

(1976) 07 CAL CK 0029
In the Calcutta High Court
Case No : Matter No. 596 of 1970

Chinta Haran Dutta

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 05-07-1976

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 246, 33
Police Forces (Restriction of Rights) Act, 1966 — Section 1, 3

Citation : AIR 1977 Cal 237

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : S. Chatterjee and S.C. Ukil, for the Appellant; B. Gupta and S. Pal, for the Respondent

Final Decision : Dismissed

Judgement

Sabyasachi Mukharji, J.—This is an application by one Chinta Haran Dutta who is the honorary general secretary of the Calcutta Police Association. In this application, the petitioner on behalf of the said association challenges the enforcement of the Police Forces (Restriction of Rights) Act, 1966 and the rules framed thereunder which have been made applicable to the State of West Bengal from 1st November, 1970 by the notification dated 22nd October, 1970 and by the directions dated 22nd October, 1970, The petitioner contends that the said association was recognised long ago and by the impugned Act and the notification being made enforceable in West Bengal rights under Art 14 and Article 19 of the Constitution have been violated. Rights of the members of the armed forces or of the forces charged with the maintenance of public order can, however, be restricted or abrogated so as to ensure proper discharge of their duties and maintenance of discipline among them by any Act passed by the Parliament pursuant to Article 33 of the Constitution. Therefore, by virtue of Article 33 of the Constitution the rights of those who are charged with the maintenance of public order can be abrogated or restricted by any Act passed by Parliament, irrespective of Articles 14 and 19 of the Constitution 90 as to ensure

proper discharge of duties by them and maintenance of discipline among them.

2. The Police Forces (Restriction of Rights) Act, 1966 is an Act which was passed, as preamble to the said Act states, to provide for restrictions of certain rights conferred by Part III of the Constitution in their application to the members of the forces charged with the maintenance of public order so as to ensure proper discharge of their duties and maintenance of discipline among them. Counsel for the petitioner contended that the provisions of the Act were not to ensure proper discharge of the duties and maintenance of discipline among them. He, therefore, submitted that the provisions of the Act and the rules framed thereunder were not protected by Article 33 of the Constitution. Whether particular provisions of the statute ensure the particular objects of the legislation is a matter for legislative judgment. Whether certain provisions fulfil certain objects or not or whether other provisions could have better fulfilled those objects, is a matter on which the legislative wisdom cannot, *prima facie*, be questioned except on the question of colourable exercise of power. It was contended that under the Seventh Schedule of the Constitution, Entries 1 and 2 of List II, namely the State List deals with public order and police forces. Therefore, it was urged that the State Legislature had competence to legislate on public order as well as regarding the police force. The Parliament by pretending to make law so as to ensure proper discharge of duties and maintenance of discipline of those who are charged with maintenance of public order which in fact the provisions did not, cannot usurp that jurisdiction or competency of the State Legislatures. It is, therefore, necessary to examine whether the provisions of the Act can be said to ensure proper discharge of the duties and maintenance of discipline among those who are charged with maintenance of public order. If there is rational nexus between the provisions of the Act and the Rules framed thereunder with the purpose stated in the preamble to the Act, then in my opinion, the Act can be said to be to ensure proper discharge of the duties and maintenance of discipline among those who are charged with maintenance of public order. Only to that limited extent there is scope of judicial review of the effect of this legislation, where, however, the legislation is governed by Article 31-C of the Constitution different considerations might apply.

3. Section 3 of the Police Forces (Restriction of Rights) Act, 1966, provides as follows :

"3. Restrictions respecting right to form association, freedom of speech, etc. (1) No member of a police force shall, without the express sanction of the Central Government or of the prescribed authority,--

(a) be a member of, or be associated in any way with, any trade union, labour union, political association or with any class of trade unions, labour unions or political association, or

(b) be a member of, or be associated in any way with, any other society, institution, association or organisation that is not recognised as part of the force

of which he is a member or is not of a purely social, recreational or religious natural or

(c) communicate with the press or publish or cause to be published any book, letter or other document except where such communication or publication is in the bona fide discharge of his duties or is of a purely literary, artistic or scientific character or is of a prescribed nature.

Explanation.-- If any question arises as to whether any society, institution, association or organisation is of a purely social, recreational or religious nature under Clause (b) of this sub-section the decision of the Central Government thereon shall be final.

(2) No member of a police force shall participate in, or address, any meeting or take part in any demonstration organised by anybody or persons for any political purposes or for such other purposes as may be prescribed."

Sub-section (1) of Section 6 empowers the Central Government to make rules. I am not concerned with the provisions of Clause (c) of Sub-section (1) of Section 3 of the Act. But, I am clearly of opinion, that between the provisions of Clauses (a) and (b) of Sub-section (1) of Section 3 there is nexus with the object, that is to say. ensurement of proper discharge of duties and maintenance of discipline among those who are charged with maintenance of public order. If that is the position, then, in my opinion, no question of violation of Article 14 or 19 arises in the instant case. Counsel also drew my attention to the rules framed by virtue of Sub-section (1) of Section 6 of the said Act. The said Rules are Police Forces (Restriction of Rights) Rules, 1966 and the Police Forces (Restriction of Rights) Amendment Rules, 1967. The said rules so far as they are relevant for the purpose of this application in my opinion, are also not beyond the object, namely, ensuring proper discharge of duties and maintenance of discipline among those who are charged with maintenance of public order. If that is the position, then, in my opinion, the challenge made in this application cannot be sustained.

4. Counsel for the petitioner drew my attention to the observations of the Supreme Court in the case of Kameshwar Prasad and Others Vs. The State of Bihar and Another, and in the case of O.K. Ghosh and Another Vs. E.X. Joseph, . These were made in the context of the rules regarding civil servants and the Supreme Court had no occasion to consider in those cases the question of the rights under Articles 14 and 19 of the Constitution in so far as they are modified by Article 33 of the Constitution. In the premises of the said decisions cannot, in the view I have taken about the applicability of Article 33 to the relevant provisions, have any application in the facts and circumstances of this case.

5. Inasmuch as Article 33 applies to the impugned legislation and in view of the nature of the provisions no question of usurping jurisdiction of the State Legislature as contained in Entries 1 and 2 of List II of the Seventh Schedule arises in the instant case.

6. In the aforesaid view of the matter, this application fails and is accordingly dismissed. The rule nisi is discharged, Interim order, if any, is vacated.

7. There will be no order as to costs.

8. There will be a stay of operation of this order for three weeks.