the application, are concerned, the same may be considered by the Union of India.

I.A. No.11 of 2017

This is an application for recall of the order dated 30th November, 2016, passed by this Court, which has been modified from time to time. In our considered opinion, this application for recall shall be heard along with the writ petition when it is finally heard.

Writ Petition (C) No.98 of 2017

Issue notice.

Let a copy of this petition be served on Ms. Binu Tamta, learned counsel assisting Mr. Tushar Mehta, learned Additional Solicitor General of India. The Union of India shall file its response to the writ petition within four weeks hence.

Let both the writ petitions along with the interlocutory applications be listed on 23rd August, 2017.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master