

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 49 OF 2015

Manoranjan Santosh Roy

Vs

Mr. Aamir Khan & Ors.

... Petitioner

... Respondents

...

Mr. Manoj Singh a/w Mr. Puneet Shukla i/b. MKS Legal Associates for the petitioner.

Mr. Ravi Kadam, Senior Advocate a/w. Mr. Rohan Kadam i/b. Murudkar & Co. for the Respondent Nos. 1, 2 & 4.

Dr. Veerendra Tulzapurkar Senior Advocate, a/w Adv. Mr. Sanjay Kadam, Ms. Apeksha Sharma, Sanjeel Kadam i/b. Kadam and Company for the respondent No. 5.

Mr. Anil Singh, Additional Solicitor General of India a/w Ms. S. V. Bharucha & Mr. D. P. Singh for the respondent No. 6, 7 & 8 – UOI.

Mr. M. D. Naik, AGP for the Respondent No. 9 & 10 – State.

CORAM : A. S. OKA & A. A. SAYED, JJ.

DATE : 21 JUNE, 2016.

P.C. :

1 Heard the learned counsel appearing for the petitioner and the learned Additional Solicitor General of India for the Respondent Nos. 7 and 8 (the Ministry of Home Affairs and the Ministry of Information Broadcasting of Union of India)

2 The objection of the petitioner is to the use of logo “SATYAMEV JAYATE” (Page No. 55) in the program produced by 2nd

Respondent and directed by the 3rd Respondent which was shown on the television channel of the 5th and 6th Respondents.

3 The learned counsel appearing for petitioner invited attention of the Court to page No. 55, which is the logo of the the said program. His submission is that the words “SATYAMEV JAYATE” constitute the title of the emblem as defined under the State Emblems of India (Prohibition of Improper use) Act, 2005 (for short “The said Act of 2005”). Inviting our attention to page 55, he submitted that the 1st to 5th Respondents have not only used the title of emblem within the meaning of said Act 2005, but the words “SATYAMEV JAYATE” are painted on “ASHOK CHAKRA” which is an integral part of the emblem under the said Act of 2005. He urged that there is a complete prohibition on the use of “Ashok Chakra” without obtaining permission of the Union of India as per the provision of Section 3 of the Emblems and Names (Prevention of Improper use) Act, 1950 (for short “The said Act of 1950”). He invited our attention to clauses 4 and 16 of the Schedule to the said Act of 1950. He submitted that there is a prohibition on pictorial

representation of “Ashok Chakra” as used in the Indian National Flag or in the official seal or emblem of the Government of India. He invited our attention to the Emblems and Names (Prevention of Improper use) Rules, 1982 for (short “The said Rules of 1982”) and in particular Rule 8 thereof. Today, he has tendered additional affidavit of the petitioner for placing on record certain documents. He invited our attention to documents starting from page No. 185 onwards. Some of the documents relate to application for registration of the word mark “SATYAMEV JAYATE” made by the 4th Respondent company and objections raised thereto.

4 He, would, therefore urge that under the provisions of both the enactments namely the said Act of 2005 and the said Act of 1950, the use of the logo on page No. 55 by 1st to 5th Respondents is completely prohibited which calls for action against them.

5 We have heard the learned Additional Solicitor General of India. He invited our attention to the provisions of both the enactments and submitted that “SATYAMEV JAYATE” is a motto forming a part of the emblem. He pointed out that even under the

said Act 1950, by virtue of clause 16 of the Schedule, there is a prohibition on the use of name of “Ashok Chakra” or pictorial representation of “Ashok Chakra” forming part of the emblem. However, the legislature in its wisdom has not chosen to prohibit the use of motto “SATYAMEV JAYATE”. There are affidavits filed on record by the contesting respondents namely 1st and 2nd respondents as well as 5th respondent.

6 We have carefully considered the submissions. Firstly, we must make a reference to the said Act of 2005 which defines emblem. As seen from its preamble, the object of the said Act of 2005 is to prohibit the improper use of State emblem for professional and commercial purposes. “emblem” is defined by clause (b) of Section 2 of the said Act of 2005. Section 2 reads thus:-

“2. Definitions - In this Act, unless the context otherwise requires -

(a) “competent authority” means any authority competent under any law for the time bring in force to register any company, firm, other body of person or any trade mark or design or to grant a patent;

(b) “emblem” means the State Emblem of India as described and specified in the Schedule to be used as an official seal of the Government.”

The prohibition is contained in Sections 3, 4 and 5 which reads thus:-

3. Prohibition of improper use of emblem – Notwithstanding anything contained in any other law for the time being in force, no person shall use the emblem or any colourable imitation thereof in any manner which tends to create an impression that it relates to the Government or that it is an official document of the Central Government or, as the case may be, the State Government, without the previous permission of the Central Government or of such officer of that Government as may be authorised by it in this behalf.

Explanation – For the purposes of this section, “person” includes a former functionary of the Central Government or the State Government.

4. Prohibition of use of emblem for wrongful gain – No person shall use the emblem for the purpose of any trade, business, calling or profession or in the title of any patent, or

in any trade mark or design, except in such cases and under such conditions as may be prescribed.

“5. Prohibition of registration of certain companies, etc.

- (1) Notwithstanding anything contained in any other law for the time being in force, no competent authority shall -

(a) register a trade mark or design which bears the emblem , or

(b) grant a patent in respect of an invention which bears a title containing the emblem.

(2) If any question arises before a competent authority whether any emblem is an emblem specified in the Schedule or a colourable imitation thereof, the competent authority shall refer the question to the Central Government and the decision of the Central Government thereon shall be final.”

7 As far as Section 3 is concerned, the prohibition is on any person using the emblem or any colourable imitation thereof in any manner which tends to create an impression that it relates to the Government or that it is an official document of the Central Government or, as the case may be, the State Government. Section 4

imposes prohibition on any person using the emblem for the purposes of any trade, business, calling or profession or in the title of any patent, or in any trade mark or design. Section 5 imposes restrictions on Competent Authority prohibiting the said Authority from registering a trade mark or design or grant of a patent in respect of an invention which bears a title containing the emblem. We have referred to the definition of emblem in clause (b) of section 2 which in turn refers to the Schedule to the said Act of 2005. The Schedule reads thus:-

“THE SCHEDULE

[See section 2(b)]

STATE EMBLEM OF INDIA

DESCRIPTION AND DESIGN

The State Emblem of India is an adaptation from the Sarnath Lion Capital of Asoka which is preserved in the Sarnath Museum. The Lion Capital has four lions mounted back to back on a circular abacus. The frieze of the abacus is adorned with sculptures in high relief of an elephant, a galloping horse, a bull and a lion separated by intervening Dharma Chakras. The abacus rests on a bell-shaped lotus.

The profile of the Lion Capital showing three lions mounted on the abacus with a Dharma Chakra in the centre, a bull on the right and

a galloping horse on the left, and outlines of Dharma Chakras on the extreme right and left has been adopted as the State Emblem of India. The bell-shaped lotus has been omitted.

The motto “Satyameva Jayate” - Truth alone triumphs – written in Devanagari script below the profile of the Lion Capital is part of the State Emblem of India.

The State Emblem of India shall conform to the designs as set out in Appendix I or Appendix II.”

8 The schedule provides that the motto “SATYAMEV JAYATE” (Truth alone Triumph) written in Devanagari script below the profile of the Lion Capital is a part of the State Emblem of India.

9 We have perused the page No. 55 of the petition which according to the case of the petitioner is the logo used by the 1st to 5th Respondents. It is true that the motto which is a part of the emblem within the meaning of the said Act of 2005 is a part of the said logo. The words “SATYAMEV JAYATE” are found printed in a circle. We have compared the said circle with the “Ashok Chakra” appearing on the emblem. Firstly, the circle on the page No. 55 is not a full or complete circle. The circle start from the word (“SATYAMEVA”). At two places, there is a gap in the circle.

Moreover, the circle is not at all similar or deceptively similar to “Ashok Chakra”.

10 Apart from the fact that under the said Act of 2005, the prohibition is on the use of the emblem and not the motto which is a part of the emblem, by no stretch of imagination, Section 3 of the said Act of 2005 is attracted. Moreover, the logo used by the 1st to 5th Respondents cannot be said to be a colourable imitation of the emblem. It is not a pictorial imitation of Ashok Chakra. The prohibition under Section 4 would not be attracted as the 1st to 5 Respondents have not used the emblem. It is not the case of the petitioner in the additional affidavit tendered today that the Competent Authority defined under Clause (a) Section 2 has violated prohibition imposed by Section 5 of the said Act, 2005.

11. We have also perused the provisions of the said Act of 1950. The definition of emblem in clause (b) of Section 2 is wider than the definition of Emblem under the said Act of 2005. Clause (a) of Section 2 of the said Act of 1950 under thus:-

“2. Definitions. - In this Act, unless the context otherwise requires, -

(a) “emblem” means any emblem, seal, flag, insignia, coat-of-arms or pictorial representation specified in the Schedule;

(b) “competent authority” means any authority competent under any law for the time being in force to register any company, firm or other body of persons or any trade mark or design or to grant a patent;

(c) “name” includes any abbreviation of a name.”

The prohibition is under Section 3 which reads thus.

“3. Prohibition of improper use of certain emblems and names. - Notwithstanding anything contained in any law for the time being in force, no person shall, except in such cases and under such conditions as may be prescribed by the Central Government, use, or continue to use, for the purpose of any trade, business, calling or profession or in the title or any patent, or in any trade mark or design, any name or emblem specified in the Schedule or any colourable imitation thereof without the previous permission of the Central Government or of such officer of Government as may be authorised in this behalf by the Central Government.”

12. We have perused the schedule and in particular, The Item No. 4 and 16 relied upon by the petitioner. Item No. 4 reads thus:-

“The name, emblem or official seal of the Government of India or of any State, or any other insignia or coat-of- arms used by any such Government or by a Department of any such Government.”

We find that 1st and 5th Respondents have not used the name or emblem or official seal of the Government of India. Clause 16 of the schedule reads thus.

“16. The names of “Ashoka Chakra” and “Dharma Chakra”, or the pictorial representation of Ashok Chakra as used in Indian national Flag or in official seal or emblem of the Government of India or of any State Government or of a Department of any such Government.”

13. As observed earlier, the 1st to 5th Respondents have not made any pictorial representation of “Ashok Chakra”. Moreover, they

have not used the name of “Ashok Chakra”.

14. The learned counsel appearing for the petitioner relied upon the said Rules of 1982 framed under the said Act of 1950. Rule 8 provides that no person shall use or continue to use, for the purpose any trade, business, calling or profession, name or emblem specified in the schedule to the said Act of 1950 or colourable imitation thereof without previous permission of the Central Government. We find that the concerned Respondents have not used the emblem or its pictorial imitation.

15. Thus, to summarize, we find that there is no violation by any of the Respondents and in particular by 1st to 5th Respondents of any of the provisions of the said Act of 2005 and the said Act of 1950 by the use of logo which is at page No. 55.

16. At this stage we must also make a reference to the affidavit filed by the 5th Respondent. In paragraph 5, it is pointed out that the expression “SATYAMEV JAYATE” is a part of the verse 3.16 of Mandukya Upanishad. In paragraph 5, by giving examples, it is contended that the expression “SATYAMEV JAYANTE” is *publici*

juris and hence, its use cannot be objected

17. In the affidavit in reply filed by the 5th Respondent, on the basis of various factual contention raised, a challenge is to the locus of the petitioner. It is pointed out that number of petitions filed in purported public interest by the petitioner have been either dismissed or withdrawn. We must clarify that though we have dealt with the challenges raised by the petitioner on merits, we have made no adjudication on the issue of locus of the petitioner to maintain PIL.

18. Therefore, we hold that there is absolutely no merit in the petition and the same is accordingly dismissed.

(A. A. SAYED, J.)

(A. S. OKA, J.)