
(1997) 07 KL CK 0030

In the High Court Of Kerala

Case No : O.P. No"s. 7551 of 1994 and 12469 of 1995

Bharat Kumar K. Palicha and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 28-07-1997

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 21, 226

Citation : AIR 1997 Ker 291 : (1997) 3 ILR (Ker) 445 : (1997) 4 RCR(Civil) 190

Hon'ble Judges : P.K. Balasubramanyan, J;K.G. Balakrishnan, J;J.B. Koshy, J

Bench : Full Bench

Advocate : K. Ramakumar, for the Appellant; M.K. Damodaran, General, G. Janardhana Kurup, K. Balakrishnan, U.K. Ramakrishnan and K.G. Anil Babu, for the Respondent

Judgement

Balasubramanyan, J.—Those Original Petitions essentially seek the relief of a declaration that the calling for and the holding of what has come to be known as "bundh is unconstitutional and is hence illegal. O.P. 7551 of 1994 is filed by two citizens who are generally carrying on their avocation in Cochin. O.P. 12469 of 1995 is by the various Chambers of Commerce in the State. In O.P. 7551 of 1994, it is sought to be declared as especially violative of Articles 19 and 21 of the Constitution and also in contravention of the Directive Principles of State Policy embodied in the Constitution and the fundamental duties enumerated in the Constitution. Among the consequential reliefs sought for in the Original Petitions, a declaration is also sought that the calling for and holding a bundh is also a penal offence under the Indian Penal Code and is liable to be declared as such. In O.P. 7551 of 1994, in addition to the State and the Director General of Police, five registered All India political parties are also impleaded as respondents. The respondents in O.P. 12469 of 1995 are also the political parties except that the Indian Union Muslim League is also impleaded therein as a respondent. The President of the National Organisation for Consumer Education and Research was subsequently impleaded as an additional respondent in that Original Petition.

2. According to the petitioners, calling for a bundh entails exhortation to violence and physically restraining others who are citizens of the country and hence it is an illegal activity and cannot be supported as a fundamental right of freedom of speech and expression or of assembling peaceably and without arms, protected by Article 19(1) (a) and (b) of the Constitution. The petitioners further complain that by the calling of the bundh and the holding of it citizens are prevented from attending to their avocations and the traders are prevented from keeping open their shops or from carrying on their business activities. It is also contended that the workers are prevented from attending to work in the factories and other manufacturing establishments leading to loss in production leading to national loss, his also contended that with a view to purvey terror, the organisers of the bundh also indulge in wanton acts of vandalism like destruction of Government property and transport vehicles and even private cars and two wheelers. These illegal acts cannot be recognised as part of the right of any person protected by Article 19(1) of the Constitution. It is also contended that the right of the political parties, if any to hold demonstration or to show protest, cannot extend to preventing the citizens of the country from exercising their fundamental rights of attending to their business, their studies and their avocations and in such a context, the calling for and the holding of "bundhs" ought to be declared illegal. It is complained that neither the State nor the police force takes steps to prevent violence and to prevent coercion so that whenever a bundh is called, a citizen out of fear for his life and his property, is forced to remain indoors. No person has a right to prevent a citizen from going to the hospital or from seeking medical aid and no person or organisation has a right to prevent the doctors from attending to their duties by attending on their patients and those who come to them for emergency treatment. The right to go to the railway station, the aerodrome and to the bus terminal could not be prevented in the guise of a protest at the instance of some of the political organisations and when such prevention is achieved by threat, sometimes naked and visible and sometimes by psychological means and by the stalking menace, the same has to be prevented. Since the State and its machinery has failed the citizen by doing nothing to ensure that he is enabled to enjoy his fundamental freedom and his fundamental rights, the petitioners are compelled to approach this Court by invoking its jurisdiction under Article 226 of "the Constitution. The petitioners-submit that the Court in exercise of its jurisdiction under Article 226 of the Constitution has not only the right but the duty to protect the citizen and his fundamental rights and fundamental freedoms guaranteed to him under Articles 19 and 21 of "the Constitution. The Court is reminded that though it cannot direct the Legislature to legislate or the executive to introduce a legislation, it has the duty to direct the executive to ensure that the rights of the citizens are not trampled upon by a political organisation or a violent minority and in that context, to issue any appropriate direction that may be required in the circumstances of the case.

3. The Communist Party of India (Marxist) and the Communist Party of India, have filed counter-affidavits in O.P. 7554 of 1994. In addition to questioning the

entitlement of the petitioners to invoke the jurisdiction of this Court under Article 226 of the Constitution and finding fault with the nature of the reliefs prayed for in the Original Petition, the essential contention raised is that the right to call for a bundh is a fundamental right of a political party and it is protected by Article 19(1)(a) and (b) of the Constitution. The Court is reminded that its duty is to protect fundamental rights and not to abridge them and any imposition of restriction on the right of a political party to call for a bundh would be the violation of the fundamental right of the political party or organisation. It is also sought to be disputed that the calling for a bundh includes either expressly or by implication a call for violence and it is maintained that no threat is held out or coercion brought to bear on any citizen to participate in the bundh. It is attempted to be contended that the holding of a bundh is a spontaneous expression of protest against a national calamity or against the exploitation of the people. An attempt is made to deny the allegation that whenever a bundh is sponsored, it is accompanied by violence.

4. The State, in its counter, in addition to contending that the Original Petition is not maintainable since the reliefs sought for are only against political parties and organisers, has contended that the call for observing bundhs peacefully and its observance individually and collectively, cannot be labelled and denounced as unconstitutional or unlawful. Non-implicating of the Union Government as a party to the Original Petition is relied on to say that the Original Petition is bad for non-joinder of parties. It is seen admitted that when bundhs are observed by political parties and other organisations they do not pass off peacefully and at times lapse into violence. In such circumstances Government takes all precautionary measures to prevent untoward incidents and to afford necessary protection for the smooth transaction of the business of the Government and functioning of other institutions both public and private. Prompt and stern action is taken against the miscreants and anti-social elements who indulge in vandalism and violence. It is stated that the Government is not competent to ban bundhs altogether, as illegal and unconstitutional. The question of acceptance or rejection of a bundh call ultimately rests with the people and a call to observe bundh peacefully does not attract any of the provisions of the Indian Penal Code or any other penal statute. Since the Government have the bounded duty to protect all classes of citizens irrespective of their political or other hues. Government always does everything possible to prevent violence and other unlawful acts in the wake of observance of a bundh.

5. In a reply filed by the petitioners in O.P. 7551 of 1994, they have traversed the allegations in the counter-affidavit filed by the Communist Party of India (Marxist) and have reiterated their contention that a bundh implies and means violence and preventing citizens from exercising their fundamental rights and enjoying their fundamental freedoms and such an illegal activity has to be stopped especially since the Government appears to be helpless to help the citizens.

6. In O.P. 12469 of 1995 it is sought to be pleaded that a bundh has always ushered in with it violence and destruction of property and loss of human lives and some paper cuttings are relied on in support of this allegation. Though served with notice, neither the Communist Party of India (Marxist) nor the Communist Party of India has tiled a counter-affidavit in that Original Petition. The State has filed a counter-affidavit which is more or less the same as the counter-affidavit already referred to.

7. Before proceeding to consider the constitutional issues sought to be projected before us. we think that it is necessary to understand what is a "bundh". "Bundh" is a Hindi word meaning "closed" or "locked". The expression therefore conveys an idea that everything is to be blocked or closed. Therefore, when the organisers of a bundh call for a bundh they clearly express their intention that they expect all activities to come to a standstill on the day of the bundh. A call for a bundh is obviously distinct and different from the call for a general strike or the call for a hurtle. The intention of the callers of the bundh is to ensure that no activity either public or private is carried on that day is also clear from their further statements sometimes made that the newspapers, hospitals and the milk supply is excluded from the bundh. This clarification obviously implies that otherwise the intention is that those services are also to be affected- If the intention is to prevent the milk supply, prevent the distribution of newspapers, prevent people going to the hospitals for treatment, prevent the people from traveling and to generally prevent them from attending to their work either in service of the State or in their own interest, that obviously means that it amounts to a negation of the rights of the citizens to enjoy their natural rights, their fundamental freedoms and the exercise of their fundamental rights. It is no doubt true that while calling for a bundh it is not also announced that any citizen not participating in the bundh will be physically prevented or attacked. But experience has shown that when any attempt is made either to ply vehicles on the day of the bundh or to attend to one's own work, or to open one's shop to carry on trade, it has resulted in the concerned person being threatened with consequences if he took out his vehicle, if he went for his work or if he kept his shop open. The leaders of the political parties who call for the bundh cannot escape by saying that they are not directly telling the citizens not to do these things under threat but if some of the participants in the bundh indulge in such activities, they cannot be held responsible. Obviously, they can with reasonable intelligence foresee the consequences of the or action in calling for the bundh. Nor can they pretend that the consequences that arise out of the calling for a bundh is too remote or does not have reasonable proximity to the call they have made. Learned Counsel appearing for the political parties contended that this Court cannot take note of what actually happens when a bundh is called, hut this Court can only go by the call for the bundh itself which docs not involve the call for violence or forceful prevention of people from going about their avocation. We do not think that we would be justified in adopting such an ostrich like policy. We cannot ignore the reality of what is involved when a bundh is called.

8. Learned Counsel contended that there was no specific pleading of any acts of violence accompanying a bundh or as forming an of a bundh in the Original Petitions and even if there are certain general allegations, they have been denied in the counter-affidavits. But we find that certain facts have been stated in the Original Petition filed by the Chambers of Commerce supported by newspaper cuttings, indicating the violence that accompanied the bundhs and no attempt has been made by the respondents to deny the specific allegations made in that Original Petition by filing counter-affidavits in that Original Petition. The counter-affidavit filed by the State itself" has revealed that more often than not the call for a bundh is accompanied by violence and forceful prevention of persons from attending to their avocations. Moreover, a bundh involves the stopping of all transport systems in the State preventing the common man from even going to the hospital in an emergency so as to bring succor to a citizen who has been taken seriously ill. Thus, on the materials made available and taking judicial notice of what generally happens in a bundh which has resulted even in the working of the High Court being totally disrupted by counsel not being in a position to attend to the Courts, we are inclined to understand the concept of a bundh as one where people are expected not to attend to their work or to travel for any purpose nor to carry on their trades with a threat held out either express or implied that any attempt to go against the call for the bundh would result in danger to life and property. Even if there is no express or implied threat of physical violence to those who are not in sympathy with the bundh, there is clearly a" menacing psychological fear instilled into the citizen by a call for a bundh which precludes him from enjoying his fundamental freedoms or exercising his fundamental rights. We are therefore not inclined to accept the contention of the political parties and the learned Advocate-General that the calling for a bundh does not involve the holding out of any threat express or implied to the citizen not to carry on his activities or to practice his avocation on the day of the bundh. We are inclined to the view that the call for a bundh implies a threat to the citizen that any failure on his part to honor the call, would result in either injury to person or injury to property and involves preventing a citizen by instilling into him the psychological fear that if he defies the call for the bundh he will be dealt with by those who are allegedly supporters of the bundh. Faced with a complaint of a similar nature against what has come to be known as "gherao" a Special Bench of the Calcutta High Court in *Jay Engineering Works Ltd. and Others Vs. State of West Bengal and Others*, considered what was really implied by the expression "gherao" and came to the conclusion that the object was to compel those who control industry to submit to the demands of the workers without recourse to the machinery provided for by law and in wanton disregard of it and in short, to achieve their object not by peaceful means but by violence and that such a "gherao" involves the commission of an offence. We think that whereas gherao is limited to a particular industrial house or its officers and its workers, a bundh in a sense involves the gherao of the citizenry if not by actual physical prevention but by holding out in unmistakable terms a threat of consequences on failure to obey the call for the bundh. In that case, of course,

there was a circular that was challenged and the Court declared that circular void. In the present case, there is no such circular or executive order which is challenged by the petitioners but what is sought is a declaratory relief. But we do not think that that distinction should make a difference to our being able to understand what is the connotation of the term "bundh" where an ordinary citizen is concerned and in proceeding to adjudicate on his claim to approach this Court under Article 226 of the Constitution, on that basis.

8A. With this understanding of the effect of a call for a "bundh" we will now consider the contention that there is a violation of the fundamental rights of the petitioners to move freely throughout the territories of India and to practice any profession or to carry on any occupation trade or business and that there is also a violation of Article 21 of the Constitution in that there is deprivation of personal liberty and even threat to life without any procedure in that behalf being established by law. We did not understand counsel for the respondents or the Advocate-General to argue that preventing a citizen from carrying on his trade or business or from practicing his profession or from going to work in his office, would not amount to interference with his fundamental right under Article 19 of the Constitution or under Article 21 of the Constitution. But what was argued was that a challenge on the basis of violation of the fundamental rights under Articles 19 and 21 of the Constitution could be raised only against State action and not to prevent a political organisation or a private citizen from allegedly interfering with that right. Necessarily we will consider that argument at the appropriate stage. But at the moment what is called for is only to notice that the rights put forward by the petitioners in these Original Petitions to earn on their profession or business or to attend to their offices is certainly part of the fundamental rights guaranteed to them by the Constitution. How far such rights are infringed and even if they are infringed by the action of the political parties and their calls for bundhs how far the same could be redressed in this proceeding under Article 226 of the Constitution are aspects that will have to be considered at the appropriate stage. Suffice it to say that when a citizen is coerced in to not attending to his work or prevented from going out for his work or from practicing his profession or carrying on his business, there is involved a violation of his fundamental right at the instance of another. From our understanding of the concept of bundh as set out above, we are of the view that there is such a violation of the rights of the citizen when a bundh is called and held.

9. The main contention raised on behalf of the political parties is that to call for a bundh and a protest against any action or inaction on the part of the executive is the fundamental right of every political party or of every citizen comprising that party and any curtailment of such a right would involve the curtailment of the fundamental right enjoyed by the citizen of this country guaranteed to them under Article 19(1)(a) and (b) of the Constitution. It is also contended that under Article 19(1) of the Constitution, only the State could make a law insofar as such law imposes a reasonable restriction on the exercise of right conferred by Article 19(1)(a) and (b) of the Constitution and so long as no law is made, this Court

cannot abridge or cut down the fundamental right of the political party or its office bearers to call for a *bundh* which is only a form of protest. Every citizen has a right to protest and even a right to civil disobedience has come to be recognised as a right of a citizen. This is sought to be met by counsel for the petitioners by contending that the fundamental right of freedom of speech and expression or of assembly peaceably cannot take within its purview the right to prevent another citizen from exercising his freedom or his fundamental right equally guaranteed by the Constitution. In other words, it is sought to be contended that the freedom of citizen A stops at the lip of the nose of citizen B.

10. It is argued with reference to *A.K. Gopalan Vs. The State of Madras*, that the right to move about, of free locomotion, is a fundamental right protected by Article 19 of the Constitution. Right to use the public roads was recognised as a fundamental right in *Saghir Ahmad Vs. The State of U.P. and Others*, : in *Rupinder Singh Sodhi and Another Vs. Union of India (UOI) and Others*, : and in *Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others*, ; and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , upheld the right to travel abroad and the right to locomotion as fundamental rights guaranteed under Articles 19 and 21 of the Constitution. The right to education, at least at the elementary level, has also been recognised and upheld as a fundamental right. Right to medical treatment is protected by Article 21 of the Constitution as held in *Pt. Parmanand Katara Vs. Union of India (UOI) and Others*, and in *Paschimanga Khet Mazdoor-Samiti v. State of W.B.. (1996)" 4 SCC 37 : (1996 AIR SCW 2964)*. When a "*bundh*" is called, no locomotion is possible, no vehicle can be put on the road, no student can go to school, no patient can go to his doctor and no one can reach the Airport to travel abroad. Public vehicles and private vehicles taken out are attacked and damaged. Anti-social elements also join in such destruction and sometimes indulge in looting. All public transports are brought to a standstill and no citizen can take out his vehicle for fear of attack and destruction. No shop can be kept open. Though while calling the *bundh* there may not be even threat of violence and destruction, clearly a psychological threat of what will happen if you do not obey the call, is held out by the organisers of the *bundh*. With reference to *Kharak Singh Vs. The State of U.P. and Others*, , it is contended that not merely physical prevention, but even a psychological restriction would be a restriction of the fundamental right of a citizen. We find that there is substance in that submission. In that decision, their Lordships observed as follows at pp. 1305-06):--

"So also, creation of conditions which necessarily endanger exhibitions and fear complexes can be described as physical restraints. Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life.....We would therefore. define the right of personal liberty in Article 21 as a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are already imposed or indirectly brought

about by calculated measures."

11. It is argued on behalf of the respondents that it is only the State that can make a law in the interests of public order which could reasonably restrict the fundamental rights guaranteed under Articles 19(1)(a) and (b) of the Constitution and so long as there is no law made to restrict, regulate or curtail the calling of a bundh, the Court cannot grant any relief to the petitioners by prohibiting or restricting the exercise of the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. What is "public order" within the meaning of Article 19(1) of the Constitution is sought to be explained with reference to the decision in *Madhu Limaye Vs. Sub-Divisional Magistrate, Monghyr and Others*, . In that decision, their Lordships observed (Para 16):--

"public order no doubt also requires absence of disturbance of a state of serenity in society but it goes further. It means what the French designate *ordre publique*" defined as an absence of insurrection, riot, turbulence, or crimes of violence. The expression public order includes absence of all acts which are a danger to the security of the State and also acts which are comprehended by the expression "*ordre publique*" explained above but not acts which disturb only the serenity of others."

After referring to the decision in *Dr. Ram Manohar Lohia Vs. State of Bihar and Others*, , expounding the phrase "maintenance of public order" their Lordships held :

"State is at the Centre and society surrounds it. Disturbances of society go in a broad spectrum from mere disturbance of the serenity of life to jeopardy of the State. The acts become graver and graver as we journey from the periphery of the larger circle towards the centre. In this journey we travel first through public tranquility, then through public order and lastly to the security of the State."

Learned Counsel postulates whether, it is "possible for the Court to presume that the calling of a bundh will disturb public order and to proceed to issue directions under Article 226 of the Constitution even assuming that it has such a jurisdiction. It is in that context that it is submitted that what Articles 19 and 21 attract are State action and curtailment of the fundamental rights of the citizen guaranteed thereunder and it is not open to this Court to issue directions either to legislate curtailing the right to call for a bundh or to issue directions curtailing the fundamental rights guaranteed by these Articles. By the calling of a bundh there is no attempt to breach public order, whether in its narrow sense or in its expanded sense and in such a situation, the petitioners are not entitled to any relief from this Court at this stage. The decision in *P.D. Shamdasani Vs. Central Bank of India Ltd.*, , was relied on in support. It is also submitted that without a legislative definition of the expression "bundh", the Court cannot test the legality or unconstitutionality of the calling of or the holding of the bundh on the touchstone of the fundamental rights of the citizens guaranteed under Articles 19

and 21 of the Constitution.

12. It is true that there is no legislative definition of the expression "bundh" and such a definition could not be tested in the crucible of constitutionality. But does the absence of a definition deprive the citizen of a right to approach this Court to seek relief against the bundh if he is able to establish before the Court that his fundamental rights are curtailed or destroyed by the calling of and the holding of a bundh? When Article 19(1) of the Constitution guarantees to a citizen the fundamental rights referred to therein and when Article 21 confers a right on any person -- not necessarily a citizen -- not to be deprived of his life or personal liberty except according to procedure established by law would it be proper for the Court to throw up its hands in despair on the ground that in the absence of any law curtailing such rights, it cannot test the constitutionality of the action? We think not. When properly understood, the culling of a bundh entails the restriction of the free movement of the citizen and his right to carry on his avocation and if the Legislature does not make any law either prohibiting it or curtailing it or regulating it we think that it is the duty of the Court to step into protect the rights of the citizen so as to ensure that the freedoms available to him are not curtailed by any person or any political organisation. The way in this respect to the Courts has been shown by the Supreme Court in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*, .

13. It is argued on behalf of the respondents that a bundh could be peaceful or violent and even if the Court were to act, it could act only to curtail violent bundhs and not peaceful bundhs. It is contended that the Court cannot presume or generalise that the calling of a bundh always entails actual violence or the threat of violence in not participating in or acquiescing in the bundh. The decision in *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, is referred to in that context. This theoretical aspect expounded by counsel for the respondents does not appeal to us especially since as understood in our country and certainly in our State, the calling for a bundh is clearly different from a call for a general strike or a hartal. We have already noticed that a call for a bundh holds out a warning to the citizen that if he were to go for his work or to open his shop he would be prevented and his attempt to take his vehicle on to the road will also be dealt with. It is true that theoretically it is for the State to control any possible violence or to ensure that a bundh is not accompanied by violence. But our present set up the reluctance and sometimes the political subservience of the law-enforcing agencies and the absence of political Will exhibited by those in power at the relevant time, has really led to a situation where there is no effective attempt made by the law-enforcing agencies either to prevent violence or to ensure that those citizens who do not want to participate in the bundh are given the opportunity to exercise their right to work, their right to trade or their right to study. We cannot also ignore the increasing frequency in the calling holding and enforcing of the bundhs in the State and the destruction of public and private property. In the face of this reality, we think that when we consider the impact of a bundh on the freedom of a citizen we are not merely theorising

but are only taking note of what happens around us when a bandh is called and a citizen attempts either to defy it or seeks to ignore it. We are not in a position to agree with counsel for the respondents that there are no sufficient allegations either in O.P. 7551 of 1994 or in O.P. 12469 of 1995 which would enable us to come to such a conclusion. In fact, the uncontroverted allegations in O.P. 12469 of 1995 are specific and are also supported by some newspaper clippings which though could not be relied on as primary material, could be taken note of as supporting material for the allegations in the Original Petition.

14. It is argued that the Court cannot restrict the freedom of the political parties to call for a general protest and any restriction placed thereon would be violative of the fundamental rights of those who compose the political party, their freedom of expression, speech and to assemble peaceably. It may be true that the political parties and organisers may have a right to call for non-co-operation or to call for a general strike as a form of protest against what they believe to be either an erroneous policy or exploitation. But when exercise of such a right infracts the fundamental right of another citizen who is equally entitled to exercise his rights, the question is whether the right of the political party extends to right of violating the right of another citizen. In *Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh*, , the Supreme Court observed (Para 13)

"The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to form associations or unions does not mean that they can exercise those freedoms in whatever place they please. The exercise of those freedoms will come to an end as soon as the right of someone else to hold his property intervenes. Such a limitation is inherent in the exercise of those rights. The validity of that limitation is not to be judged in the tests prescribed by Sub-Articles (2) and (3) of Article 19. In other words the contents of the freedoms guaranteed under Clauses (a), (b) and (c), the only freedoms with which we are concerned in this appeal, do not include the right to exercise them in the properties belonging to others."

If this be the position and if the call for the bandh and the holding of it entails restriction on the fundamental freedoms of the citizen, it has to be held that no political party has the right to call for a bandh on the plea that it is part of its fundamental right of freedom of speech and expression. Moreover, nothing stands in the way of the political parties calling for a general strike or hurdle unaccompanied by express or implied threat of violence to enforce it. It is not possible to accept that the calling of a bandh alone could demonstrate the protest of a political party to a given decision or in a given situation.

15. Part IV-A of the Representation of the People Act, 1951, deals with registration of political parties. Section 24A provides for registration of an association or a body as a political party with the Election Commission. The concerned respondents are registered political parties. Section 24-A(5) compels the association or body seeking registration, to produce a memorandum or rules

and regulations of the Association with a provision therein "that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India". This would compel the political party to respect the fundamental rights of the citizens embodied in Part III of the Constitution and to recognise the fundamental duties enunciated in Article 51 of the Constitution. In such a situation, we find that the jurisdiction of this Court under Article 226 of the Constitution should be exercised at least to the extent of considering the grant of declaratory relief to the petitioners regarding the right of the political parties to call for a bundh and to enforce it is they deem fit.

16. We do not think it necessary or proper to consider whether the enforcing of a bundh results in any offence under the Indian Penal Code being made out. That question will have to be decided by the appropriate Court at the appropriate stage.

17. No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or Nation and is entitled to prevent the "citizens not in sympathy with its view point, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the Nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it. The claim for relief by the petitioners in these Original Petitions will have to be considered in this background.

18. The contention that no relief can be granted against the political parties in these proceedings under Article 226 of the Constitution cannot be accepted in its entirety. As indicated already this Court has ample jurisdiction to grant a declaratory relief to the petitioners in the presence of the political party respondents. This is all the more so since the case of the petitioners is based on their fundamental rights guaranteed by the Constitution. The State has not taken any steps to control or regulate the bundhs. The stand adopted by the Advocate-General is that the Court cannot compel the State or the Legislature to issue orders or make law in that regard. As we find that organised bodies or Associations or registered political parties, by their act of calling and holding bundhs trample upon the rights of the citizens of the country protected by the Constitution, we are of the view that this Court has sufficient jurisdiction to declare that the calling of a bundh" and the holding of it is unconstitutional especially since, it is undoubted, that the holding of "bundhs are not in the interests of the Nation, but tend to retard the progress of the Nation by leading to national loss of production. We cannot also ignore the destruction of public and private property when a bundh is enforced by the political parties or other organisations. We are inclined to the view that the political parties and the organisations which call for such bundhs and enforce them are really liable to compensate the Government, the public and the private citizen for the loss

suffered by them for such destruction. The State cannot shirk its responsibility of taking steps to recoup and of recouping the loss from the sponsors and organisers of such bundhs. We think that these aspects justify our intervention under Article 226 of the Constitution.

In view of our discussion above, we allow these Original Petitions to the extent of declaring that the calling for a bundh by any association, organisation or political party and the enforcing of that call by it is illegal and unconstitutional. We direct the State and its officials., including the law enforcement agencies, to do all that is necessary to give effect to this declaration.

The Original Petitions are allowed to the above extent. We make no order as to costs.