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Prasanna S,

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No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



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CASE COMMENTARY ON BIJOE EMMANUEL V. STATE OF KERALA (1986) 3 SCC 615

AUTHOR - SIDDH ANAND, STUDENT AT CAMPUS LAW CENTRE, FACULTY OF LAW, UNIVERSITY OF DELHI

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Abstract

Bijoe Emmanuel v. State of Kerala is a landmark judgment in Indian constitutional law that affirmed the fundamental right to freedom of expression and conscience, especially in the context of religious beliefs and practices. This judgment is significant as it upheld the importance of the freedom of expression and conscience as a core value of the Indian Constitution, and reinforced the principle that individuals have the right to hold and express their beliefs, even if they are in conflict with the majority or the state. It also emphasized the need for tolerance and respect for diversity in a democratic society. Furthermore, this judgment has been cited in several subsequent cases where the freedom of expression and conscience has been challenged, and has been instrumental in shaping the jurisprudence around these fundamental rights. It is an important precedent for ensuring that the constitutional values of freedom and democracy are protected and upheld in India.

KEYWORDS-

National Anthem, Infringement of Fundamental Rights, Article 19, The Prevention of Insults to National Honour Act, Reasonable restrictions, Jehovah's Witnesses, Religious belief.

1. Introduction and Background of Judgement-

A national anthem depicts the soul of a country, their challenges, and their story across time, their traditions, and information about its people. It is often a patriotic song, a musical composition that is officially recognized by the government or the country's constitution.

In this case, Bijoe, Binu Mol, and Bindu Emmanuel, the 3 kid appellants, were Jehovah's

Witnesses When the National Anthem 'Jana Gana Mana' was sung during the morning assembly at school, they stood politely but did not sing. The reason is that it violates the precepts of their religious faith—not the words or sentiments of the Anthem, but the singing of it. This they and their elder sisters who attended the same school before them have done for many years. Nobody was bothered, and no one was concerned. Nobody considered it offensive or unpatriotic. In July 1985, a member of the Legislative Assembly observed that the youngsters were not singing the National Anthem, which he considered disloyal. submit a question to the Assembly A Commission was formed to investigate and report. According to the Commission, the children are 'law-abiding' and did not insult the National Anthem. They have always stood silently in reverence. The children were expelled from the school on July 26, 1985, on the orders of the Deputy Inspector of Schools. The children petitioned the High Court for an order preventing the authorities from preventing them from attending school. The children's plea was rejected by both a learned single judge and a Division Bench. They moved to the Supreme Court on special leave under Article 136 of the Constitution.

The Supreme Court of India passed a judgment on 11 August 1986 in which it held that the 3 students were not guilty of disrespecting the National Anthem just because they refused to sing it.

Moreover, they did stand in respect whenever the National Anthem was being sung.

2. FACT AND ISSUE-

A. FACTS OF THE CASE -

The three child-appellants, Bijoe, Binu Mol and Bindu Emmanuel, are the faithful of Jehovah's Witnesses. They attend school. Daily, during the morning Assembly, when the National Anthem 'Jana Gana Mana' is sung, they stand respectfully but they do not sing. They do not sing because, according to them, it is against the tenets of their religious faith - not the words or the thoughts of the anthem but the singing of it. This they and before them their elder sisters who attended the same school earlier have done all these several years.

Deputy Inspector of Schools, the Headmistress expelled the children from the school from July 26, 1985. The father of the children made representations requesting that his children may be permitted to attend the school pending orders from the government. The Headmistress expressed her helplessness in the matter. Finally the children filed a writ petition in the High Court seeking an order restraining the authorities from preventing them from attending school. First a learned Single Judge and then a Division Bench rejected the prayer of the children. They have now come before us by special leave under Article 136 of the Constitution.

B. ISSUES OF THE CASE -

Whether the expulsion of the children from the school are consistent with the rights guaranteed under Article 19(1) and Article 25 of the Indian Constitution?

3. Both Parties Argument-

A. Petitioner side ~

The students who are Witnesses do not sing the Anthem though they stand up on such occasions to show their respect to the National Anthem. They desist from actual singing only because of their honest belief and conviction that their religion does not permit them to join any rituals except it be in their prayers to Jehovah their God.

Article 19(1)(a) of the Constitution guarantees to all citizens freedom of speech and expression, but Article 19(2) provides that nothing in Article

19(1)(a) shall prevent a State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Article 25(1) guarantees to all persons freedom of conscience and the right freely to profess, practise and propagate religion, subject to order, morality and health and to the other provisions of Part III of the Constitution.

Standing up respectfully when the National Anthem is sung but not singing oneself clearly does not either prevent the singing of the National Anthem or cause disturbance to an assembly engaged in such singing so as to constitute the offence mentioned in Section 3 of the Prevention of Insults to National Honour Act.

B. Respondent side ~

Article 51-A(a) of the Constitution enjoins a duty on every citizen of India "to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem". Proper respect is shown to the National Anthem by standing up when the National Anthem is sung. It will not be right to say that disrespect is shown by not joining in the singing.

Parliament has not been unmindful of 'National Honour'. The Prevention of Insults to National Honour Act was enacted in 1971. While Section 2 deals with insult to the Indian National Flag and the Constitution of India, Section 3 deals with the National Anthem and enacts:

"Whoever intentionally prevents the singing of the National Anthem or causes disturbance to any assembly engaged in such singing shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both."

Respondents suggested that the appellants, who belonged but to a religious denomination could not claim the Fundamental Right guaranteed by Article 25(1) of the Constitution. They purported to rely upon a sentence in the judgment of this court in **Acharya Jagdishwaranand v. Commissioner of Police, Calcutta [AIR 1984 SC 51]**. The question in that case was whether the Ananda Margis had a fundamental right within the meaning of Article 25 or Article 26 to perform Tandava dance in public streets and public places. The court found that Ananda Marga was a Hindu religious denomination and not a separate religion. The court examined the question whether the Tandava dance was a religious rite or practice essential to the tenets of the Ananda Marga and found that it was not. On that finding the court concluded that the Ananda Marga had no fundamental right to perform Tandava dance in public streets and public places.

4. Judgement -

In **Kharak Singh v. State of U.P. [AIR 1963 SC 1295, 1299]**, the question arose whether a police regulation which was a mere departmental instruction, having no statutory basis could be said to be a law for the purpose of Article 19(2) to (6). The Constitution Bench answered the question in the negative and said:

“Though learned counsel for the respondent started by attempting such a justification by invoking Section 12 of the Indian Police Act he gave this up and conceded that the regulations contained in Chapter XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be “a law” which the State is entitled to make under the relevant clauses (2) to (6) of Article 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Article 19(1), nor would the same be “a procedure established by law” within Article 21. The position therefore is that if the action of the police which is the arm of the executive of the State is found to infringe any of

the freedoms guaranteed to the petitioner the petitioner would be entitled to the relief of mandamus which he seeks, to restrain the State from taking action under the regulations.”

In the light of **Kharak Singh v. State of U.P.** Hold that the expulsion of the children from the school for not joining the singing of the National Anthem though they respectfully stood up in silence when the Anthem was sung was violative of Article 19(1) (a).

5. Conclusion -

Article 19(1)(a) which guarantees to all citizens freedom of speech and expression and to Article 19(2) which provides that nothing in Article 19(1)(a) shall prevent a State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by Article 19(1)(a) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. The law is now well settled that any law which be made under clauses (2) to (6) of Article 19 to regulate the exercise of the right to the freedoms guaranteed by Article 19(1)(a) to (e) and (g) must be ‘a law’ having statutory force and not a mere executive or departmental instruction.

The two circulars on which the department has placed reliance in the present case have no statutory basis and are mere departmental instructions. They cannot, therefore, form the foundation of any action aimed at denying a citizen’s Fundamental Right under Article 19(1) (a). Further it is not possible to hold that the two circulars were issued ‘in the interest of the sovereignty and integrity of India, the security of the State, friendly relation with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence’ and if not so issued, they cannot again be invoked to deny a citizen’s Fundamental Right under Article 19(1) (a).