

Court No. - 2

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 437 of 2022

Petitioner :- Chandra Bhushan Pandey

Respondent :- State Of U.P. Thru. Prin. Secy. Govt. Of U.P. Deptt. Of Panchayati Raj Lko. And 8 Others

Counsel for Petitioner :- In Person

Counsel for Respondent :- C.S.C.

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Rajnish Kumar,J.

Pursuant to our order dated 28.07.2022, the learned State Counsel has been able to seek instructions.

It has been stated by the learned State Counsel that Government of India in the Ministry of Home Affairs has issued certain directions for organizing "Har Ghar Tiranga" programme during "Azadi Ka Amrit Mahotsav" and accordingly the Chief Secretary, State of U.P. has issued certain directions in this regard by means of Circular/Order dated 01.06.2022 giving instructions for hoisting the National Flag during "Azadi Ka Amrit Mahotsav". Learned State Counsel has stated that according to the same, from 11.08.2022 to 17.08.2022 every house hold is not only permitted but has been required to hoist the National Flag. The Circular dated 01.06.2022, according to the learned State Counsel, will cover the Gram Panchayats also which shall be able to hoist National Flag from 11.08.2022 to 17.08.2022 on the Gram Panchayat Bhawans.

It has been stated by the petitioner who appears in person that in terms of the provisions contained in Article 51A(a), one of the fundamental duties set out by the Constitution of India is to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. It has thus been argued by Sri Pandey, the petitioner in person that Village Panchayats are permitted to hoist the National Flag only on two days in a year, namely, 'Independence Day i.e. 15th August and 'Republic Day i.e. 26th January'.

Sri Pandey has drawn our attention to the provisions contained in Part III, Section VIII of Flag Code of India 2002 issued by the Ministry of Home Affairs, Government of India. Paragraph 3.39 of Part III, Section VIII of Flag Code of India states that National Flag should be flown only on important public buildings such as High Courts, Secretariats, Commissioners' Offices, Collecorates, Jails and offices of the District Boards, Municipalities and Zila Parishads and Departamental/Public Sector Undertakings. Paragraph 3.39 of Part III, Section VIII of

flag Code of India is extracted herein below :

"3.39. Normally the National Flag should be flown only on important public buildings such as High Courts, Secretariats, Commissioners' Offices, Collectorates, Jails and offices of the District Boards, Municipalities and Zila Parishads and Departmental/Public Sector Undertakings."

It has, thus, been argued that after insertion of Part IX in the Constitution of India, the Gram Panchayats have been given the constitutional status and as such the Gram Panchayat Bhawan is also a public office for the purposes of Flag Code and thus the State Government should issue appropriate Circular/Guidelines permitting the Gram Panchayats to hoist the National Flag every day on the Gram Panchayat Bhawans.

For bringing home his argument, the petitioner has referred to the provision contained in Article 243G of the Constitution of India which provides that Legislature of the State shall by law confer certain powers on Panchayats as may be necessary to enable them to function as Institution of Self Government. It has thus been submitted by the petitioner that since in terms of Article 243G, the State Government has to enact the law permitting the Panchayats to discharge certain functions which includes preparations of plan for economic development and social justice and also implementation of certain schemes of economic development and social justice, hence Panchayat Bhawan in every Gram Panchayat certainly falls within the meaning of "Important Public Buildings"

Accordingly, in view of the aforesaid, we require the learned State Counsel to seek complete instructions from the Department of Culture as well as from the Department of Panchayati Raj by the next date of listing. While considering the aforesaid issues, the State Government should also be conscious of two Central Legislations, namely, The Prevention of Insults to National Honour Act, 1971 and The Emblems and Names (Prevention of Improper Use) Act, 1950.

List this case on 22.08.2022 as fresh.

In the meantime, Gram Panchayats are permitted to hoist the National Flag during 11th to 17th August, 2022 while celebrating "Azadi Ka Amrit Mahotsav" in terms of the instructions and guidelines issued by the Chief Secretary, Government of U.P. which are embodied in the Circular/ Order dated 01.06.2022.

Order Date :- 1.8.2022/Sanjay