DR. CHIRANJI LAL (D) BY LRS. A

v.

HARI DAS (D) BY LRS.

MAY 13, 2005

[R.C. LAHOTI, CJ., Y.K. SABHARWAL AND G.P. MATHUR, JJ.] B

Limitation Act, 1963—Article 136—Decree passed in a partition suit—Period of limitation for execution of such decree commences from the date of the decree and not from the date of engrossment of the decree on the stamp paper—Engrossment of the decree on stamp paper would relate back to the date of the decree—Indian Stamp Act, 1899—Section 35. C

In a suit for partition filed against the predecessor-in-interest of the appellants, final decree was passed on 7th August, 1981 in favour of the predecessor-in-interest of the respondents. There was no order of the Court directing the parties to furnish stamp papers for the purposes of engrossing the decree. The stamp papers required for engrossing the decree were furnished by respondents on 25th May, 1982 and the decree was engrossed thereafter. The execution application was filed on 21st March, 1994 in the High Court. The appellant raised objection that the execution application was barred by limitation in view of Article 136 of the Act, but the execution court rejected the objection. That order was upheld by the Division Bench in appeal, which held that unless and until the decree is engrossed on the stamp paper it is merely a judgment of the Court and there is no decree available for execution and therefore, the starting point of limitation in case of execution of a decree in partition suit is the date when the decree is engrossed on the requisite stamp papers as that would be the date when decree becomes enforceable. Hence the present appeal. D E F

Allowing the appeal, the Court

HELD: 1.1. The Indian Stamp Act, 1899 is a fiscal measure enacted with an object to secure revenue for the State on certain classes of instruments. Since a decree in a suit for partition creates rights and liabilities of the parties with respect to the immovable properties, it is considered as an instrument liable for the payment of stamp duty under the Indian Stamp Act. G H

A **1.2. The Indian Stamp Act is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue. Once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of initial defect in the instrument. [368-E-F]**

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Hameed Joharan and Ors. **v.** *Abdul Salam and Ors.,* **[2001] 7 SCC 573;** *Renu Devi* **v.** *Mahendra Singh and Ors.,* **AIR (2003) SC 1608 and** *Hindustan Steel Limited* **v.** *Messrs Dilip Construction Company,* **[1969] 1 SCC 597, relied on.**

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Shankar Balwant Lokhande **v.** *Chandrakant Shankar Lokhande and Anr.,* **[1995] 3 SCC 413 and** *W.B. Essential Commodities Supply Corporation* **v.** *Swadesh Agro Farming & Storage Pvt. Ltd. and Anr.,* **[1999] 8 SCC 315, referred to.**

D **2. The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act, within the domain, purview and control of a party. No date or period is fixed for furnishing stamp papers. No rule has been shown requiring the court to call upon or give any time for furnishing of stamp paper. A party by his own act of not furnishing stamp paper cannot stop the running of period of limitation. None can take advantage of his own wrong. The proposition that period of limitation would remain suspended till stamp paper is furnished and decree engrossed thereupon and only thereafter the period of twelve years will begin to run would lead to absurdity. [369-E, G]**

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Yeshwant Deorao Deshmukh **v.** *Walchand Ramchand Kothari,* **[1950] SCR 852, relied on.**

G **3. Rules of limitation are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. There is no statutory provision prescribing a time limit for furnishing of the stamp paper for engrossing the decree or time limit for engrossment of the decree on stamp paper and there is no statutory obligation on the Court passing the decree to direct the parties to furnish the stamp paper for engrossing the decree.**

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In the present case the Court has not passed an order directing the parties to furnish the stamp papers for the purpose of engrossing the decree. Merely because there is no direction by the Court to furnish the stamp papers for engrossing of the decree or there is no time limit fixed by law, does not mean that the party can furnish stamp papers at its sweet will and claim that the period of limitation provided under Article 136 of the Act would start only thereafter as and when the decree is engrossed thereupon. The starting of period of limitation for execution of a decree cannot be made contingent upon the engrossment of the decree on stamp paper. The engrossment of the decree on stamp paper would relate back to the date of the decree, namely, 7th August, 1981, in the present case. In this view, the execution application filed on 21st March, 1994 was time barred having been filed beyond the period of twelve years prescribed under Article 136 of the Act. The High Court committed illegality in coming to the conclusion that it was not barred by limitation. [370-B-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3745 of 2002.

From the Judgment and Order dated 23.11.2000 of the Delhi High Court in Execution First Appeal (O.S.) No. 1 of 2000.

K.N. Bhat, R.N. Verma, M.K.Verma and R.S. Rana with him for the Appellant.

Jaspal Singh, Ms. Jayashree Wad, Ashish Wad, Neeraj Kumar and Ms. Surabhi Madan with him for the Respondent.

The Judgment of the Court was delivered by

Y.K. SABHARWAL, J. Article 136 of the Limitation Act, 1963 (for short 'the Act') prescribes a period of twelve years for the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court. It provides that the period would commence when the decree or order becomes enforceable.

The question that arises for determination in this matter is when would the period of limitation for execution of a decree passed in a suit for partition commence. In other words, question is when such a decree becomes enforceable - from the date when the decree is made or when the decree is engrossed on the stamp paper. Which, out of these two, would be the starting point of limitation?

A The facts are brief and undisputed. In a suit for partition filed against the predecessor-in-interest of the appellants, final decree was passed on 7th August, 1981 in favour of the predecessor-in-interest of the respondents. The stamp papers required for engrossing the decree were furnished by respondents on 25th May, 1982 and the decree was engrossed thereafter. There was no order of the Court directing the parties to furnish stamp papers for the purposes of engrossing the decree. The execution application was filed on 21st March, 1994 in the High Court. The appellant raised objection that the execution application was barred by limitation in view of Article 136 of the Act. The execution court rejected the objection. The order was also upheld by the Division Bench in the appeal. The Division Bench by the impugned judgment held that unless and until the decree is engrossed on the stamp paper it is merely a judgment of the Court and there is no decree available for execution. Therefore, it held that the starting point of limitation in case of execution of a decree in partition suit is the date when the decree is engrossed on the requisite stamp papers as that would be the date when decree becomes enforceable.

A two-Judge Bench of this Court found that there was obvious conflict among the three two-Judge Bench decisions i.e. (i) *Shankar Balwant Lokhande* v.*Chandrakant Shankar Lokhande and Anr.*, [1995] 3 SCC 413 (ii) *W.B.Essential Commodities Supply Corporation* v. *Swadesh Agro Farming & Storage Pvt. Ltd. and Anr.*, [1999] 8 SCC 315 and (iii) *Hameed Joharan and Ors.* v. *Abdul Salam and Ors.*, [2001] 7 SCC 573 and was of the view that it would be appropriate that the case be placed before a three-Judge Bench to resolve the conflict in these decisions.

The contention urged on behalf of the appellants is that the date of engrossment of decree on stamp paper cannot be the starting point of limitation for the purposes of Article 136 of the Act.

Learned counsel for the appellants contends that there is no conflict in the decisions. The submission is that the case of *W.B. Essential Commodities Supply Corporation* was that of a money decree and, therefore, any discussion therein on the issue of enforcement of decree on stamp paper and starting point of limitation on that basis would be merely obiter dicta. Likewise, the point in issue, in fact, did arise in *Lokhande's* case and only passing observations have been made therein which are purely obiter. The said observations were not necessary to decide the issue which was germane to the matter. Placing strong reliance on the decision in *Hameed Joharan's* case

(supra), it is contended by learned counsel that the legal propositions correctly laid down therein squarely cover the issue arising in the present matter. A

On the other hand, the learned counsel appearing for the respondents supporting the impugned judgment strongly relies on the decisions in *Lokhande* and W.B. Essential Commodities Supply Corporation cases in support of the contention that a final decree of partition becomes enforceable only when it is engrossed on the stamp paper. B

In *Lokhande's* case, a preliminary decree was passed on 2nd August, 1955 in a suit for partition declaring the share of each of the parties to the suit. The Court by its order dated 19th April 1958 directed preparation of final decree on the supply of the stamp papers. On 19th December, 1960 one among the several parties to the suit whose shares had been declared in the preliminary decree, supplied the stamp paper for engrossing the final decree to the extent of his share declared in the preliminary decree and accordingly on 11th January, 1961 a final decree was engrossed on the stamp paper to the extent of his share. Other parties to the suit whose shares were declared in the preliminary decree did not supply the stamp papers, hence no final decree was made *qua them*. However, they filed application for execution of the preliminary decree, which was dismissed as barred by limitation. The High Court while dismissing the appeal held that in view of the fact that no final decree was drawn on stamp paper there was no decree in existence for its execution. In this background it was found that no executable final decree has been drawn working out the rights of the parties dividing the properties in terms of the shares declared in the preliminary decree. Since the final decree had not been drawn, the observations regarding furnishing of stamp paper and engrossment of the final decree thereupon were not *germane* to the issue involved in the said case. Thus, the said observations are clearly *obiter dicta*. C D E F

Therefore, *Lokhande's* case cannot be said to have laid down the proposition that the period of limitation would commence only on engrossment of final decree of partition on stamp paper. G

In *W.B. Essential Commodities Supply Corporation's* case, the High Court decreed the suit filed for recovery of money on 8th March, 1982. However, the decree was actually drawn up and signed by the judge on 9th August, 1983. Application for execution of decree was filed by the decree holder on 5th June, 1995. The executing court ordered execution of the decree. But, on appeal, the Division Bench of the High Court set aside the H

A order and held that the execution petition was barred by limitation under Article 136 of the Act. The question before this Court was whether the period of limitation begins to run from the date the suit is decreed or from the date when the decree is actually drawn up and signed by the judge.

B The Court held that a decree is said to be enforceable when it is executable. For a decree to be executable, it must be in existence. A decree would be deemed to come into existence immediately on the pronouncement of the judgment and the decree becomes enforceable the moment the judgment is delivered and merely because there will be delay in drawing up of the decree, it cannot be said that the decree is not enforceable till it is prepared C because an enforceable decree in one form or the other is available to a decree holder from the date of the judgment till the expiry of the period of limitation under Article 136 of the Act.

In arriving at the abovenoted conclusion, the Court placed reliance on Order 20 Rule 6A of Civil Procedure Code which provided that the last D paragraph of the judgment should state in precise terms the relief which has been granted by such judgment. It fixed the outer time limit of 15 days from the date of the pronouncement of the judgment within which the decree must be drawn up. In the event of the decree not so drawn up, clause (a) of sub-rule (2) of Rule 6-A enabled a party to make an appeal under Rule 1 of Order E 41 CPC without filing a copy of the decree appealed against and for that purpose the last paragraph of the judgment shall be treated as a decree. For the purpose of execution also, provision is made in clause (b) of the said sub-rule which says that so long as the decree is not drawn up, the last paragraph of the judgment shall be deemed to be a decree. Clause (b) has thus enabled the party interested in executing the decree before it is drawn up to apply for F a copy of the last paragraph only, without being required to apply for a copy of the whole of the judgment.

After holding that decree becomes enforceable the moment the judgment is delivered, which ultimately decided the question that arose for consideration G in the case, the Court went further and observed that there may, however, be situations in which a decree may not be enforceable on the date it is passed. The Court gave three situations by way of illustrations to demonstrate when a decree may not be enforceable on the date it is passed. The third illustration is more pertinent to the present discussion, which is as follows:

H "Thirdly, in a suit for partition of immovable properties after passing

of preliminary decree when, in final decree proceedings, an order is passed by the court declaring the rights of the parties in the suit properties, it is not executable till final decree is engrossed on non-judicial stamp paper supplied by the parties within the time specified by the court and the same is signed by the Judge and sealed. It is in this context that the observations of this Court in *Shankar Balwant Lokhande* v. *Chandrakant Shankar Lokhande,* [1995] 3 SCC 413 have to be understood. These observations do not apply to a money decree and, therefore, the appellant can derive no benefit from them."

This illustration according to the Court was necessitated because of the observations in *Lokhande's* case. Since these observations have already been held to be obiter, this illustration is not of much significance in deciding the present matter and it cannot be said to be exposition of law. In addition to this, the decree involved in the case was a decree passed in a suit for recovery of money and not a decree passed in a suit for partition, hence the question of engrossing of the decree on stamp paper does not arise.

In *Hameed Joharan's* case, a preliminary decree for partition was passed on 8th June, 1969 and a final decree was passed on 20th November, 1970. On 28th February, 1972, the Court issued notice to the parties to furnish stamp papers and granted time till 17th March, 1972 for the same. The decree holder did not furnish any stamp paper, hence no decree was finalized. An execution application was presented on 21st May, 1984. The execution petition was dismissed as barred by limitation as the same was filed beyond twelve years stipulated in Article 136 of the Act. Subsequently, a revision petition was filed against the said order and the High Court set aside the order and directed the executing court to consider the question of limitation afresh. The executing court after fresh consideration of the matter held that the execution petition is not barred by limitation. As against this, a revision petition was filed before the High Court and the Learned Single Judge of the High Court allowed the revision petition and set aside the order of the executing court. Consequently, the execution petition also stood dismissed. The question before the Court was whether the limitation period begins to run from the date when the decree is made or from the date on which the stamp paper for engrossing the decree is to be furnished as per the direction of the court and the decree is engrossed on such stamp papers.

This Court in its detailed and elaborate judgment held that the direction given by the Court for furnishing of stamp papers within a specified date by

A itself will not take the decree out of the purview of Article 136 of the Act as regards the enforceability of the decree. It was held that furnishing of stamp paper was an act entirely within the domain and control of the party required to furnish and any delay in the matter of furnishing of the same cannot possibly be said to be putting a stop to the period of limitation being run. The Court observed that:-

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> "Needless to record that engrossment of stamped paper would undoubtedly render the decree executable but that does not mean and imply, however, that the enforceability of the decree would remain suspended until furnishing of the stamped paper - this is opposed to the fundamental principle on which the statutes of limitation are founded".

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The Court has further observed that:-

> "Be it noted that the legislature cannot be subservient to any personal whim or caprice. In any event, furnishing of engrossed stamp paper for the drawing up of the decree cannot but be ascribed to be a ministerial act, which cannot possibly put under suspension a legislative mandate. Since no conditions are attached to the decree and the same has been passed declaring the shares of the parties finally, the Court is not required to deal with the matter any further - what has to be done - has been done. The test thus should be - has the Court left out something for being adjudicated at a later point of time or is the decree contingent upon the happening of an event - i.e. to say the Court by its own order postpones the enforceability of the order - in the event of there being no postponement by a specific order of the Court, there being a suspension of the decree being unenforceable would not arise".

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Thus, even if there is direction by the Court for furnishing of stamp papers by a particular date for the purposes of engrossing of the decree, the period of limitation begins to run from the date when the decree is passed and not from the date when the decree is engrossed on the stamp papers supplied by the parties.

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The Court also held that the period of limitation prescribed in Article 136 of the Act cannot be obliterated by an enactment wholly unconnected therewith, like the Indian Stamp Act. Legislative mandate as sanctioned under Article 136 of the Act cannot be kept in abeyance unless the selfsame

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legislation makes a provision therefor. The Indian Stamp Act, 1899 has been engrafted in the statute book to consolidate and amend the law relating to stamps. Its applicability thus stands restricted to the scheme of the Indian Stamp Act.

As regards the bar under Section 35 of the Indian Stamp Act, it was held in *Hameed Joharan'a* case that the prescribed period shall not be allowed to remain suspended until the stamp paper is furnished and the partition decree is drawn thereon and subsequently signed by the judge. Enforceability of the decree cannot be the subject-matter of Section 35, neither can the limitation be said to be under suspension. The Court differentiated between "executability" and "enforceability" of the decree. The phrase 'execution' was held to mean the process for enforcing or giving effect to the judgment of the court and it is completed when the decree holder gets the money or other thing awarded to him by the judgment. It was held that though the decree may not be received in evidence or be acted upon but the period of limitation cannot be said to remain under suspension at the volition and mercy of the litigant. The period of limitation starts by reason of the statutory provisions as prescribed in the statute. Time does not stop running at the instance of any individual unless, of course, the same has a statutory sanction being conditional.

The reference order mentions that the decision of a two Judge Bench of this Court in *Renu Devi* v. *Mahendra Singh and Ors.*, AIR (2003) SC 1608 would have some bearing. In that case in a suit for partition a compromise decree was made on 13th February, 1978 declaring the share of the parties in the suit property. The final decree was engrossed on the stamp paper on 24th May, 1979. Two parties to the decree gifted the property that fell into their share by a gift deed. Title to these gifted properties was challenged in the title suit. The Trial Court dismissed the suit. On appeal, the First Appellate Court allowed the appeal. On further appeal, the High Court while allowing the appeal held that donors acquired their separate title in the joint property only after the final decree was engrossed on the stamp paper i.e. on 24th May, 1979 and, therefore, they were legally incompetent to gift their property so as to transfer the title to the donees inasmuch as before the decree was engrossed on the stamp paper they did not have any title in the property.

This Court while allowing the appeal against the decision of the High Court held that the compromise decree dated 13th February, 1978 being a

A decree effecting partition by metes and bounds ought to have been engrossed on requisite stamp papers. The deficiency stood supplied by the same being engrossed on stamp papers on 24th May, 1978. The engrossing of the decree on stamp paper validated the compromise decree dated 13th February, 1978 and it became effective and binding with effect from 13th February, 1978 B itself. Thus, the Court has categorically held that even if the decree is engrossed on the stamp paper on a subsequent date, the decree would be legally effective from the date when the decree is actually passed.

Learned counsel for the respondents contends that Section 35 of the Indian Stamp Act, 1899 provides that an instrument not duly stamped cannot C be 'acted upon'. Therefore, a decree passed in a suit for partition cannot be acted upon which means it cannot be enforced until engrossed on stamp paper. It is further contended that Article 136 of the Act presupposes two conditions for the execution of the decree. Firstly, the judgment has to be converted into a decree and secondly, the decree should be enforceable. It is D further submitted that a decree becomes enforceable only when the decree is engrossed on the stamp paper. Therefore, the period of limitation begins to run from the date when the decree becomes enforceable i.e. when the decree is engrossed on the stamp paper.

Such an interpretation is not permissible having regard to the object E and scheme of the Indian Stamp Act, 1899. The Stamp Act is a fiscal measure enacted with an object to secure revenue for the State on certain classes of instruments. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue. Once that object is secured according F to law, the party staking his claim on the instrument will not be defeated on the ground of initial defect in the instrument {*Hindustan Steel Limited* v. *Messrs. Dilip Construction Company,* [1969] 1 SCC 597}. Section 2(14) of the Indian Stamp Act defines an 'instrument' as including every document by which any right or liability is, or purported to be created, transferred, limited, extended, extinguished or recorded. Section 2(15) defines 'instrument of G partition' as any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any revenue authority or any Civil Court and an award by an arbitrator directing partition. Section 3 provides a list of instruments which shall be chargeable with duty of the amount indicated in H Schedule I of the Indian Stamp Act. Article 45 of Schedule I prescribes the

proper stamp duty payable in case of an instrument of partition. Section 33 provides for the impounding of the instrument not duly stamped and for examination of the instrument for ascertaining whether the instrument is duly stamped or not. Section 35 provides that no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties, authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped. Section 40 (b) provides for payment of the proper duty, if the instrument impounded is not duly stamped. Section 42 (1) provides for certifying that proper duty has been paid on the impounded instrument. Sub-section (2) provides that after such certification the instrument shall be admissible in evidence, and may be registered, acted upon and authenticated as if it had been duly stamped.

A decree in a suit for partition declares the rights of the parties in the immovable properties and divides the shares by metes and bounds. Since a decree in a suit for partition creates rights and liabilities of the parties with respect to the immovable properties, it is considered as an instrument liable for the payment of stamp duty under the Indian Stamp Act. The object of the Stamp Act being securing the revenue for the State, the scheme of the Stamp Act provides that a decree of partition not duly stamped can be impounded and once the requisite stamp duty along with penalty, if any, is paid the decree can be acted upon.

The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act, within the domain, purview and control of a party. No date or period is fixed for furnishing stamp papers. No rule has been shown to us requiring the court to call upon or give any time for furnishing of stamp paper. A party by his own act of not furnishing stamp paper cannot stop the running of period of limitation. None can take advantage of his own wrong. The proposition that period of limitation would remain suspended till stamp paper is furnished and decree engrossed thereupon and only thereafter the period of twelve years will begin to run would lead to absurdity. In *Yeshwant Deorao Deshmukh* v. *Walchand Ramchand Kothari*, [1950] SCR 852 it was said that the payment of court fee on the amount found due was entirely in the power of the decree holder and there was nothing to prevent him from paying it then and there; it was a decree capable

A of execution from the very date it was passed.

Rules of limitation are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. As above noted, there is no statutory provision prescribing a time limit for furnishing of the stamp paper for engrossing the decree or time limit for engrossment of the decree on stamp B paper and there is no statutory obligation on the Court passing the decree to direct the parties to furnish the stamp paper for engrossing the decree. In the present case the Court has not passed an order directing the parties to furnish the stamp papers for the purpose of engrossing the decree. Merely because there is no direction by the Court to furnish the stamp papers for engrossing C of the decree or there is no time limit fixed by law, does not mean that the party can furnish stamp papers at its sweet will and claim that the period of limitation provided under Article 136 of the Act would start only thereafter as and when the decree is engrossed thereupon. The starting of period of limitation for execution of a partition decree cannot be made contingent upon the engrossment of the decree on the stamp paper. The engrossment of the D decree on stamp paper would relate back to the date of the decree, namely, 7th August, 1981, in the present case. In this view the execution application filed on 21st March, 1994 was time barred having been filed beyond the period of twelve years prescribed under Article 136 of the Act. The High Court committed illegality in coming to the conclusion that it was not barred E by limitation.

In view of the above, the impugned judgment is set aside and the appeal is allowed. Parties shall bear their own costs.

B.B.B. Appeal allowed.

SANJEEV BHATNAGAR

v.

UNION OF INDIA AND ORS.

MAY 13, 2005

[R.C. LAHOTI, CJ. AND P.K. BALASUBRAMANYAN, J.]

Constitution of India 1950—Article 32—Public Interest Litigation—Seeking deletion of word 'Sindh' from the National Anthem as 'Sindh' no longer part of India post partition—Held: National Anthem is song expressing patriotic feelings and not a chronicle defining territory of nation which has adopted the anthem—'Sindh' is not just a geographical region, it refers to place and to its people spread throughout the country—Further, issue raised neither constitutional nor there is enforcement of any fundamental right—Also petition not in public interest—Hence, petition rejected—Article 51A.

The question which arose for consideration in this writ petition was whether the text of National Anthem could be rectified and the word 'Sindh' be deleted therefrom since the geographical region 'Sindh' does not form part of India post partition.

Dismissing the Writ Petition, the Court

HELD: 1.1. A National Anthem is a hymn or song expressing patriotic sentiments or feelings. It is not a chronicle which defines the territory of the nation which has adopted the anthem. A few things such as - a National Flag, a National Song, a National Emblem and so on, are symbolic of our national honour and heritage. The National Anthem did not, and does not, enlist the states or regional areas which were part of India at the point of time when it was written nor is it necessary that the structure of the National Anthem should go on changing as and when the territories or the internal distribution of geographical regions and provinces undergoes changes. Recently Uttaranchal, Chhattisgarh and Jharkhand have been carved out by reorganizing certain states but that does not mean that the National Anthem should be enlarged, re-written or modified to include the names of these new states. [377-C-D, D-E, E-F]

1.2. The National Anthem is our patriotic salutation to our motherland, nestling between the Himalyas and the oceans and the seas

A surrounding her. The mention of a few names therein is symbolic of our recollection of the glorious heritage of India. 'Sindh' is not just a geographical region. It refers to the place and to its people. Sindhis are spread throughout the country and they derive their such name as having originated and migrated from Sindh. *'Sindh'* also refers to the river *'Sindhu'* or *'Indus'*. It also refers to a culture, one of the oldest in the world
B and even modern India feels proud of its having inherited the Indus Valley Civilisation as an inalienable part of its heritage. River Indus *(Sindhu)* finds numerous references in the Indian Classical Literature including Rig Veda. [377-E-F-G]

C 1.3. The National Anthem is the poem written by Rabindranath Tagore. He himself had said that the five stanzas in which the poem was written is addressed to God. The poem is a reflection of the real India as a country - a confluence of many religions, races, communities and geographical entities. It is a message of unity in diversity. It is a patriotic song. It has since the decades inspired many by arousing their patriotic
D sentiments when sung in rhythm. It is the representative of the ethos of the country. Any classic, once created, becomes immortal and inalienable; even its creator may not feel like making any change in it. Any tampering with the script of the poem would be showing disrespect to the great poet-Rabindranath Tagore. [377-G-H; 378-A-B]

E 1.4. The issue raised does not amount to raising any constitutional issue or canvassing any fundamental right for the enforcement of which the jurisdiction of this Court under Article 32 of the Constitution can be invoked. The petition is not in public interest but more of the publicity interest litigation. It is a petition which should never have been filed.
F [378-B-C; 380-D-E]

'Indian National Anthem' by Prabodhchandra Sen Vishva Bharti, Calcutta May 1945, referred to.

2. The Prevention of Insults to National Honour Act, 1971 enacted
G by the Parliament makes it an offence for whoever intentionally prevents the singing of the Indian National Anthem or causes disturbance to any assembly engaged in such singing. Article 51A of the Constitution inserted by Forty-second Amendment, provides for it being the fundamental duty, amongst others, of every citizen of India to abide by the Constitution and respect its ideals and institutions, the National Flag and the National
H Anthem. The Constitution of India, its ideals and institutions, the National

Flag and the National Anthem have been treated almost on par. From the language of clause (a) of Article 51A, it is clear that the National Anthem is an ideal and an institution for the Indian citizens. [375-F-G-H] A

Re: Kerala Education Bill, **[1959] SCR 995, referred to.**

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 16 of 2005. B

(Under Article 32 of the Constitution of India.)

Petitioner-in-person.

Milon K. Banerji, Attorney General for India, A. Sharan, Additional Solicitor General, M.R. Calla, Ram Jethmalani, Amit Anand Tiwari, Samir Ali Khan, Amit Kumar, Navin Prakash, Gaurav Aggarwal, Dewashish Bharuka, Mrs. Sushma Suri, Ms. Ranjeeta Rohatgi, Ms. Lata Krishnamurthy, R.L. Panjwani, Ms. P.R. Mala, Mushtaq Ahmad, Vijay Panjwani, Dr. Natis A. Siddiqui, R.N. Keshwani and Ms. Priya Hingorani with them for the appearing parties. C D

The Judgment of the Court was delivered by

R.C. LAHOTI, CJ. On 24th January 1950, the Constituent Assembly of India finally met to sign the Constitution. The question of having a National Anthem for India as a free country and a nation was under consideration. The Constituent Assembly had appointed a Committee to make recommendations about the final selection of a National Anthem. E

After deliberations it was considered desirable to leave it with the President to make a declaration in the Assembly on the question of adopting a National Anthem for India. In the Constitution Hall, on 24th January 1950, where the Constituent Assembly of India finally met to sign the Constitution, President Dr. Rajendra Prasad declared his decision on the matter relating to National Anthem in his opening statement in the following words:- F

> "There is one matter which has been pending for discussion, namely the question of the National Anthem. At one time it was thought that the matter might be brought up before the House and a decision taken by the House by way of a resolution. But it has been felt that, instead of taking a formal decision by means of a resolution, it was better if I make a statement with regard to the National Anthem. G H

A Accordingly I make this statement.

The composition consisting of the words and music known as Jana Gana Mana is the National Anthem of India, subject to such alterations in the words as the Government may authorise as occasion arises; and the song Vande Mataram, which has played a historic part B in the struggle for Indian freedom, shall be honoured equally with Jana Gana Mana and shall have equal status with it. I hope this will satisfy the Members."

—Constituent Assembly Debates, XII.
(24th January, 1950)

C After the Constitution had been signed by all the members of the Assembly, the President, on the request of Shri M. Ananthasayanam Ayyangar permitted all members of the House to sing Jana Gana Mana in chorus. Then led by Shrimati Purnima Banerji all of them sang it in chorus for the first time after its formal adoption as our National Anthem.

D The following is the transliteration i.e. the text of the National Anthem in Hindi:

"Jana-gana-mana-adhinayaka, jaya he

Bharata-bhagya-vidhata.

E *Punjab-Sindh-Gujarat-Maratha*

Dravida-Utkala-Banga

Vindhya-Himachala-Yamuna-Ganga

Uchchala-Jaladhi-taranga.

F *Tava shubha name jage,*

Tava shubha asisa mange,

Gahe tava jaya gatha,

Jana-gana-mangala-dayaka jaya he

G *Bharata-bhagya-vidhata.*

Jaya he, jaya he, jaya he

Jaya jaya jaya, jaya he!"

H *(Source—India 2004, A Reference Annual, published by Publications Division,*

Ministry of Information and Broadcasting, Government of India, p.22) A

The great poet Rabindranath Tagore had himself rendered the English translation of his poem which reads as under:-

> "Thou art the ruler of the minds of all people, dispenser of India's destiny. B
>
> Thy name rouses the hearts of Punjab, Sind, Gujarat and Maratha,
>
> Of the Dravida and Orissa and Bengal;
>
> It echoes in the hills of the Vindhyas and Himalayas, mingles in the music of Jamuna and Ganges and is chanted by the waves of the C Indian Sea.
>
> They pray for thy blessings and sing thy praise.
>
> The saving of all people waits in thy hand, thou dispenser of India's destiny. D
>
> Victory, victory, victory to thee."
>
> *(Source, India 2004, ibid, p.22)*

The song was first sung on December 27, 1911 at the Calcutta session E of the Indian National Congress. Ever since the date of its being adopted by the Constituent Assembly of India, the National Anthem has been sung throughout the length and breadth of India, by every patriot, every citizen and all people of this country. It has been sung even in places beyond India.

The Prevention of Insults to National Honour Act, 1971 (Act No. 69 of F 1971) enacted by the Parliament makes it an offence for whoever intentionally prevents the singing of the Indian National Anthem or causes disturbance to any assembly engaged in such singing. Article 51A of the Constitution of India, inserted by Forty-second Amendment, provides for it being the fundamental duty, amongst others, of every citizen of India to abide by the Constitution and respect its ideals and institutions, the National Flag and the G National Anthem. The Constitution of India, its ideals and institutions, the National Flag and the National Anthem have been treated almost on par. From the language of Clause (a) of Article 51A, it is clear that the National Anthem is an ideal and an institution for the Indian citizens. In *Re: Kerala Education Bill,* [1959] SCR 995, S.R. Das, Chief Justice, quoted a stanza H from the National Anthem as India sending out its message of goodwill to the

A world and thus the genius of India finding unity in diversity by assimilating the best of all creeds and cultures.

The petitioner is an advocate. He has filed this petition, claiming to be in public interest, invoking the extraordinary jurisdiction of this Court under Article 32 of the Constitution of India seeking a direction to the Union of B India to rectify the text of National Anthem and delete the word 'Sindh' therefrom. Earlier too, he had filed a similar petition, registered as W.P.(C) No.506/2004. When the matter came up for hearing on 20.9.2004, the Court was not inclined to entertain the petition. However, the petitioner insisted that the Government of India had the authority to alter the text of National C Anthem and therefore, a direction by the Court in that regard was called for. The petition was dismissed though the petitioner was allowed liberty of inviting the attention of the Central Government to the facts stated in the writ petition and such other material as may be with the petitioner. The petitioner did make a representation on 24.9.2004. On 3.12.2004, he once again filed this writ petition seeking the very same and the only relief as was sought for D earlier. The Court directed a notice to be issued to the respondent-Union of India for having its response.

While the Union of India has filed its response opposing the prayer made by the petitioner, there are a number of applicants seeking intervention in the hearing so as to oppose the writ petition. Some of the intervenors are E All India Sindhu Culture Society headed by a former Judge of the High Court, Rashtriya Sindhu Parishad headed by an Advocate, Sindhi Council of India A Registered Society, International Sindhi Forum, Sindhi Jagriti Sabha, Delhi Pradesh Sindhi Samaj and a few other similar institutions and representative bodies. A few individuals belonging to Sindhi or non-Sindhi F community have also sought for intervention. In substance, all the intervenors have offered their vehement opposition to the petition submitting that their feelings, first as an Indian and then as members of Sindhi community who love Sindhi as a language and also as a culture, have been hurt by the move of the petitioner. They have sought for the petition being dismissed.

G The stand taken by the Union of India is that the National Anthem is a highly emotive issue; any alteration/substitution in the National Anthem will distort the National Anthem and may give rise to several unnecessary controversies, while no fruitful object will be served. The National Anthem is not open to mutilation. The song is a literary creation which cannot be H changed. The National Anthem reflects our culture spread throughout the

length and breadth of India whether it is North, South, East or West. A

Having heard the petitioner appearing in-person, the learned Attorney General for the Union of India and the several counsel for intervenors led by Mr. Ram Jethmalani, Senior Advocate, and a few intervenors appearing in-person, we are satisfied that the petition is wholly devoid of any merit and is liable to be dismissed. The main plank of the *petitioner's* case is that the B geographical region known as '*Sindh*', was a part of India pre-partition (i.e. before 15th August, 1947) and ever since then it is not a part of India, and therefore, the use of the word 'Sindh' in the National Anthem is misplaced and deserves to be deleted for which an appropriate direction needs to be issued to the Union of India. In our opinion, the submission is misconceived C for very many reasons which we proceed to summarize herein below.

A National Anthem is a hymn or song expressing patriotic sentiments or feelings. It is not a chronicle which defines the territory of the nation which has adopted the anthem. A few things such as—a National Flag, a National Song, a National Emblem and so on, are symbolic of our national D honour and heritage. The National Anthem did not, and does not, enlist the states or regional areas which were part of India at the point of time when it was written. Nor is it necessary that the structure of the National Anthem should go on changing as and when the territories or the internal distribution of geographical regions and provinces undergoes changes. Very recently Uttaranchal, Chhattisgarh and Jharkhand have been carved out by reorganizing E certain states. Does it mean that the National Anthem should be enlarged, re-written or modified to include the names of these new states? The obvious answer is - no. The National Anthem is our patriotic salutation to our motherland, nestling between the Himalyas and the oceans and the seas surrounding her. The mention of a few names therein is symbolic of our F recollection of the glorious heritage of India. 'Sindh' is not just a geographical region. It refers to the place and to its people. Sindhis are spread throughout the country and they derive their such name as having originated and migrated from Sindh. 'Sindh' also refers to the river 'Sindhu' or 'Indus'. It also refers to a culture, one of the oldest in the world and even modern India feels proud of its having inherited the Indus Valley Civilisation as an inalienable part of G its heritage. River Indus (Sindhu) finds numerous references in the Indian Classical Literature including Rig Veda.

The National Anthem is the poem as it was written by *Rabindranath* Tagore. He himself had said that the five stanzas in which the poem was H

written is addressed to God. The poem is a reflection of the real India as a country—a confluence of many religions, races, communities and geographical entities. It is a message of unity in diversity. It is a patriotic song. It has since the decades inspired many by arousing their patriotic sentiments when sung in rhythm. It is the representative of the ethos of the country. Any classic, once created, becomes immortal and inalienable; even its creator may not feel like making any change in it. Any tampering with the script of the poem would be showing disrespect to the great poet—Rabindranath Tagore.

The hue and cry raised by the petitioner in his petition and also during the hearing at the Bar does not amount to raising any constitutional issue or canvassing any fundamental right for the enforcement of which the jurisdiction of this Court under Article 32 of the Constitution can be invoked. The issue is puerile. Shri Milon Banerjee, the learned Attorney General for India, submitted that the Union of India, a democratically elected popular Government is not in favour of making any alteration in or any tampering with a finely structured poem or song, which is the National Anthem. Every word placed therein is carefully in position in the whole composition. A suggestion seeking a substitution of words in the National Anthem would be "a bid to rob Tagore of his greatness". He further submitted that in any poetry the structure has some purpose other than to clarify the content. Poetry is more structured than prose. It is the structure which forces the author to be more creative; to find ways of saying things which do not disrupt the flow. The choice of words and the structure often provide a path for the reader to follow outside the flow of the theme and a good poet achieves interesting things by playing the flow through the content and off the content. The fabric of words is the creation of the author. A poem once popular, more so if adopted as a National Anthem, becomes symbolic of the feelings, ideas and images that have come to be associated in our minds with the words used by the author in structuring the poem and then the meaning of a word or a group of words reaches far beyond its dictionary definition. The learned Attorney General invited our attention to the book, "India's National Anthem" by *Prabodhchandra* Sen, published by Vishva Bharti, Calcutta in May 1949, wherein Mahatma Gandhi, the Father of the Nation, has been quoted as having said in a prayer discourse on 8th May, 1946 on the occasion of Rabindranath Tagore's Birth Anniversary about Jana Gana Mana—"It is not only a song but is also like a devotional hymn". The National Anthem has been given a tune. Its singing or playing takes 52 seconds.

The learned Attorney General read out the following passage from

"India's National Anthem" (ibid) which we feel inclined to quote verbatim for its value:

"THE MORNING SONG OF INDIA"

In the year 1919, during his tour of South India, Rabindranath spent five days at the Theosophical College, Madanapalle, at the invitation of Principal James H. Cousins. There he sang the song 'Janaganamana' at some function. The audience was very much moved by the tune and at their request he made an English translation of the song and called it 'The Morning Song of India'. The college authorities, greatly impressed by the tune and the lofty ideals of the song, selected it as their prayer song to be sung every morning before the day's work commenced. In a letter (23.7.34) Principal Cousins writes:

Every working morning Janaganamana is sung by hundreds of young people in our big hall. We want to extend its purifying influence by sending copies of it to other schools and colleges in India and by making it known abroad.

Later, in the year 1936, the translation mentioned above was printed in the Poet's own handwriting in the College Commemoration Volume and distributed widely, with a note that this 'would become one of the world's most precious documents.....From Madanapalle Janagana has spread all over India, and is admired in Europe and America.'

In the next year (1937), when a bitter controversy was raging throughout the whole country over the selection of India's National Anthem, Principal Cousins issued a statement to the Press (3.11.37) in which he stated:

My suggestion is that Dr. Rabindranath's own intensely patriotic, ideally stimulating, and at the same time world-embracing Morning Song of India (Janaganamana) should be confirmed officially, as what it has for almost twenty years been unofficially, namely, the true National Anthem of India."

Mr. Ram Jethmalani, the learned senior counsel leading the intervenors, severely criticized the conduct of the petitioner who has mentioned in the writ petition that the continued use of the word 'Sindh' in the National

A Anthem offends patriotic sentiments of the citizens of India and is offensive of sovereignty of the neighbouring country. He goes on to allege that the sentiments of 100 crore Indians can be soothened by correcting and updating the "National Anthem". The learned senior counsel posed the questions— Whose cause the petitioner is pleadingof the citizens of India or of a neighbouring country? Wherefrom does the petitioner gather an impression B and plead that he is espousing the cause of more than one billion people of India? The learned senior counsel was at pains to point out that ever since this petition was filed in the Court and notice was directed to be issued the Indian newspapers have been flooded with editorials and hundreds of 'letters to the editor' highlighting the sentiments of the people of India, and in C particular of *Sindhis* who have felt hurt by the move of the petitioner. There are several oppositions filed in the Court. There is not even one who may have spoken in support of the petitioner.

We find merit in the submissions made by the learned Attorney General for India and Mr. Ram Jethmalani, the learned senior counsel appearing for D the intervenors, and agree with the same.

We are satisfied that the petitioner is not entitled to the relief prayed for. The petition is wholly devoid of any merit. The petition is not in public interest. It is a petition which should never have been filed. It is more of the publicity interest litigation wherein the petitioner seems to have achieved his E purpose. To discourage the filing of such like petitions which result only in wasting the valuable time of this Court, we direct the petition to be dismissed with costs quantified at Rs. 10,000.

N.J. Writ Petition dismissed.