

Singing National Anthem not obligatory

From Our Legal Correspondent

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The expulsion of three children belonging to "Jehovah's Witnesses" from a school in Kerala for not singing the 'National Anthem' in the morning assembly because of their religious belief, though they did stand up respectfully when the anthem was sung, is a violation of their Fundamental Right "to freedom of conscience and to profess, practise and propagate religion" under Article 25 of the Constitution, the Supreme Court has ruled.

Mr. Justice O. Chinnappa Reddy (who delivered the judgment of the Bench), in allowing an appeal from these aggrieved students also held that the expulsion was again violative of their Fundamental Right to freedom of speech and expression under Article 19 (i) (A).

The Bench, which included Mr. Justice M. M. Dutt allowed the appeal against a judgment of a Division Bench of the Kerala High Court upholding their expulsion. It directed the respondent authorities to readmit the children in the school, to permit them to pursue their studies without hindrance and to give them the necessary facilities.

Inconsistent ban: The Bench held that the ban imposed by the Kerala Education authorities by two circulars issued in September 1961 and February 1970 by the Director of Public Instruction against silence when the National Anthem was sung was inconsistent with the Fundamental Rights to freedom of speech and expression and the freedom of religion guaranteed under the Constitution.

These two circulars "have no statutory basis and are mere departmental instructions" and "they cannot, therefore, form the foundation of any action aimed at denying citizen's Fundamental Right" under Article 19 (1) (A) or Article 25 of the Constitution.

"We also notice", the Bench said, that these

circulars "do not oblige each and every pupil to join in the singing nor is any penalty attached to not joining in the singing." On the other hand one of the circulars very rightly emphasised the importance of religious tolerance.

The Bench ruled that if the two circulars were to be so interpreted as to compel each and every pupil to join in the singing of the National Anthem despite his genuine, conscientious religious objection, then such compulsion would clearly contravene the rights guaranteed by the Constitution.

There was no provision of law "which obliges anyone to sing the National Anthem nor do we (court) think it is disrespectful to the National Anthem if a person who stands up respectfully when the anthem is sung does not join the singing."

'Proper respect': It was true that Article 51-A enjoins upon every citizen of India to abide by the Constitution of India and respect its ideals and institutions, the National Flag and the National Anthem," the Bench said and added that "proper respect is shown to the National Anthem by standing up when it is being sung."

"It will not be right to say that disrespect is shown by not joining in the singing", the court said.

A person not singing the anthem does not either prevent the singing of National Anthem or cause disturbance to an assembly engaged in such singing so as to constitute an offence under the relevant provisions of the Prevention of Insults to National Honour Act."

"We are afraid," the Bench said, that the High Court "misdirected itself and went off at a tangent." The High Court considered, in minute detail, each and every word and thought of the National Anthem and concluded that there was no word or thought in the National Anthem which could offend anyone's religious susceptibilities.

"But that is not the question at all," the Supreme Court Bench pointed out and noted that the objection of the petitioners was not to the language or the sentiments of the National Anthem.

Honest belief: According to the students' case, they do not sing the National Anthem though they stand upon such occasions to show their respect. They desist from singing only because of their honest belief and conviction that their religion does not permit them to join in any rituals except in their prayers to Jehovah their god.

That the petitioners truly believed what they said was "not in doubt", the Bench noted. "They do not hold their beliefs idly and their conduct is not the outcome of any perversity."

The petitioners had not asserted these beliefs for the first time out of any unpatriotic sentiments. Jehovah's Witnesses appeared to have always stood up for such beliefs the world over, as could be gathered from the Encyclopaedia Britannica and some well-known decisions of the U.S. Supreme Court and the Australian High Court, the Bench said.

"It is evident that Jehovah's Witnesses, wherever they are, do hold religious beliefs which may appear strange, even bizarre but the sincerity of their belief is beyond question," the Court said.

"The question is not whether a particular religious belief appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion — our personal views and reactions are irrelevant," the Bench pointed out and added that "if the belief is genuinely and conscientiously held it attracts protection of Article 25 of the Constitution but subject, of course, to the inhibitions contained therein". These inhibitions were not attracted in this case.