

(2025) 01 CAL CK 1722
In the Calcutta High Court, Appellate Side
Case No : W.P.A. No. 1390 Of 2025

All India Secular Front (ISF) & Anr

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 20-01-2025

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)(a), 19(1)(b)

Citation : (2025) 01 CAL CK 1722

Hon'ble Judges : Tirthankar Ghosh, J

Bench : Single Bench

Advocate : Firdous Shamim, Gopa Biswas, Sampriti Saha, Swati Dey, Rishabh Ahmed Khan, Kishor Datta, Swapan Banerjee, Sumita Shaw, Diptendu Narayan Banerjee, Soumen Chatterjee, Tirupati Mukherjee

Final Decision : Disposed Of

Judgement

Tirthankar Ghosh, J

The petitioners being a registered political party have approached this Court pursuant to a permission being rejected by the Joint Commissioner of Police (HQ), Kolkata Police in respect of the prayers advanced by them for observing its 5th inauguration day at Shahid Minar Maidan, Kolkata. The petitioners informed the police authorities that they have been granted necessary clearances from the Military Authorities for using Shahid Minar Maidan on 21st January, 2025. However, in response to the permission sought for on 4th of January, 2025, by a communication dated January 14, 2025, the Joint Commissioner of Police was pleased to pass the following orders:

"With reference to your email dt. 04.01.2025 reg. public meeting at Shahid Minar Maidan, Kolkata on 21.01.2025, this is to inform that your schedule programme cannot be allowed keeping in mind the history of violence that happened during your programme on 21/01/2023 at Rani Rasmoni Avenue (R.R. Avenue), Kolkata where more than 2000 members/ supporters of your Party gathered and held the

meeting and after the meeting at R.R. Avenue, at around 16.00 hrs., your supporters assembled at Dorina crossing and sat down blocking the S.N. Banerjee Road & J.L. Nehru Road. They blocked the road for a considerable period and refused to lift the blockade. Police personnel tried to lift the road blockade but to no effect. Your supporters assaulted police personnel with lathi, bam, sticks, brickbats, glass bottles etc. and also damaged private and Govt. properties.

It should also be noted that there is an International Cricket Match on 22.01.2025 at Eden Gardens for which the adjacent areas of your proposed programme will be barricaded for Car Parking and spectators' movement.

However, you may hold your programme at any indoor venue.”

Without going into the details of the contentions advanced in the writ petition, I find that earlier in the year 2024, the petitioners preferred an application being WPA 1196 of 2024, wherein, a Co-ordinate Bench was pleased to allow the petitioners to hold such meeting at the venue on their foundation day i.e., 21.01.2024 at the stipulated time stated over there. Being aggrieved State preferred an appeal being MAT 148 of 2024 with I.A. CAN 1 of 2024, wherein, the Hon’ble Division Bench was pleased to modify the order to the extent that the venue be changed from a place in front of the Victoria House to Netaji Indoor Stadium, Kolkata.

The grounds so assigned by the Hon’ble Division Bench presided over by the Hon’ble the Chief Justice as is reflected in the following paragraphs are set out below:

“5. It is not in dispute that the convenor is an accused in the criminal case and he was in judicial custody for 40 days and now he has been enlarged on bail.

6. Given the fact situation, the violence has erupted on 21st January, 2023 being not in dispute, it is immaterial whether the violence occurred during the meeting or after the meeting and it is an admitted fact that violence had occurred and certain policemen are also said to have been injured. Further, in the order dated 13th January, 2024, the other three programmes, which were stated to be conducted in the vicinity have also been mentioned. Out of the three programmes, one is the Kolkata Police Marathon, which is to be held in which 25,000 participants are to participate in the programme.

7. Undoubtedly, a marathon is more important than having these rallies and meetings. If 25000 participants are expected to participate, it goes without saying that the participants will arrive at the venue much before the marathon would begin.

8. Therefore, we are of the view that the respondents/writ petitioners has to choose a different venue in stead of the venue viz., in front of Victoria House.”

Mr. Samim, learned advocate appearing for the petitioners, submits that the

same grounds which were the foundations of rejecting the permission in the year 2024 have been emphasized by the State in refusing the permission in the present year by the order dated 14th January, 2025.

Learned advocate, to that extent, has also referred to an Exception which was filed in the year 2024 in response to the police report which was filed. It has also been contended that the order passed by the Hon'ble Division Bench emphasized much more on the Kolkata Police Marathon which was fixed for twenty five thousand participants, but it was never the intention of the Hon'ble Court to deprive the rights vested by the Constitution to the petitioners and, as such, the venue was shifted from in front of the Victoria House which is an open space to an indoor stadium.

Learned advocate has also relied upon the bail orders to emphasize that, in fact, the persons who were implicated were granted bail because specific materials were not available against them and the bail orders were passed after perusal of the Case Diary.

Mr. Dutta, learned Advocate General, opposes the contentions advanced by the petitioners and also submits that the history of violence of the petitioner/political party is eminent as in the year 2023 they have resorted to the violence and not only caused destruction to the public and private properties at the heart of the city after the programme was over but also assaulted public servants which resulted in physical injuries, especially the police authorities who were deployed. Some of the individuals who were portfolio holders of the petitioners were arrested and four criminal cases had to be registered being New Market Police Station Case No. 12 of 2023; Hare Street Police Station Case No. 17 of 2023; Kolkata Leather Complex Police Station Case No. 12 of 2023 and, Kolkata Leather Complex Police Station Case No. 13 of 2023.

Learned Advocate General emphasized that the right to protest, conduct rallies and demonstrations, although, enshrined in the fundamental rights, but are subject to regulations and restrictions. According to the State, the petitioner/political party conducted themselves in such a manner in the year 2023 that the same leaves a scar which cannot be balanced by way of exercising fundamental rights or be considered to be any form of democratic rights to be exercised.

State has also drawn the attention of the Hon'ble Division Bench's order where the Hon'ble Division Bench referred to the period of custody of the convenor of the petitioners for about 40 days and also took into account the violence which erupted on 21st January, 2023 irrespective of the fact that whether it was during the meeting or after the meeting.

The attention of the court has been drawn to paragraphs 16 and 17 of the judgement of the Hon'ble Supreme Court in Amit Sahni (Shaheen Bagh, In Re) – vs- Commissioner of Police and Others reported in (2020) 10 SCC 439, which are as follows:

"16. India, as we know it today, traces its foundation back to when the seeds of protest during our freedom struggle were sown deep, to eventually flower into a democracy. What must be kept in mind, however, is that the erstwhile mode and manner of dissent against colonial rule cannot be equated with dissent in a self-ruled democracy. Our constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties. Article 19, one of the cornerstones of the Constitution of India, confers upon its citizens two treasured rights i.e. the right to freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully without arms under Article 19(1)(b). These rights, in cohesion, enable every citizen to assemble peacefully and protest against the actions or inactions of the State. The same must be respected and encouraged by the State, for the strength of a democracy such as ours lies in the same. These rights are subject to reasonable restrictions, which, inter alia, pertain to the interests of the sovereignty and integrity of India and public order, and to the regulation by the police authorities concerned in this regard. [See Ramlila Maidan Incident, In re, (2012) 5 SCC 1 : (2012) 2 SCC (Civ) 820 : (2012) 2 SCC (Cri) 241 : (2012) 1 SCC (L&S) 810] Additionally, as was discussed in Mazdoor Kisan Shakti Sangathan case [Mazdoor Kisan Shakti Sangathan v. Union of India, (2018) 17 SCC 324] , each fundamental right, be it of an individual or of a class, does not exist in isolation and has to be balanced with every other contrasting right. It was in this respect, that in this case, an attempt was made by us to reach a solution where the rights of protestors were to be balanced with that of commuters.

17. However, while appreciating the existence of the right to peaceful protest against a legislation (keeping in mind the words of Pulitzer Prize winner, Walter Lippmann, who said "In a democracy, the opposition is not only tolerated as constitutional, but must be maintained because it is indispensable"), we have to make it unequivocally clear that public ways and public spaces cannot be occupied in such a manner and that too indefinitely. Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone. The present case was not even one of protests taking place in an undesignated area, but was a blockage of a public way which caused grave inconvenience to commuters. We cannot accept the plea of the applicants that an indeterminable number of people can assemble whenever they choose to protest. K.K. Mathew, J. in Himat Lal case [Himat Lal K. Shah v. State, (1973) 1 SCC 227 : 1973 SCC (Cri) 280] had eloquently observed that : (SCC p. 248, para 70)

"70. ... Streets and public parks exist primarily for other purposes and the social interest promoted by untrammelled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion."

There are other issues which have been canvassed by the petitioners and

resisted by the State. However, without elaborating on the other issues concerned and having taken into account the order dated January 14, 2025 vis-à-vis the directions passed by the Division Bench presided by the Hon'ble the Chief Justice in MAT 148 of 2024, I find that in the year 2024 itself in paragraph 9, it has been recorded that State offered Netaji Indoor Stadium to the petitioners for conducting the meeting. In the communication dated January 14, 2025, State has also allowed the petitioner to hold the programme at an indoor venue.

The petitioner is a political party registered under the relevant provisions of the Act and, as such, they are entitled to reach the people. Thus, the indoor venue may not be commensurate with an organization, particularly a political party and the purpose for which they have been espousing their cause.

One of the peculiarities which is observed in the communication dated January 14, 2025 is that the conduct of the petitioners and/or their sympathisers and/or the members in the year 2024 were not taken into account by the Joint Commissioner of Police while refusing the prayers of the petitioners for observing its inauguration day programme at Shahid Minar Maidan, Kolkata.

In view of the said office being silent in respect of the conduct of the petitioners and its members in the year 2024, I believe it can be presumed that there are no complaints against the petitioners and/or its members and/or its sympathisers and/or office bearers.

Having considered the periphery of Article 19 of the Constitution of India and the history of political parties prevailing in the State, one incident cannot be relevant as a precedent for the political party concerned for not allowing them in each and every year. To that extent, it may be stated that the programme which was conducted in the year 2024 was a litmus test and, to that extent, the petitioners have conducted themselves in a manner which is not detrimental to the society. However, Article 19 of the Constitution is never an unilateral right enjoyed by a citizen and is subjected to reasonable restrictions.

Taking into account the date and time when this writ petition is being considered, I grant liberty to the petitioners for an assembly of three thousand persons to be held at Shahid Minar Maidan, Kolkata from 12.00 pm to 4.30 p.m. on 21.01.2025, who are to follow the route prescribed by the police authorities.

The following conditions are being imposed upon the assembly/meeting proposed to be held at the aforesaid venue and time which are as follows:

- i.) Let the petitioners and their associates hold a peaceful assembly/meeting with not more than 3000 individuals on 21st January, 2025.
- ii.) The petitioners shall abide by all the conditions for holding such peaceful assembly/meeting and shall not cause any undue obstruction to public at large.
- iii.) The police authorities shall make necessary arrangements for security with good number of personnel so as to ensure that no breach of peace takes place.

(iv) The police arrangements would be made under the supervision of the Officer-in-Charge of the concerned police station or any other superior officer as the State deems fit and proper.

(v) Assembly/meeting shall be held subject to observance of rules in relation to noise pollution and without causing any inconvenience to the public at large.

It is further directed that if any car parking is to be created, that would be within the area wherein permission has been granted by the Military Authorities. More than 30 cars are not to be parked within the said area.

The persons who have been implicated in the criminal cases in connection with New Market Police Station Case No. 12 of 2023; Hare Street Police Station Case No. 17 of 2023; Kolkata Leather Complex Police Station Case No. 12 of 2023 and, Kolkata Leather Complex Police Station Case No. 13 of 2023, will not be allowed to participate physically in the meeting. The Kolkata Police or the authorities responsible will sent a communication to the concerned police stations wherein such persons reside and on the said date the following persons will cooperate with the police by not leaving their home and making themselves available in virtual mode to the people who would be assembling at the Shahid Minar Maidan.

The names of the following persons as forwarded by the State are quoted below:

“(1) Md. Nawsad Siddiqui; (2) Biswajit Maity; (3) Udyan Das; (4) Aktarul Islam; (5) Md. Samibur Rahaman; (6) Md. Bakibulla Gazi; (7) Sk. Mobarak Ali; (8) Saiful Mollah; (9) Taimur Gazi; (10) Md. Kalimullah; (11) Md. Abu Jahed Laskar; (12) Md. Ramiz Hossain; (13) Santu Babu Mollah; (14) Sk. Md. Ikbāl; (15) Syed Alamgir Hossain; (16) Md. Soriful Mollick; (17) Khalif Molla; (18) Ohidul Islam; (19) Md. Abdul Maleque; (20) Asadul Molla.”

A list of 10 organisers would be handed over to the police in advance so that in case of any crisis, both the parties may communicate with themselves to dilute the situation.

It is reiterated that adequate police force be deployed who would be trained enough to control any sort of untoward incident. It is further reiterated that in case any sort of untoward incident takes place, the police authorities immediately would be at liberty to close the meeting.

The petitioner no. 1 being a political party, is directed that it would ensure its members, supporters, attending participants to conduct themselves in such a manner as they are responsible citizens and answerable to the citizens of the State for their act and actions.

With the aforesaid observations, WPA 1390 of 2025 is disposed of.

There will be no order as to costs.

All concerned parties shall act on the server copy of this order duly downloaded

from the official website of this Court.

Urgent photostat certified copy of the judgement, if applied for, be supplied to the parties upon compliance with all requisite formalities.