

SUPREME COURT JUDGEMENT REPORTER


20
23

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION



Supreme Court Judgement Reporter
(Free Publication and Open Access Journal)

Journal's Home Page – <https://scjr.iledu.in/>

Journal's Editorial Page – <https://scjr.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://scjr.iledu.in/category/volume-1-and-issue-1-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

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



© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://scjr.iledu.in/terms-and-condition/>



THE NATIONAL ANTHEM CONUNDRUM: A SHORT COMMENTARY ON BIJOE EMMANUEL & ORS v STATE OF KERALA & ORS

Author – Ashutosh Kumar Singh & Sakshi Srivastava, Students at Shambhunath Institute of Law

Best Citation – Ashutosh Kumar Singh & Sakshi Srivastava, THE NATIONAL ANTHEM CONUNDRUM: A SHORT COMMENTARY ON BIJOE EMMANUEL & ORS v STATE OF KERALA & ORS, *SUPREME COURT JUDGEMENT REPORTER*, 1 (1) of 2023, Pg. 66-69, ISBN - 978-81-960677-8-6.

ABSTRACT

Whether singing national anthem is compulsory or not? Whether standing and not singing the national anthem will result into insult of national honour? Whether standing and not singing the national anthem because of some religious sentiments and beliefs shall be protected by the constitution or not? The National Anthem which proves our Nationalism toward our country. The National Anthem shows our belief, culture, mournings, cause, triumphs which we all suffered and faced together. A National Anthem keeps all people in the country together as one. It's played wherever; it gives you a uncomely presence and pride in our heart by hearing it. It has a sense of pride and strong feelings of Nationalism for the country. The National Anthem is played at assembly of academy and council cultural, theatre, and in induction of programs and events. While playing it, we as a citizen need to stand by showing respect towards it and it inculcate pride, respect, nationalism and a sense of concinnity and identity of our country. In India, The Prevention of cuts to National Honour Act, 1960; section 3 of the act has discipline of extended 3 times imprisonment or fine or both, when anyone interrupts or prevents or beget disturbance while singing National Anthem.

The Fundamental Rights of the petitioners under Art. 19(1) (a) and 25(1) have been infringed and they're entitled to be defended.¹¹⁹ There's no provision of law which obliges anyone to sing

the National Anthem nor is it discourteous to the National Anthem if a person who stands up hypercritically when the National Anthem is sung doesn't join the singing.¹²⁰ The court decided that the fundamentals rights of the appellants under article 19(1) (a) and 25(1) shall be protected, and the freedom of speech and expression and freedom of religion were infringed by the authority of the school. This case upheld an important aspect of Article 19(1) (a) that right to stay silent is covered under freedom of speech and expression. Therefore the expulsion of students was violating their Fundamental Rights.

Key Words: National Anthem, Right to stay silent, Freedom of free speech and expression, Freedom of religion, Jehovah's witnesses.

I. CASE DETAILS

CASE TITLE	BIJOE EMMANUEL & ORS. V. STATE OF KERALA & ORS.
CASE NUMBER	CIVIL APPEAL NO. 870 OF 1986
DATE OF JUDGEMENT	11-08-1986
CITATION	1987 AIR 748, 1986 SCR (3) 518
COURT	Reddy, O. Chinnappa (J)
QUORUM	Hon'ble Mr. Justice Chinnappa Reddy J

¹¹⁹ BIJOE EMMANUEL & ORS. V. STATE OF KERALA & ORS. 1987 AIR 748, 1986 SCR (3) 518

¹²⁰ Ibid

AUTHOR	O C Reddy
---------------	-----------

II. INTRODUCTION

In India basically the national anthem plays an important role. National anthem basically reflects the citizens of its country and the struggle, unity, patriotism, of the people. The national anthem is a patriotic song and it is officially recognized by the government of India. So, basically in this case three students of Jehovah community have been expelled from school for not singing the national anthem.

The three students followed the faith of Jehovah's witnesses and they were objected to sing the "Jana Gana Mana" as it was against their religious beliefs. The students were expelled from the school for not singing the national anthem. Then this matter went to Kerala high court where the high court has dismissed the petition as it mentioned that in national anthem there is not anything which can hurt any one's sentiments. Then the father of the children filled a special leave petition in the Supreme Court and the Supreme Court mentioned:

In the particular case of the Bijoe Emmanuel and Ors. v State of Kerala¹²¹ the supreme court gave the judgement upon the issue that if the fundamental right guaranteed under Indian Constitution i.e. Right to Freedom of Speech and Expression mentioned under article 19(1)(a) and Right to Freedom of Conscience and the Right to Freely Profess, Practice and Propagate Religion mentioned under article 25(1) of the Indian Constitution clashes against the ideals of patriotism, then the fundamental rights of the students have been infringed and standing and not singing the national anthem does not result in infringement of national honour.

III. BACKGROUND OF THE CASE

1. There were three students Bijou, Binu Mol and Bindu Emmanuel of Jehova

witnesses who only worship their Jehovah the creator and none other and they used to study in school of Kerala and they used to attend the assembly on daily basis.

2. As per their religious beliefs they don't sing the national anthem because they believe that singing of national anthem is against their religious faith and not the words of national anthem although they keep standing silently and stood up in attention position whenever the national anthem is sung in the assembly.¹²²
3. One day a member of legislative assembly came to the school and noticed that the three students were not singing the national anthem and he thought that the behaviour of student is unpatriotic and he thought that they disrespect the national anthem.
4. Then a commission was appointed to investigate the matter and report it. The commission reported that children are law abiding and well disciplined and they never showed disrespect to national anthem.
5. Head mistress expelled students from the school, under the instruction of deputy inspector of schools, on July 26, 1985.
6. The father of the students requested to head mistress to allow the children to attend the school at least until they receive the government order in this regard. The head mistress told that it is not under her authority to do so.
7. Father of the children moved to High Court of Kerala for issuing an order against the authorities. But the learned single judge bench and then a division bench rejected the prayer of the aggrieved party.
8. Then the father moved to Supreme Court and he instituted a special leave petition under Article 136 of the Constitution.

¹²¹ 1987 AIR 748, 1986 SCR (3) 518

¹²² Refer Page 5 paragraph 1

IV. ISSUE RAISED

There were many arguments raised in the case of *Bijoe Emmanuel and Others v State of Kerala*:-

1. Whether the expulsion of the students from the school is consistent with the fundamental rights guaranteed under article 19(1) (a) and 25(1) of the Indian Constitution?
2. Whether the expulsion of the students from the school is justified under section 36 of the Kerala Education Act, Kerala education rules and section 3 of Prevention of Insults of National Honour Act, 1971?

V. CONTENTION OF THE PARTIES

A. Arguments in favour of Appellant

1. Appellant claimed the students were always used to stand in respect of national anthem.
2. They were well behaved students and never disrespected to the national anthem.
3. They didn't sing the national anthem only because of their religious Jehovah's belief.
4. Then the appellant raised the issue that whether the expulsion of the students is justifiable in accordance with the article 19(1) (a) and 25(1) of the Indian constitution.

B. Arguments in favour of Respondent

1. Respondent claimed that standing and not singing the national anthem is an unpatriotic behaviour.

VI. ANALYSIS OF JUDGEMENT AND REASONING

The Supreme Court in this case gave the judgment that, 19(1)(a), which guarantees Right to Freedom of Speech and Expression, and Article 25(1), which gives Right to Freedom of Conscience and the Right to Freely Profess, Practice and Propagate Religion are abecedarian rights which are guaranteed to every citizen. Over then the reason to impel

each and every pupil to join in the singing of the National Anthem despite his/ her genuine concern that it would violate their religious belief easily breaches the right guaranteed by Composition 19(1) (a) and Composition 25(1) of the Constitution of India. In *Prevention of Insults of National Honour Act, 1971*, there is no obligation to stand and sing at the time when the national anthem is being played. To substantiate its position, the Court reckoned on the case of *Kharak Singh v. State of U.P.*¹²³, where the same court refused to accept the police regulation which was a bare departmental instruction as a law for the purpose of Composition 19(2). In this regard, it must be noted that the abecedarian rights of the people can be taken down only through a procedure established by law which must be just, fair and reasonable. The expatriation of the scholars from the academy easily violated their Fundamental Right to Freedom of Speech and Expression, under Composition 19(1)(a), because the freedom to speech and expression doesn't only mean the freedom to say or express what one solicitations, but also the freedom to remain silent where one solicitations.

The Supreme Court set aside the judgment of the High Court and directs the replier authorities to admit the children into the academy, to permit them to pursue their studies without interference and to grease the pursuit of their studies by giving them the necessary installations.

VII. CONCLUSION

The state must not expect the people to be secular against their will. State shall not seek more patriotism from their citizen than what is allowed in the Indian constitution. This case is the landmark judgment which draws a line between the patriotism and the religious practice of the people. By these judgments, we understand our nationalism towards our country and introductory rights toward the

¹²³ Cri LJ 329 (1963)

people in a society. Day by day society is streamlining and evolving further about the Abecedarian rights of every citizen in the country and People in a country are following their religious belief explosively. And the significance of the National Anthem and its vittles regarding it, our tradition tutored us forbearance; our gospel sermonized forbearance and our constitution practices forbearance, hence we shouldn't adulterate it.

The Supreme Court of India further added that: our Indian tradition teaches tolerance, our philosophy preaches tolerance, our Indian constitution practices tolerance, let us not dilute it.¹²⁴

VIII. REFERENCES

A.BOOKS REFFERED

1. PANDEY J.N., CONSTITUTIONAL LAW OF INDIA: Allahabad: CLA (43rded.)2006

B.STATUTE

1. .THE CONSTITUTION OF INDIA

C.WEBSITES

1. <https://indiankanoon.org/doc/1508089/>
2. <https://ijlr.iledu.in/case-commentary-bijoe-emmanuel-ors-versus-state-of-kerala-ors/>
3. <https://main.sci.gov.in/judgment/judis/8973.pdf>
4. https://www.education.gov.in/hi/sites/upload_files/mhrd/files/upload_document/LA-Kerala.pdf

¹²⁴ Refer page16 paragraph 4