

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No.14697 of 2014

S.Mukachand Bothra (Deceased)

M.Gagan Bothra

... Petitioner

Vs.

1) The Central Government
Represented by
The Secretary,
Ministry of home Affairs
New Delhi

2) The Parliamentary Secretary
Parliament
New Delhi

3) The State of Tamil Nadu
Represented by
Secretary, Public (General 1) Department
Secretariat, Chennai

4) The Commissioner of police
Vepery, Chennai 8



5)The Director General of Police,
Kamarajar Salai, Mylapore,
Chennai -4.

...Respondents

(GAGAN BOTHRA, S/o. Late Shri S.Mukanchand Bothra, No.43,
Veerappan Street, Sowcarpet, Chennai 600 079. (P2 SUBSTITUTED
AS LR_s OF DECEASED SOLE PETITIONER VIDE ORDER DT
09.12.2021 MADE IN WMP.27834/2021 IN WP.14697/2014)

(R-5 THE DIRECTOR GENERAL OF POLICE, Kamarajar Salai,
Mylapore, Chennai -4. (R5 SUO MOTU IMPLEADED VIDE
ORDER DT 09.12.2021 MADE IN WP.14697/2014))

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to take necessary action as per the order dated 12.06.2013 passed by the Central Government against R.Anbarasu, who misused the National Emblem for his personal use and personal gain or any other orders

For Petitioner : Mr.M.Gagan Bothra
Petitioner in Person

For Respondents : Mr.V.Balasubramaniam
1 & 2 SPC

For Respondents : Mr.M.Rajendiran
3 to 5

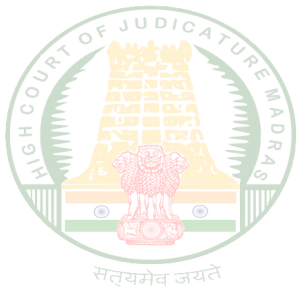


WEB COPY

ORDER

The Writ of Mandamus has been instituted to direct the respondents to take necessary action as per the order dated 12.06.2013 passed by the Central Government against Sri.R.Anbarasu, who misused the National Emblem for his personal use and personal gain or any other orders.

2. The original Writ Petitioner Mr.S.Mukanchand Bothra who filed the Writ Petition states that Mr.R.Anbarasu was misusing the Indian National Emblem as per “the Emblem and Names (Prevention of Improper Use) Act, 1950”. The said Anbarasu who was the Member of Parliament for two successful periods had used the Indian National Emblem for his personal gain to lodge a complaint against the original Writ Petitioner late, S.Mukanchand Bothra on 27.05.2006 to the Commissioner of Police in his letter pad, which contains the Indian National Emblem.



W.P.No.14697 of 2014

3. On the strength of the said complaint, though the complaints are false, the original petitioner was arrested and was in custody for a period of 21 days and thereafter he was released on bail. During the pendency of the Writ Petition, the writ petitioner died and his son Mr.M.Gagan Bothra impleaded himself and made a submission that an injustice had caused to his father. Therefore, he is interested in pursuing the matter as many such illegalities are being noticed and the Indian National Emblem and the Names of the Governments are misused on many occasions by many such persons. In view of the said submission and considering the importance involved, this Court thought fit to consider the issues raised by the petitioners.

4. In respect of the complaint given by Former Member of Parliament, Mr.Anbarasu, the original petitioner filed a quash petition before the High Court in Crl.O.P.No.6807 of 2007, and it was posted in the month of December 2012 and this Court quashed the FIR. After quashing the complaint dated 27.05.2006, the petitioner came to understand that the complaint itself was lodged by the Ex-Member of



W.P.No.14697 of 2014

Parliament Mr.Anbarasu in the letter pad containing the Indian

WEB COPY

National Emblem. Before that the petitioner had no occasion to see the copy of the complaint and he had no knowledge about the said complaint containing the Indian National Emblem. Thus, there was no delay in filing the Writ Petition.

5. As on 27.05.2006, the date of complaint Mr.Anbarasu was not a Member of Parliament and he was only an Ex- Member of Parliament. Thus, he was not supposed to use the Indian National Emblem as per Section 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950. In spite of the directions issued by the Central Government asking the State Government to take necessary action as per the provision, the State Government also failed to initiate any action against the Ex- Member of Parliament. Thus, the petitioner was forced to move the present Writ Petition.

6. The petitioner sent a representation to the Hon'ble Prime Minister of India on 25.03.2013 stating all the facts and circumstances. The Office of the Prime Minister had forwarded the



W.P.No.14697 of 2014

said complaint to the Home Secretary, Ministry of Home Affairs

WEB COPY

dated 02.05.2013 via PMO ID No.8/3/2013-PMP2/41550. The

Ministry of Home Affairs via No.13/1/2013-Public (Part I) had

forwarded the complaint to the Secretary, the Government of Tamil

Nadu vide its letter dated 12.06.2013 asking the State Government to

take action against the Ex- Member of Parliament, Anbarasu as per

the provisions of the Act and Rules. The said order was forwarded to

the Office of the 4th respondent / the Commissioner of Police,

Chennai, vide letter No.20477/Gen-1/2013/1 sent to PA/Crime dated

13.07.2013. However, no action had been taken by the State

Government as per letter dated 12.06.2013 regarding the misuse of

the Indian National Emblem by the Ex- Member of Parliament.

7. The petitioner who is the son of the original writ petitioner is serious in pursuing the matter as his father was victimized due to the misuse of Indian National Emblem by the Ex-Member of Parliament. The petitioner appearing as party in person has articulated his case by saying that usage of Indian National Emblem in letter pad by the Ex-Member of Parliament is prohibited



W.P.No.14697 of 2014

and without verifying these facts, the authorities had entertained the complaint and arrested his father and his father was in custody for 21 days. He has contended that his father was a financier in Cine field and when his father demanded return of loan, the dispute arose and by misusing the National Emblem his father was arrested.

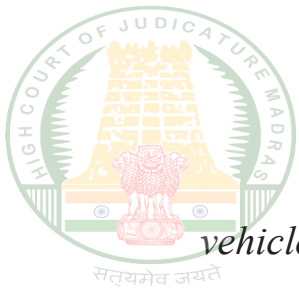
8. The petitioner has stated that very purpose of the enactment of the Emblems and Names (Prevention of Improper Use) Act, 1950, would become meaningless if such activities are allowed to continue. If the Ex-Dignitaries, Ex-Legislators and the Ex-Bureaucrats started using the Emblems in such a manner then the sufferer would be the common man. Therefore, the Court must take serious note of these facts and issue appropriate direction.

9. The petitioner in person relied on the notification issued by the Central Government formulating the rules, namely, the State Emblem of India (Regulation of Use) Rules, 2007. Under the said Rules, usage of Emblems are restricted and the Ex-Legislators cannot use the National Emblem either in their vehicle or in the letter pad or



elsewhere. However, the practice of using the National Emblem is continuing and many such Ex-Legislators and other Ex-Dignitaries are using the National Emblem and the name of the Government etc, for their personal gains. Therefore, appropriate directions are to be issued for initiation of action under the provisions of Act and Rules.

10. The petitioner in person further relied on the Interim orders passed by the High Court of Punjab and Haryana in C.W.P.PIL.No.78 of 2019 and connected matters, wherein, the High Court observed that *“During the course of hearing, it was brought to the notice of the Court by the learned amicus curiae that on Government vehicles/private vehicles, designations/description of offices/unauthorised emblems are displayed. Words like Court, Army, Police, Press etc. are written on private vehicles, which is not permissible under the law. Accordingly, the display of designation/description of offices/unauthorised use of emblems on Government/private vehicles is banned forthwith. Writing of words, like Court, Army, Airport/Navy Police, Press or any designation, like Chairman, Vice Chairman, on private vehicles and Government*



W.P.No.14697 of 2014

vehicles is prohibited forthwith. This direction be implemented by the

Chandigarh Administration within 72 hours. This direction shall also cover the Executive Officers as well as the Judicial Officers. It is made clear that only the ambulances/fire brigades, police patrols and any vehicle used for salvage are exempted“.

11. Relying on the said Judgement, the petitioner in person reiterated that such offenses being common, the Court should take note of the prevailing situation and consider the injustice caused to his late father and issue appropriate direction.

12. In view of the said statement, this Court has suo motu impleaded the Director General of Police, Kamarajar Salai, Mylapore, Chennai, for the purpose of responding to the issues raised by the petitioner with reference to the facts and circumstances. The Additional Commissioner of Police, Dr.J.Loganathan appeared in person and requested time for preparing status report. Accordingly, two weeks time was granted and the Additional Commissioner of Police, Headquarters, Greater Chennai Police filed a status report on



05.01.2022.

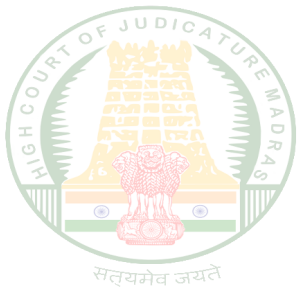
WEB COPY

13. The issue raised in the present Writ Petition is regarding an unauthorised usage of Emblems and Names and therefore it is relevant to consider the provisions of the Act and Rules in this regard.

14. The Emblems and Names (Prevention of Improper Use)

Act, 1950 (12 of 1950) was enacted by the Parliament as follows:

“Statement of Objects and Reasons.—The General Assembly of the United Nations Organisation recommended in 1946 that members of the United Nations should take necessary legislative or other appropriate measures to prevent the use, without proper authority, and in particular for commercial purposes, of the emblem, the official seal and the name of the United Nations and of the abbreviations of that name. A similar recommendation has since been received also from the World Health Organisation.”



W.P.No.14697 of 2014

15. Section 3 of the Act 12 of 1950 provides *Prohibition of*

WEB COPY

improper use of certain emblems and names. Accordingly, 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 of 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 such officer of Government as may be authorised in this behalf by the Central Government.

16. In exercise of powers conferred by Section 9 of the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950), the Central Government made the rules i.e., the Emblems and Names (Prevention of Improper Use) Rules, 1982.

17. Under Rule 3 of 1982 Rules, a designated Officer has to be appointed. Rule 8 of 1982 Rules deals with use of Emblems and Names contained in the schedule.



WEB COPY

18. Importantly, the Act 50 of 2005 has to be considered by this Court. The State Emblem of India (Prohibition of Improper Use) Act, 2005, (50 of 2005) was enacted by the Parliament in the fifty sixth year of the Republic of India as follows:

Statement of Objects and Reasons.—The use of State Emblem of India is presently governed by a set of executive instructions, which cover various aspects, such as, standard design of the State Emblem of India, its adoption by the State Governments, its use in the official seals and on stationery, design of official seal, display on vehicles and on public buildings, use for educational and various other purposes, etc. However, these instructions or orders do not have any legal sanction. The State Emblem of India being the official seal of the Government, its use on any document or thing tends to create an impression that it is an official document or thing of the Government. Therefore, there is a need to prevent its misuse by unauthorised persons.



WEB COPY

In order to regulate the use of State Emblem of India with a view to

(i) prohibiting the use of the State Emblem of India by members of the public, including retired /former Government officials/public servants, etc., unless specifically authorised by the Central Government;

(ii) prohibiting the improper use of State Emblem of India for professional and commercial purposes and for matters connected therewith or incidental thereto; and

(iii) regulating its use by Government functionaries, it is proposed to enact a self-contained legislation.

With the above objects, the Parliament enacted the Act 50 of 2005, which is relevant to deal with the issues raised in the present Writ Petition.

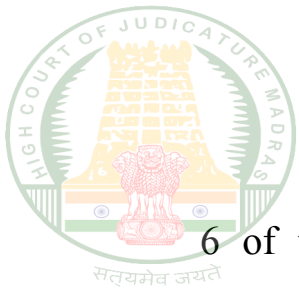


WEB COPY

19. Section 2 (b) of the Act 50 of 2005 defines "*emblem*" means the State Emblem of India as described and specified in the Schedule to be used as an official seal of the Government.

20. Section 3 of the Act 50 of 2005 in clear terms contemplates that, 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 to Section 3 of the Act 50 of 2005 states that "For the purposes of this section, "person" includes a former functionary of the Central Government or the State Governments.

21. Section 4 of the Act 50 of 2005 deals with Prohibition of use of emblem for wrongful gain. Section 5 of the Act 50 of 2005 defines Prohibition of registration of certain companies, etc.,. Section



W.P.No.14697 of 2014

6 of the Act 50 of 2005 deals with General powers of Central Government to regulate use of emblem. Section 7 of the Act 50 of 2005 provides penalty.

22. Sub-Section (1) to Section 7 of the Act 50 of 2005 enumerates that *"Any person who contravenes the provisions of section 3 shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, or if having been previously convicted of an offence under this section, is again convicted of any such offence, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which shall not be less than six months, which may extend to two years and with fine which may extend to five thousand rupees"*.

23. Section 8 of the Act 50 of 2005 contemplates Previous sanction for prosecution. Accordingly, no prosecution for any offence punishable under this Act shall be instituted, except with the previous sanction of the Central Government or of any officer



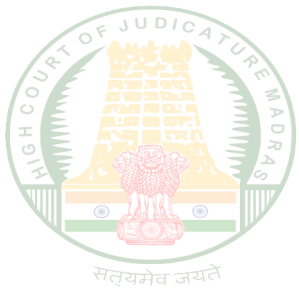
W.P.No.14697 of 2014

authorised in this behalf by general or special order of the Central Government.

24. Section 11 of the Act 50 of 2005 provides Power to make rules. Sub-Section 1 to Section 11 states that the Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of the Act 50 of 2005.

25. The Schedule to the Act 50 of 2005 provides Description and Design of State Emblem of India.

26. In exercise of powers conferred under Section 11 of the Act 50 of 2005, the Central Government issued the State Emblem of India (Regulation of Use) Rules, 2007. Rule 4 of the 2007 Rules provides Adoption by States or Union territories. Sub Rule (1) of Rule 4 provides that State Government may adopt the emblem as the official Emblem of the State or the Union territory, as the case may be, without obtaining the approval of the Central Government.



W.P.No.14697 of 2014

27. Sub Rule (2) of the Rule 4 contemplates that, where a

State Government proposes to incorporate the emblem or any part thereof in the Emblem of that State or Union territory, as the case may be, it shall do so after obtaining the prior approval of the Central Government and shall get the design and layout approved by the Central Government. Provided that where a State Government has already incorporated the emblem or part thereof in the Emblem of that State or Union territory, as the case may be, prior to the coming into force of these rules, it may, subject to the other provisions of these rules, continue to use the emblem.

28. Rule 5 of the 2007 Rules contemplates use in Official seals. The use of the emblem in official seal shall be restricted to the authorities specified in Schedule I.

29. Rule 6 of the 2007 Rules denotes use of stationery. The use of the emblem on official or demi-official stationery shall be restricted to the authorities specified in the Schedule I aforesaid. Sub-

Rule (2) to Rule 6 states that the emblem, when printed or embossed



on official or demi-official stationery, shall appear prominently on the middle of the top of such stationery.

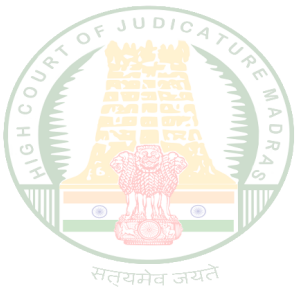
WEB COPY

30. Rule 7 of the 2007 Rules provides Display on vehicles. The use of the emblem on vehicles shall be restricted to the authorities specified in Schedule II. Rule 8 states Display on public buildings. Rule 9 deals with use for various other purposes.

31. Rule 10 of the State Emblem of India (Regulation of Use) Rules, 2007, reads as follows:

"10. Restriction on the use of the emblem.—(1) No person (including former functionaries of the Government, like, former Ministers, former Members of Parliament, former Members of Legislative Assemblies, former Judges and retired Government officials), other than those authorised under these rules, shall use the emblem in any manner.

(2) No Commission or Committee, Public Sector



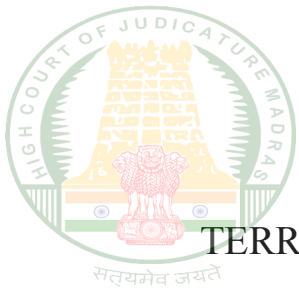
WEB COPY

Undertaking, Bank, Municipal Council, Panchayat Raj Institution, Parishad, Non-Government Organisation, University, other than those authorised under these rules, shall use the emblem in any manner.

(3) No association or body of persons, whether incorporated or not, shall use the emblem on their letter-heads, brochures, seats, crests, badges, house flags or for any other purpose in any manner.

(4) The stationery, including letter-heads, visiting cards and greeting cards, with emblem printed or embossed on it, shall not bear words, like, Advocate, Editor, Chartered Accountant with the name of the person authorised to use the emblem under these rules on the stationery.

32. **Schedule I** with reference to Rules 5 and 6 provides
 CONSTITUTIONAL OR STATUTORY AUTHORITIES,
 MINISTRIES OR DEPARTMENTS OF THE CENTRAL
 GOVERNMENT, STATE GOVERNMENTS OR UNION



W.P.No.14697 of 2014

TERRITORY ADMINISTRATIONS AND OTHER
GOVERNMENT FUNCTIONARIES WHICH MAY USE THE
EMBLEM.

33. **Schedule II – Part I** to Rule 7 stipulates
CONSTITUTIONAL AUTHORITIES AND OTHER DIGNITARIES
WHICH MAY **DISPLAY THE EMBLEM ON THEIR CARS**

34. **Schedule II – Part II** stipulates AUTHORITIES
WHICH MAY DISPLAY THE ASHOKA CHAKRA (WHICH IS
PART OF THE EMBLEM) ON TRIANGULAR METAL PLAQUES
ON THEIR CARS.

35. **Schedule III** with reference to Rule 9 deals with
OTHER PURPOSES FOR WHICH EMBLEM MAY BE USED.

36. Let us now consider the issue, *whether the Act of the
Parliament has been implemented by the authorities of the State
Government of Tamil Nadu or not.* In this regard, it is necessary to



go into the status report filed on behalf of the respondents 4 and 5.

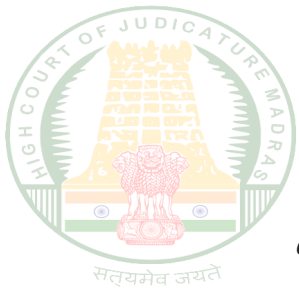
WEB COPY

37. The report of the 4th and 5th respondents state that the High Court has issued directions regarding the usage of number plates in vehicles and unauthorised use of LED lights and colouring lights on vehicles, wherein, usage of tinted glasses on vehicles were prohibited and fixing of portraits / photos / dashboard were also prohibited. In this regard, the status report reveals the number of cases registered for unauthorised usage.

38. The report further suggest the following guidelines:

a) *Since offence under section 7 of the State Emblem of India (Prohibition of Improper Use) Act, 2005 is a non —cognizable offence, permission from the concerned Jurisdiction Magistrate to be obtained to register case against the violators.*

b) *Misuse of stickers by way of sticking on the vehicle number plates, a case under the category of defective number plate as per section 177 r/w Rule No.50*



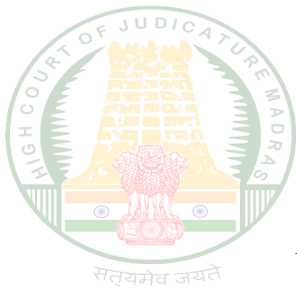
WEB COPY

and 51 of the Motor Vehicle Act, 1989 and Central Motor Vehicle Rules, 1989 to be registered.

C) If any alteration is made on Motor Vehicle without the approval of registering authority, case under section 52 r/w 177 of the Motor Vehicle Act, 1989 shall be registered and any alteration made on the vehicle can be removed. As per the section, “alteration” means a change in the structure of a vehicle which results in a change in its basic feature.

d) If any person who pretends to hold any office as public servant or falsely impersonating any other person holding such office shall be charged under Section 170 & 171 IPC.

e) Any violations to the instruction given in G.O.Ms.No.739, Public (General-I) Department, dated 18.08.1994 and amendment vide G.O.Ms.No.871, Public (General-I) Department dated 20.12.2019 regarding the use of Tamil Nadu Government State Emblem by the Officials of the State, Cases under section 7 of State



Emblem of India (Prohibition of Improper Use) Act, 2005

WEB COPY shall be registered by following proper procedure

39. This Court is of the considered opinion that with reference to the implementation of the provisions of the Central Motor Vehicles Act, 1989, the competent authorities are initiating action and cases are also registered. With reference to the persons pretends to hold any office as public servants or falsely impersonating any other person holding such office shall be charged under Section 170 & 171 of IPC, however, there is no mention regarding the registration of cases, more specifically, under the provisions of the Act 50 of 2005 and the Rules framed thereunder.

40. Further, not even a single case has been registered under the provisions of the State Emblem of India (Prohibition of Improper Use) Act, 2005 and the Rules framed thereunder. Even in the cases of impersonation, the cases are registered only under Section 170 and 171 of the IPC and the authorities miserably failed to register any case under the Act 50 of 2005.

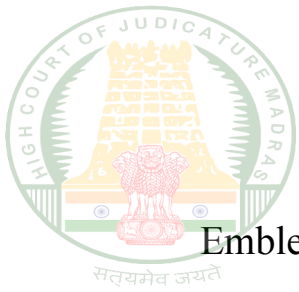


WEB COPY

41. In this context, the status report is blank and no particulars are provided. Thus, this Court has to consider the issues specifically raised in the present Writ Petition.

42. In respect of registration of cases under the Motor Vehicles Act and Indian Penal Code, the law enforcing agencies are registering cases. However, they are not registering cases under the provisions of the State Emblem of India (Prohibition of Improper Use) Act, 2005 wherein, Section 7 contemplates penalty by stating that any person who contravenes the provisions of Section 3 shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees, or with both.

43. The importance of the provisions of the Act 50 of 2005 and Rules of the year 2007 have not been taken into consideration by law enforcing authorities and other competent authorities. The Act comprehensively provides the usage and prohibition of National

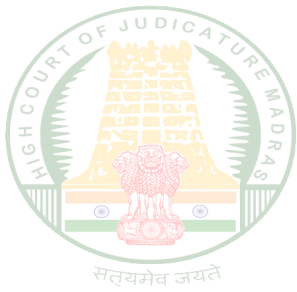


W.P.No.14697 of 2014

Emblem, Names etc., The Schedule to the Act and Rules also elaborates the manner in which the Emblems are to be used and the Dignitaries who all are authorised to use the National Emblem, Tricolours etc., The prescriptions are accurate, but the authorities are not sensitised.

44. In the case of *Sable Waghire & Company and others reported in MANU/SC/0056/1975*, the Hon'ble Supreme Court had an occasion to consider the validity of Sections 3, 4 and 8 of the Emblems and Names (Prevention of Improper Use) Act, 1950. The Apex Court made the following observations in paragraph nos.19 and 20 of the said Judgement as follows:

“19. There is also no merit in the contention that section 3 and 4 violate the provisions of Article 19 (1) (f) and (g) of the Constitution. The petitioners' right to trade in bidis is not at all interfered with by the legislation. Section 3 in terms provides for enabling the affected persons to adjust their business or affairs inasmuch as the Central Government can permit some



WEB COPY

time to alter their emblems, designs, etc. to carry on with their trade. Indeed in the present case the petitioners on their own application obtained an extension of time presumably under [section 3](#) of the Act and, therefore, cannot complain on that score. There is built-in safeguard in [section 3](#) itself for mitigating any hardship to persons or any rigor of the law. The provisions are accordingly regulatory in nature and even, if at all, impose only reasonable restrictions on the exercise of the petitioners' right under [Article 19 \(1\) \(f\) and \(g\)](#). [Section 4](#) is a consequential provision and validly co-exists with [section 3](#).

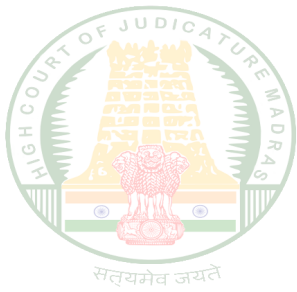
20.It is also contended by the petitioners that no rules have been framed under [section 9](#) of the Act which make the same unworkable. We are not impressed by this argument. From the scheme and machinery of the Act there is nothing to indicate that absence of rules will make the Act unworkable. The submission is devoid of substance.



WEB COPY

45. The learned Senior Central Government Standing Counsel brought to the notice of this Court that even the nationalised Bank officials are using the Government of India Emblem and Name in their vehicles and in letter pads. The usage of National Emblem / State Emblem / Department Names by the Bank officials unless authorised under the Act is prohibited. All such unauthorised usages are to be prevented and they must be informed that all such Emblems, names etc., are to be removed from their vehicles, buildings etc., In the event of any violations, those Bank Officials or the officials of any Public institution, Government undertakings including all Commissions etc., must be prosecuted.

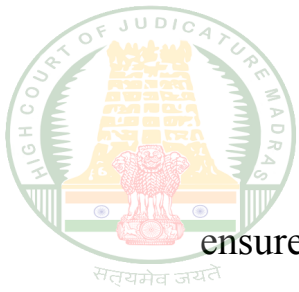
46. The consequences of non-implementation are to be considered by this Court. The Court cannot close its eyes in respect of the misuse of National Emblem, State Emblem and Names of the Government, etc., by the persons who all are not authorised to use such Emblem and Names, etc., either in their vehicle or elsewhere.



W.P.No.14697 of 2014

47. The State Emblem, Names of the Government, Names of the Departments are displayed in private vehicles in an unauthorised manner to avoid actions for violation of traffic rules, etc,. Many persons including employees are using the Emblems, Names, Stickers etc., to escape from the criminal liabilities. Offenders are misusing the Emblems, Names etc., for the purpose of fleeing away from the scene of occurrences or otherwise. Many such criminal activities are noticed by affixing the State Emblem, Name of the Departments etc., in the vehicles. The Police authorities and the competent authorities of the Government are unable to nab those persons immediately on account of the display of such Emblems, Names of the Departments etc., in the vehicles.

48. On many occasions, it would be difficult for the investigating authorities to get back those offenders after allowing them to escape from the clutches of law. Thus, serious repercussions and consequences are involved on account of misuse of Emblems, Names etc,. Any form of misuse would cause greater prejudice to the interest of the public at large. Therefore, the Courts are bound to



W.P.No.14697 of 2014

ensure that the implementation of the Act and the Rules are done scrupulously by the authorities competent and the Police authorities.

49. No doubt, offences under Section 3 of the Act 50 of 2005 is non-cognizable offence. As per Section 7 of the Act, the maximum punishment is only two years of imprisonment. However, in the Criminal Procedure Code, as per First Schedule, classification of offences against other laws was the offence being punishable with imprisonment for not less than 3 years which becomes non-cognizable. Section 8 of the Act contemplates previous sanction for prosecution. Accordingly, previous sanction must be obtained from the competent authorities for prosecuting a person.

50. The Act 50 of 2005 contemplates suo motu registration of complaint by the competent authorities / Police authorities. It need not be through de-facto complainant. A complaint can be registered on information from any person. It is needless to state that the police constable on duty can provide informations to the Jurisdictional authorities, who inturn is bound to verify the facts and details and

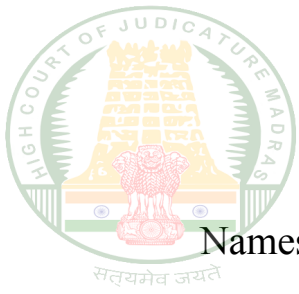


W.P.No.14697 of 2014

accordingly register the case under the Act. Therefore, suo motu registration being contemplated under the provisions of the Act, the law enforcing authorities on duty must be sensitised with reference to the Act for its effective implementation. Public awareness programmes are to be conducted.

51. Any Police official on duty ordinarily witnessing such offences, is mandated to provide information to the jurisdictional Police authorities for registration of complaint. Complaint has to be registered by conducting initial verification / investigation. Therefore, it is important to sensitise the law enforcing officials so as to ensure that the Act is implemented effectively to achieve its purpose and object.

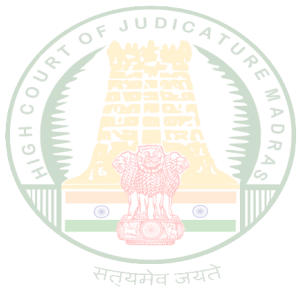
52. The very idea of misuse of Emblems, Flags, Symbols, Names, Stickers etc., are to escape from the penal actions by the law enforcing authorities. Therefore, implementation of the Act and Rules are of paramount importance in order to minimise the commission of offences by unauthorisedly using such Emblems,



W.P.No.14697 of 2014

Names, Flags, Stickers etc,. The very statement of object and reasons of the Act itself enumerates that the enactment was made to prevent misuse. Therefore, implementation of the Act and Rules are vital for the purpose of prevention of crimes, commission of offences and violations etc,. Unfortunately, the Act and Rules are not at all implemented by the competent authorities. It is painful to record that not even a single case has been registered in the entire State of Tamil Nadu, under the provisions of the Act and Rules. This being the situation, an urgent actions are imminent considering the growing tendency of misuse of Emblems, Stickers, Names, Government Symbols etc., in vehicles, buildings, letter pads etc,.

53. In this regard no complaint in writing is required for enforcement of the provisions of the Act 50 of 2005 and the Rules framed thereunder and the Act does not mandate any such written complaint or otherwise. When suo motu complaint is contemplated, then any source of information would be sufficient to conduct a preliminary investigation and for initiation of appropriate action.

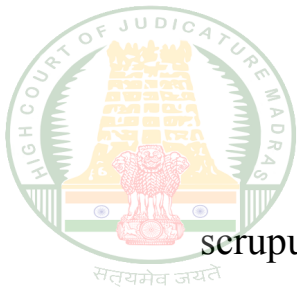


W.P.No.14697 of 2014

54. The present situation witnessed by the people at large in public roads and in public places and institutions are that several persons are unauthorisedly using the Emblems, Government Names, Departments Names etc., Rule 10 of the State Emblem of India (Regulation of Use) Rules, 2007 specifically contemplates that no person including formal functionaries of the Government, like, former Ministers, former Members of Parliament, former Members of Legislative Assemblies, former Judges and retired Government Officials other than those authorised under these rules, shall use the emblem in any manner.

55. However, it is brought to the notice of this Court that many persons, who all are not holding the public offices are misusing the Emblems, Names etc., All such activities are to be prevented in the interest of public as such usage will create an impression as if they are holding an office and on many occasions, misuse would be an impediment to the competent authorities for initiation of action in the event of commission of any traffic offences and violations.

Therefore, all such misuse must be prevented and has to be regulated



W.P.No.14697 of 2014

scrupulously in accordance with the provisions of the Act and Rules framed thereunder.

WEB COPY

56. Pertinently Public servants even the last grade servants / officials are using department Names, Emblems etc., in their vehicles. More specifically, people are commonly witnessing that in vehicles including two wheelers, names of the **Secretariat, High Court, Police, Press, Government and its undertakings** and other Department names are displayed mainly with an idea to escape from the Traffic offences and Violations. Many associations or body of persons are also using their Emblem in a bold manner for the purpose of threatening the common man and the law enforcing authorities, mostly with an ill motive to escape from the clutches of law.

57. Authorised usage of Emblems, Names etc., under the provisions of the Act has got a specific purpose and object. For effective and efficient public administration, usage of Emblems is required and moreso, for developing a transparency in performance of public services. The people of this great nation must know the



W.P.No.14697 of 2014

performance of public duties by the public officials and they must be

WEB COPY

in a position to avail the services of the public servant, whenever needed and therefore, usage of Emblems, Names etc., are restricted only to the authorised public vehicles. Usage of Emblems, Names etc., is prohibited for private vehicles.

58. Therefore, effective implementation of the provisions of the Act is more important for effective public administration and for upholding the constitutional mandates. Thus, the non-implementation of the Statutes leads to several adverse and disastrous consequences.

59. It is contended before this Court that many criminals are escaping from the clutches of law and many traffic offenders are abusing the Emblems, Names etc., by affixing the same in an unauthorised manner in their vehicle, letter pads etc,. When such practices are allowed, naturally any person who is not authorised for such usage is tempted to use, as law enforcing authorities are failing in their duty to implement the provisions of the Act. When there is lack of implementation, the same would encourage the violators to



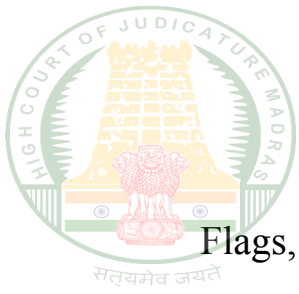
W.P.No.14697 of 2014

continue to commit the offence and further will lead to misuse by many persons and the consequences, no doubt, would be disastrous.

Therefore, it is of paramount importance that the Act is to be implemented forthwith and the offenders are prosecuted.

60. It is most unfortunate that even few former Constitutional Authorities and Ex-Legislators are misusing the Emblems, Flags, Names etc., by affixing in their vehicles and in letter pads. The constitutional authorities while holding office and after demitting the office are expected to maintain good conduct at all circumstances. The Oath of Office taken by the Constitutional Authorities under Indian Constitution is not only for the tenure, but for lifetime. The Oath taken to uphold sovereignty and integrity of India and maintaining confidentiality and performance of duties are not only restricted to the term of office as it involves many constitutional duties and obligations to protect the sovereignty and integrity of India.

61. Let us now consider the misuse of Symbols, Seals,

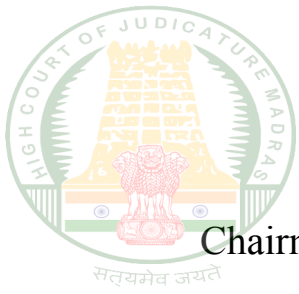


W.P.No.14697 of 2014

Flags, Emblems, Names etc., by many other Executives, Bureaucrats

and other persons. It is commonly witnessed in the public domain that many officials like Chairman, Vice-Chairman of various Commissions are affixing the Emblems, Names, etc., in their vehicles and in the offices or otherwise. Unless such usage is authorised under the provisions of the Act, it is prohibited and actions are to be initiated.

62. In the absence of any authorisation under the provisions of the Act and Rules, the usage must be prevented as there is a specific prohibition under the Act. Therefore, no former functionaries, like former Members of Parliament, former Members of Legislative Assembly, retired officials of Commissions or Committees, Public Sector Undertakings, Banks, Panchayati Raj Institutions, Parishads, Non-Government Organisations, Universities are authorised to use the Symbols, Emblems, Stickers, Flag, Names of the Institution or Government Names, etc., in their vehicles or in their letter pads or in the buildings. For any such usage, prior approval under the provisions of the Act is mandatory. But unfortunately



W.P.No.14697 of 2014

Chairman, Vice-Chairman, Secretaries of Commissions,

WEB COPY

Organisations, Public Sector Undertakings, Banks, Municipal

Councils etc., are misusing the Emblems, Names, Flag etc., and

affixing the Emblems, Names, Flag etc., both outside the vehicle and

in the dashboard of the vehicle. The very idea and conduct itself

cannot be appreciated by this Court.

63. As of now, the police authorities and the other competent authorities are totally insensitive with regard to the implementation of the provisions of the Act and the Rules framed thereunder. Not even a single case has been registered despite the fact that many such offences and violations are noticed by public at large in public roads, institution, buildings etc., Thus, immediate implementations are imminent and warranted.

64. Though, the Writ petitioner is able to establish that the National Emblem has been misused by the Ex-Member of Parliament for the purpose of registering a complaint against the original writ petitioner, no relief needs to be considered as the original Writ



W.P.No.14697 of 2014

Petitioner died. Considering the inaction on the part of the State

WEB COPY

Government with reference to letter issued by the Ministry of Home

Affairs to the Government of Tamil Nadu dated 12.06.2013, this

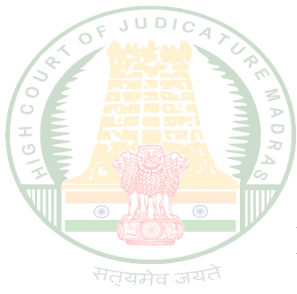
Court has considered the issues raised by the petitioner and is inclined

to pass the following orders:

(i) The 5th respondent / the Director General of Police, Tamil Nadu is directed to issue wide publications through Visual Media and Press Media, providing an opportunity to all concerned to remove all kind of unauthorised usage of Flags, Emblems, Names, Symbols, Stickers, Seals, etc., within a period of one month, from the date of such publication.

(ii) The 5th respondent is directed to register cases under the provisions of the Act, on expiry of the said period of one month and prosecute the offenders by following the procedures as contemplated under law.

(iii) The respondents 3 to 5 are directed to sensitise the competent authorities / Police officials for the purpose of securing informations regarding misuse of

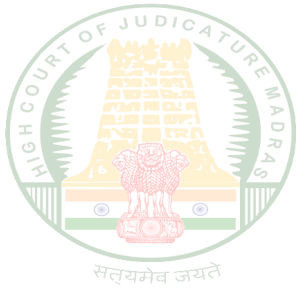


WEB COPY

Flags, Emblems, Stickers, Names, etc., and in the event of any violation on the part of the law enforcing officials strict actions are to be taken against such officials, for dereliction of duty.

(iv) The 5th respondent is directed to instruct the Subordinate Police officials across the State of Tamil Nadu to register cases under the provisions of the Act and Rules, in the event of receiving information from any person and by verifying / investigating the genuinity of the informations and complaints.

(v) The 5th respondent / the Director General of Police, Tamil Nadu is directed to issue appropriate circular / instructions for implementation of Act and Rules, to all the Subordinates / Police officials, within a period of two weeks from the date of uploading of this order copy in the official website of the High Court. The instructions to be issued shall contain the procedures to be followed for registration of cases by the competent authorities, in consonance with the Act and Rules.



WEB COPY

65. With the above directions, the Writ Petition stands disposed of. No costs.

66. List the case under the caption "*For Reporting Compliance*" on 21.01.2022.

05.01.2022

kan

Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order



WEB COPY

To

1) The Central Government
Represented by
The Secretary,
Ministry of home Affairs
New Delhi

2) The Parliamentary Secretary
Parliament
New Delhi

3) The State of Tamil Nadu
Represented by
Secretary, Public (General 1) Department
Secretariat, Chennai

4) The Commissioner of police
Vepery, Chennai 8

5) The Director General of Police,
Kamarajar Salai, Mylapore,
Chennai -4



WEB COPY

WWW.LIVELAW.IN



W.P.No.14697 of 2014

S.M.SUBRAMANIAM, J.

kan

W.P.No.14697 of 2014

05.01.2022