

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 24TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 19801 OF 2022 (GM-RES)

BETWEEN:

SRI. KIKKERI KRISHNA MURTHY
S/O LATE B S NARAYANA BHATTA
AGED ABOUT 58 YEARS,
R/O NO.22/6, EAST ANJANEYA TEMPLE ROAD,
OPP BUGLE ROCK PARK, BASAVANAGUDI,
BENGALURU-560 004.

...PETITIONER

(BY SRI.ASHOK HARANAHALLI., SENIOR COUNSEL A/W
SRI.VISHWANATH H M.,ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
DEPARTMENT OF KANNADA AND CULTURE,
VIKASA SOUDHA, DR B R AMBEDKAR VEEDHI,
BENGALURU-560 001.
REPRESENTED BY ITS PRINCIPAL SECRETARY.
2. THE STATE OF KARNATAKA,
DEPARTMENT OF PERSONNEL AND
ADMINISTRATIVE REFORMS (POLITICAL)
NO.605, 6TH FLOOR,
MULTI STORIED BUILDING, 1ST BLOCK,
DR B R AMBEDKAR VEEDHI,
BENGALURU-560 001.
REPRESENTED UNDER SECRETARY
TO THE GOVERNMENT
3. THE DIRECTORATE OF KANNADA AND CULTURE
KANNADA BHAVANA,
J C ROAD, BENGALURU-560 002.

4. AKHILA KARNATAKA SUGAMA SANGEETHA,
SAMSTHEGALA OKKUTA(REGD.)
REPRESENTED BY ITS PRESIDENT,
MR. MRUTHYUNJAYA DODDAWADA,
OFFICE AT NO.26, 1ST CROSS,
SHAMANNA GARDEN,
SRINIDHI TEMPLE ROAD,
CHUNCHAGHATTA,
BENGALURU - 560 062.

...RESPONDENTS

(BY SRI. S A AHMED., AAG FOR R1 TO R3;
SRI. H SUNIL KUMAR., ADVOCATE FOR R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER BEARING NO.C.AA.SU.E. 168 RA.SA.2022 BENGALURU, DTD 25.09.2022 PASSED BY THE R2 PRODUCED AT ANNEXURE-A AS ILLEGAL AND DIRECT THE RESPONDENTS TO CONSIDER THE PETITIONERS REPRESENTATIONS DTD 17.09.2021 PRODUCED AT ANNEXURE-G AND G1 RESPECTIVELY.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Petitioner, an acclaimed singer, is complaining before the Writ Court against the Government Order dated 25.09.2022 at Annexure-A whereby, the State Government has directed the rendition of the State

Anthem 'Jaya Bharata Jananiya Tanujate' in a specific tune/raaga as composed by late Sri.Mysore Ananthaswamy, a singer of great repute, in yester decades. The operative portion of the said order is as under:

“ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ:ಸಿಆಸುಇ 168 ರಾಸ 2022 ಬೆಂಗಳೂರು,
ದಿನಾಂಕ:25-09-2022

ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿರುವಂತೆ, ನಾಡಗೀತೆಯನ್ನು ಹಾಡಲು ಶ್ರೀ ಮೈಸೂರು ಅನಂತಸ್ವಾಮಿ ರವರ ಧಾಟಿಯನ್ನು ಆಳವಡಿಸಿಕೊಂಡು ನಾಡಗೀತೆಯ ಪೂರ್ಣಪಾಠವನ್ನು ಬಲಸಬೇಕು ಹಾಗೂ ಯಾವುದೇ ಅಲಾಪವಿಲ್ಲದೇ, ಪುನರಾವರ್ತನೆ ಇಲ್ಲದೆ, ಎರಡು ನಿಮಿಷ ಮೂವತ್ತು ಸೆಕೆಂಡುಗಳಲ್ಲಿ (2.30 ನಿಮಿಷಗಳಲ್ಲಿ) ಹಾಡಲು ಆದೇಶಿಸಿದೆ.”

2. The gist of submission of learned Sr. Advocate Mr.Ashok Haranahalli appearing for the petitioner is as under:

(i) The impugned order constitutes an unreasonable clog/restriction on the right to expression which has been constitutionally guaranteed u/a 19(1)(a) to the citizens.

(ii) Asking citizens to sing a song in a particular tune/raaga is constitutionally impermissible unless it is authorized by law i.e., legislation, and therefore, in exercise of executive power, such an imperative cannot be levied.

(iii) Citizens are free to sing any song in any tune/raaga, especially when the author of the said song namely

Kuvempu himself had never prescribed any particular tune/raaga, proscribing all other.

(iv) Merely because a Committee constituted for the purpose has recommended a particular tune/raaga in which Naadageethe needs to be sung, the impugned order does not get validated.

In support of this submission, he pressed into service certain Rulings.

3. After service of notice, learned Additional Advocate General Mr.S.A.Ahmed appearing for the official respondents has filed the Statement of Objections resisting the petition. A private entity got impleaded as the 4th respondent and its learned counsel Mr.H.Sunil Kumar has filed a separate Statement of Objections. Learned AAG appearing for the State and learned Sr. Advocate Mr.C.H.Hanumantharaya appearing for the private respondent made vehement submissions in justification of the impugned order.

4. This matter was taken up for hearing on a few occasions. Stalwarts from the field of music namely Smt.B.K.Sumithra, Sri.B.R.Lakshman Rao,

Sri.Y.K.Muddukrishna & Sri.Mrunthunjaya Doddawad personally appeared and gracefully assisted the court with zeal & zest in the hearing of this matter of seminal importance, though they are not parties *eo nomine*. They made submission in justification of prescription of particular tune/raaga as composed by Sri.Mysore Ananthaswamy. Such great gestures, nowadays are marked by their rarity. When the hearing was half a through, learned AAG has placed on record the Corrigendum dated 21.02.2024 vide Memo dated 16.04.2024, which reads as under:

“ಕರ್ನಾಟಕ ಸರ್ಕಾರ

ಸಂಖ್ಯೆ:ಕಸಂವಾ 62 ಕಸಧ 2024 ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ,
ವಿಕಾಸಸೌಧ,
ಬೆಂಗಳೂರು, ದಿನಾಂಕ:21.02.2024

ತಿದ್ದುಪಡಿ

ರಾಷ್ಟ್ರಕವಿ ಜ್ಞಾನಪೀಠ ಪುರಸ್ಕೃತರಾದ ಡಾ. ಕುವೆಂಪುರವರ “ಜಯ ಭಾರತ ಜನನಿಯ ತನುಜಾತೆ” ಕವನವನ್ನು ನಾಡಗೀತೆಯಾಗಿ ಘೋಷಿಸುವ ಕುರಿತು ಹೊರಡಿಸಲಾದ ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ: ಸಂಕಇ 207 ಕಸಧ 2003, ದಿನಾಂಕ:07.01.2004ರ ಆದೇಶ ಭಾಗದಲ್ಲಿನ ಮಾರ್ಗಸೂಚಿ “ಇ” ಅಂಶಕ್ಕೆ ಹೊರಡಿಸಲಾದ ತಿದ್ದುಪಡಿ ಆದೇಶ ಸಂಖ್ಯೆ:ಕಸಂವಾ 62 ಕಸಧ 2024, ದಿನಾಂಕ:16.02.2024ರ ತಿದ್ದುಪಡಿ ಆದೇಶವನ್ನು ಹಿಂಪಡೆಯಲಾಗಿದೆ.

ಮುಂದುವರೆದು, ಸರ್ಕಾರದ ಆದೇಶ ಸಂಖ್ಯೆ:ಸಂಕಇ 207 ಕಸಧ 2003, ದಿನಾಂಕ:07.01.2004ರ ಆದೇಶ ಭಾಗದಲ್ಲಿನ ಮಾರ್ಗಸೂಚಿ “ಇ” ಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಹೊರಡಿಸಲಾದ ದಿನಾಂಕ:01.02.2024ರಲ್ಲಿನ ತಿದ್ದುಪಡಿ ಆದೇಶದ “(ಇ) ಎಲ್ಲಾ ಶಾಲೆಗಳಲ್ಲಿ ನಾಡಗೀತೆಯನ್ನು ದೈನಂದಿನ

ಚಟುವಟಿಕೆಗಳು ಆರಂಭವಾಗುವ ಮುನ್ನ ಹಾಗೂ ಸರ್ಕಾರದ ಇಲಾಖೆಗಳು ಹಾಗೂ ನಿಗಮ, ಮಂಡಳಿ, ಪ್ರಾಧಿಕಾರ ಮುಂತಾದ ಅರೆ ಸರ್ಕಾರಿ ಸಂಸ್ಥೆಗಳ ಅಧಿಕೃತ ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಏರ್ಪಡಿಸುವ ಪ್ರಾರಂಭದಲ್ಲಿ ಹಾಡುವುದು” ಎಂಬುದರ ಬದಲಾಗಿ “(ಇ) ಎಲ್ಲಾ ಶಾಲೆಗಳಲ್ಲಿ (ಸರ್ಕಾರಿ, ಅನುದಾನಿತ, ಅನುದಾನ ರಹಿತ ಮತ್ತು ಖಾಸಗಿ) ನಾಡಗೀತೆಯನ್ನು ದೈನಂದಿನ ಚಟುವಟಿಕೆಗಳು ಆರಂಭವಾಗುವ ಮುನ್ನ ಹಾಗೂ ಸರ್ಕಾರದ ಇಲಾಖೆಗಳು ಹಾಗೂ ನಿಗಮ, ಮಂಡಳಿ, ಪ್ರಾಧಿಕಾರ ಮುಂತಾದ ಅರೆ ಸರ್ಕಾರಿ ಸಂಸ್ಥೆಗಳು ಅಧಿಕೃತ ಕಾರ್ಯಕ್ರಮಗಳನ್ನು ಏರ್ಪಡಿಸುವ ಪ್ರಾರಂಭದಲ್ಲಿ ಹಾಡುವುದು” ಎಂದು ತಿದ್ದಿ ಓದಿಕೊಳ್ಳತಕ್ಕದ್ದು”

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ
ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ

(ಎಸ್. ಗೀತಾಬಾಯಿ)

ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ,
ಕನ್ನಡ ಮತ್ತು ಸಂಸ್ಕೃತಿ ಇಲಾಖೆ(ಸಂಸ್ಕೃತಿ)

5. Learned AAG Mr.S.A.Ahmed and learned Sr. Advocate Mr.C.H.Hanumantharaya took up the following contentions for opposing the petition:

(i) Petition in its present form & substance is not maintainable. Petitioner has not demonstrated as to which right of his has been breached by the impugned order.

(ii) The State has prescribed a particular tune/raaga for rendering Naadageethe after duly considering the unanimous report of Expert Committee and therefore, it is not that the impugned prescription has fallen abruptly as a bolt from the blue.

(iii) In schools, naadageethe needs to be sung in the prescribed tune/raaga so that uniformity is brought amongst the students; similarly, for obvious reasons, singing of this song is made compulsory in government

departments and governmental bodies that too only on official occasions.

(iv) No individual right of the petitioner has been infringed by the prescription of tune/raaga for singing naadageethe inasmuch as it is always open to citizens to sing the said song in any tune/raaga of their choice. No citizen has a right to insist that he be allowed to sing Naadageethe in schools, government departments and governmental bodies.

(v) The government has power to issue the impugned order in exercise of power availing under the provisions of the Karnataka Education Act, 1983; even otherwise, it has executive power vested u/a 162 of the Constitution.

They bank upon certain rulings in support of their stand.

6. Having heard the learned counsel for the parties and having perused the Petition Papers, this court declines indulgence in the matter for the following reasons:

A. KAVIRATNA KUVEMPU AND OUR HERITAGE:

A few words needs to be stated about the author of our Naadageethe: Sri. Kuppalli Venkatappa Puttappa (1904-1994), popularly known as 'Kuvempu' was a most popular poet, playwright, novelist and literary critic

of great repute. His *magnum opus* "Sri Ramayana Darshanam" a profound epic, secured to him the prestigious Jnanapeetha Award in 1968. He happened to be the first such awardee from the State. For his invaluable contribution to Kannada language & literature, the Government of Karnataka decorated him with the honorific *Raashtrakavi* ('National Poet') in 1964. He was bestowed with the highest civilian award in the State namely, 'Karnataka Ratna' ('*Gem of Karnataka*') in 1992. The Government of India in 1988, honoured him with 'Padma Vibhushana', the second highest civilian award. 'Kuvempu' is a by-word in Kannada prose & poetry; that very name thrills every Kannadiga worth his salt. It is Kuvempu who penned 'Jaya Bharata Jananiya Tanujate' in 1930 which the Government of Karnataka adopted as the State Anthem on 29.12.2003. This song being immensely emotive, vividly picturizes with beauty the land, mountains, rivers, forests, faiths/religions, cultures, saints/sages, poets, singers/musicians and dynasties of Karnataka, in the bygone era.

B. The bone of contention between the parties is not the singing of Naadageethe *per se*, but the tune/raaga in which it is directed to be sung in schools regularly and in governmental bodies during occasions. It is the specific case of petitioner that the impugned order has been issued without competence and in the absence of statutory backing. This contention is difficult to countenance inasmuch as, the impugned order does not come in his way of singing Nadageethe in any tune/raaga of his choice. Despite vociferous submissions, petitioner is not in a position to demonstrate his right to sing in qualified spaces like schools and governmental bodies the State Anthem i.e., Naadageethe in a raaga composed by Late C Ashwath or such other stalwarts, in variance with the one specified. It is not that petitioner's minor children are studying in any schools and they are compelled to sing Naadageethe, much less in specified raaga; thus, he is not espousing their cause. It is relevant to mention that in the light of ***BIJOE EMMANUEL vs. STATE OF KERALA, (1986) 3 SCC 615***, arguably no child can be compelled to sing the Anthem, provided that it shows respect. No

school has come forward to challenge the impugned order and this is appreciable indeed. Rightly, petitioner is not espousing the cause of any school, either. That being the position, the impugned orders do not give a choate cause of action for maintaining this petition.

C. Learned Sr. Advocate Mr. Ashok Harnahalli appearing for the petitioner vehemently argued that the impugned order is incompetent in the absence of any statutory power being indicated. Learned AAG Mr. S A Ahmed appearing for the official respondents is right in submitting that the court need not examine this question in the absence of any legal injury being demonstrated by the petitioner by virtue of impugned orders. As already observed above, since the impugned orders do not impinge on the rights of petitioner to sing Naadageethe in any raaga of his choice anywhere and at any time except in qualified spaces, he is not an "aggrieved person". Secondly, the power to prescribe State Anthem and to specify raaga in which it is to be rendered in schools, broadly avails to the State Government under Section 3(1)

of the Karnataka Education Act, 1983 which reads as under:

"The State Government may, subject to sub-section (3) of Section 1, regulate general education, professional education, medical education, technical education, commerce education and special education at all levels in accordance with the provisions of this Act."

The power to regulate general education necessarily includes the power to do all that, that is necessary therefor and incidental thereto. It cannot be gainfully argued that this power does not include the authority to prescribe State Anthem and specify raaga in which it is to be sung in schools. Although the impugned order and the corrigendum dated 21.02.2024 issued during the pendency of the petition do not mention the provision of law, they can be construed as having been issued under Section 3(1) of the 1983 Act and a set of rules promulgated thereunder.

D. So far as the prescription of singing State Anthem in a specified raga (composed by Mysuru Ananthaswamy) in government offices and governmental bodies is concerned, the provisions of 1983 Act do not come to the rescue of the respondents, is true. However, learned AAG Mr.

Ahmed is right in telling that such prescription as has been done vide impugned orders is permissible in the exercise of executive power of the State availing under Article 162 of the Constitution of India, as widely interpreted in **SAHIB RAM JAWAYA KAPUR vs. STATE Of PUNJAB, (1955) 2 SCR 225**, wherein it is observed as under:

"... Ordinarily, the executive power connotes the residue of governmental functions which remain after legislative and judicial functions are taken away. And yet, when such action affects the rights of a citizen or any person, the authority of law would be required."

Mr. H M Seervai in Constitutional Law of India, Fourth Edition, at paragraph No.22.384 writes as follows:

"In NARAINDAS Vs. MP, (1974) 3 SCR 624 the Sup. Ct. held that under Art. 162 the executive power of the State was co-extensive, with its legislative power under entry 11, List II (education). Therefore in the exercise of that power the State could prescribe school textbooks without the authority of law, as it did not affect the rights of publishers even before s.4 was enacted."

On the same analogy, the occupational rights of petitioner guaranteed under Article 19(1)(g) are not infringed even in the least. It hardly needs to be stated that the field of education figures in the Concurrent List vide Item No.25

and that the scope of executive power is co-extensive with legislative power.

E. It is not that the subject orders are universal in their application in the sense that everyone, everywhere and at every time, if desires to sing this song, has to do it in the specified tune/raaga. Their operation is confined to 'qualified spaces' namely, schools, government departments and governmental bodies. Thus, they do not extend to any other spaces/places. It is not that the petitioner has got any right to go to these specified entities for singing the State Anthem, regardless of the specified raaga. He may arguably have a right to visit the school or government offices for working out his grievances if any, in accordance with law. However, that does not give him the right to sing the Anthem during the visit. In other words, no right of the petitioner much less his fundamental right to speech and expression constitutionally guaranteed under Article 19(1)(a) or his occupational rights secured under Article 19(1)(g) can be said to have been infringed even going by any stretch of

imagination. Therefore, his contention that the impugned order constitutes an unreasonable restriction, does not merit acceptance. The question of adjudging reasonableness of restriction does arise only when the substantive right and its curtailment are demonstrated. However, such demonstration is lacking in this case.

F. In all justification, Naadageethe needs to be sung in the schools on daily basis before any curricular/non-curricular activity commences. Similarly, in government offices and governmental bodies too, the singing of Naadageethe is made imperative although not on regular basis but on official occasions/functions. This arrangement cannot be said to be unreasonable when adjudged by any standards obtaining in the contemporary constitutional jurisprudence. Singing the National Anthem facing the National Flag in qualified spaces like the schools and public offices is necessary to teach students and citizens patriotism and respect for the country. The same purpose is achieved by making the singing of Naadageethe imperative. It generates love for the State, for its people,

for plurality of religions/faiths, cultures, rivers, forests, mountains, etc., that are beautifully depicted in the subject song. Since 2000, Japanese Courts have affirmed school administrators' power to order even teachers to sing National Anthem and to discipline them for refusing to sing. SHINO vs. OTSU KYOIKUIINKAT, 1087 HANREI TAIMUZU 117 (Otsu D. Ct., May 7, 2002). If singing the National Anthem *Jana Gana Mana* in a particular tune is imperative, drawing analogy from the same one can without the risk of contradiction state that singing the State Anthem in a specified raaga cannot be faltered.

G. Learned AAG Mr. Ahmed in his inimitable style submitted and this court agrees with the same that the prescription of particular raaga for singing the State Anthem is preceded by a study by a High Level Committee comprising of experts in the field. The said Committee was constituted by the Government by an official order dated 09.09.2021. The Committee was headed by Dr. Siddalingaiah. There were six members viz (i) Sri. K R Ramakrishna, the Commissioner, the Department of

Kannada, (ii) Sri Y K Muddukrishna, (iii) Sri. Muddumohan, (iv) Smt. Vaijyanthi Kashi who was heading Karnataka Snggeetha – Nrutya Academy, (v) Sri. Balavanthrao Patil, Joint Director, Department of Kannada & Culture and (vi) Smt. Y S Vijayalakshmi, Programme Officer Department of Kannada & Culture. There were two great poets namely, Dr. Channaveera Kanavi of Dharwad and Dr. Doddarangegowda of Bengaluru. The composition of Committee later was changed with the inclusion of some other members after deleting their counter parts. The Committee after deliberation had submitted reports. The Government having looked into the same, has come out with the impugned order followed by the subject corrigendum. Therefore, the argument that the action of the Government in prescribing a particular raaga/tune for the singing of State Anthem is arbitrary and unreasonable, is liable to be rejected, to say the least. The subject raaga/tune is being followed for about two decades or so, with no complaint from the concerned quarters, also cannot be overlooked while deciding the *lis* brought before the court.

In the above circumstances, this petition being devoid of merits is liable to be and accordingly dismissed, costs having been made easy.

**Sd/-
JUDGE**

Snb/