

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.

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

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

7
464

IMMEDIATE

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 21st December, 2016

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.

Sir/Madam,

In continuation of this Ministry's letter of even No. dated 06.12.2016, I am directed to state that the Hon'ble Supreme Court in its Order dated 09.12.2016 in the Writ Petition Civil No. 855 of 2016 (copy enclosed) has 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. Accordingly, the following guidelines are prescribed in this regard:

- (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.

- 463
- (ii) If the person with disability is on crutch, he / she shall 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 persons 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.

3. Further in case of persons 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 behavioral problems like flapping of the hands, screaming, shouting, abnormal body movements, difficulty in performing practical task etc.

3.1. 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 persons 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 persons with intellectual disabilities may not exhibit physical disabilities.~~

4. The Rights of Persons with Disabilities Bill has been passed by both the Houses of Parliament which recognizes 21 categories of disabilities and the issues concerning the new categories of disabilities also need to be considered after the notification in this regard is issued. In view of this and para 3 and 3.1 above, the Department of Empowerment of Persons with Disabilities will suggest further modifications in guidelines as and when required or necessary. In such eventualities, these guidelines will be further amended or modified or expanded.

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

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

Yours faithfully,

(V.K. Rajan)

Deputy Secretary to the Govt. of India

Tel. 2309 4376

Encl.: As above.

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. Registrar, Supreme Court of India, New Delhi.
10. 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 and Subordinate Offices of the Ministry of Home Affairs.
16. 20 Spare copies.

Copy also to:-

The Secretary, Department of Empowerment of Persons with Disabilities for action in respect of para 4 above.

ITEM NO. 801

COURT NO. 3

SECTION FIL(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

IA Nos. _____/2016 in Writ Petition(s) (Civil) No(s). 855/2016

SHYAM NARAYAN CHOUKSEY

Petitioner(s)

VERSUS

~~UNION OF INDIA~~

Respondent(s)

(With appln.(s) for impleadment and recall of the order dated 30.11.2016 and office report)

Date : 09/12/2016 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) Mr. Abhinav Shrivastava, AOR
Mr. Rituvendra Singh, Adv.
Mr. Hameet Singh R., Adv.

For Respondent(s) Mr. Mukul Rohatgi, AG
Mr. R.K. Rathore, Ad.
Mr. B. Krishna Prasad, AOR

Mr. Siddharth Luthra, Sr. Adv. (AC)
Ms. Tara Narula, Adv.
Ms. Gargi Khanna, Adv.
Mr. Siddhartha Mehta, Adv.
Ms. Supriya Juneja, Adv.

Mr. C.U. Singh, Sr. Adv.
Mr. P.V. Dinesh, Adv.
Ms. Sinha T.P., Adv.
Mr. R. Beniwal, Adv.
Mr. Namit Saxena, Adv.
Mr. Biresh K., Adv.
Mr. Arushi Singh, Adv.

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

These two applications have been filed one seeking impleadment in the writ petition and the other for recall of the order dated

30.11.2016.

On being mentioned by Mr. P.V. Dinesh, learned counsel, the I.As. are taken on Board.

Registry is directed to register the I.As.

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.

The prayer in the application is for recall of our order dated 30.11.2016. 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 re-look at the grounds and will amend the same.

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. Siddharth 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.

Mr. Rohatgi, 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 person 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.

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 the case of Municipal Corporation of Delhi, Delhi vs. Uphaar Tragedy Victims Association and Ors. [(2011) 14 SCC 481] but only to regulate the ingress and egress during the period while the National Anthem is played.

Let the matter be listed on the date fixed, i.e., 14.2.2017.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master

B. K. Prasad

Addl Govt Advocate

Supreme Court

10/12/2016.