

(2022) 01 CAL CK 0006
In the Calcutta High Court
Case No : Writ Petition (P) No. 1 Of 2022

Dr. Avinandan Mondal

APPELLANT

Vs

State Of West Bengal And Ors

RESPONDENT

Date of Decision : 07-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 21, 39(e), 39(f), 47
Gangasagar Mela Act, 1976 — Section 2(d), 3, 3(1), 4

Citation : (2022) 01 CAL CK 0006

Hon'ble Judges : Prakash Shrivastava, CJ; Kesang Doma Bhutia, J

Bench : Division Bench

Advocate : Srijib Chakraborty, Aditya Mondal, Suryaneel Das, S.N. Mookherjee, Anirban Roy, Samrat Sen, T.M. Siddiqui, Nilotpall Chatterjee, Avishek Prasad, Aniruddha Chatterjee, Rahul Karmakar, Gargi Goswami

Final Decision : Disposed Of

Judgement

Prakash Shrivastava, CJ

1. The petitioner in this public interest petition is seeking various directions to restrict and regulate gathering of pilgrims, sadhus and tourists in

Gangasagar Island during the Makar Sankranti period.

2. The plea of the petitioner is that between 8th of January to 16th January, 2022 large congregation of pilgrims from all parts of the country will

gather in Gangasagar Island to take a holy dip on the occasion of Makar Sankranti which will be in the form of a Mela, namely, Gangasagar Mela. On

this occasion thousands of pilgrims gather to take a holy dip when the sun rises on the day of Makar Sankranti at the confluence of river Ganges and

Bay of Bengal and offer prayer in the Kapil Muni Temple. Even sadhus from hill top of Himalayas assemble at the island. To facilitate the movement

of pilgrims the State Government erects pandals near Babu Ghat and at other convenient places at Kolkata which become a sort of exhibition grounds.

It is disclosed in the petition that on 14th of January, 2018, about 18.2 million people had visited Gangasagar in 2018 as against 1.5 million in 2017.

Having regard to the large scale spread of COVID-19 virus especially Omicron variant which is highly contagious, a prayer has been made to restrict the Mela.

3. This Court on 05th January, 2022, having regard to the respective submissions of Counsel for the parties and taking into account the severity of

spread of COVID virus in the State, had issued following directions:

â??Having regard to the severity of spreading of COVID virus, we expect that the State will seriously consider the plea to ban the Mela this year and

take a decision in this regard keeping in view the following factors:

(1) Earlier order of this Court holding that life is more important in every sense in comparison to religious practices, beliefs and faith.

(2) Possibility of spread of virus on account of oral droplets and nasal droplets in the river water and their percolation and transmission through the

water when the infected pilgrims will take holy dip.

(3) The aspect of safety of not only the pilgrims but the persons coming in contact with the infected pilgrims and the police personnel deployed in the

Mela and frontline health workers deputed in this process.

(4) The State will duly take into account the positivity rate of virus and fact that within the last 24 hours there is 50 per cent increase in number of

cases and also the fact that large number of doctors are already infected.

We have been assured by the learned Advocate General that the appropriate decision in this regard will be taken and the affidavit of the competent

authority will be placed on record by 2.00 p.m. tomorrow.â??

4. In pursuance to the above directions report in the form of affidavit dated 06th of January, 2022 has been filed today by the State Government

stating that the State is not in favour of banning the Gangasagar Mela at this stage in view of the arrangements which have been already made. It is

stated that in the affidavit that about thirty thousand people have already visited the Mela ground and nearly fifty thousand people including sadhus

have arrived at different locations and that due to COVID situation the inflow of

devotees has come down and only about four to five lakh pilgrims are expected to arrive between 06th to 15th January, 2022. In the affidavit following measures, which the State intends to take, have been disclosed:

(a) It shall be ensured that all persons and pilgrims including sadhus, sanyanis and citizens coming from other states to the Ganga Sagar Mela ground

and its immediate precincts mandatorily use face masks, maintain physical distancing and use sanitizers. It is stated that about 30,000 people have

already visited the Mela ground and nearly 50,000 people including Sadhus have arrived at different locations. Due to Covid situation the inflow of

devotees has come down and it is expected that around 4 to 5 lakh pilgrims will arrive between 6th and 15th of January 2022.

(b) It shall be ensured that all persons connected with the control and management of the Ganga Sagar Mela namely Government Officials, Police

Personnel, Medical Personnel, Volunteers and all other aiding State machinery use face masks, maintain physical distancing and use sanitizers. From

the 9th of January, deployment of 10,000 police personnel and around 5000 volunteers will be started exclusively from South 24 parganas District. In

the chart below deployment of medical personnel and other staff is indicated.

(c) Sufficient amount and quality of face masks and sanitizers would be made available for distribution to those not having masks and sanitizers.

(d) Health Care Volunteers would be deployed at strategic points to spread awareness amongst the pilgrims and others for maintaining Covid-19

Protocol and for distributing masks and sanitizers. So far only 2 doctors and few Health workers have been Covid affected. A temporary hospital has

been set up at the Mela ground itself, which has an area of 2 km radius. It is mentioned that the Ganga Sagar Temple Mela Hospital is 250 m from the

temple and the Rudranagar Hospital is 12.5 kms away from the Mela Ground.

(e) E-Snan (e-bathing) through door step delivery of packaged holy water would be made to those who intend to have so and arrangements are also

being made for online broadcasting (e-darshan) of Ganga Sagar Mela.

(f) Pilgrims and others reaching the Ganga Sagar Mela would be encouraged through the public address system to opt for E-Snan instead of having a

dip in the holy water. E-Snan packaged holy water would be distributed from kiosks to be set up for such purpose.

(g) All supporting facilities namely, Toilet, Rest Rooms, Pilgrim Sheds, eateries

would be kept clean through the different agencies of the State under the overall co-ordination of District Administration.

(h) To ensure that if there is congregation of large number of pilgrims at places, government employees and volunteers would ensure that the pilgrims keep moving through the dedicated barricaded channels and vacate the mela ground and the river bank without delay.â??

5. In addition to above the plans relating to health care facilities such as hospitals, safe homes, COVID hospitals, quarantine centres, wellness centres, dead body disposal facility, medical screening of pilgrims, officers, frontline workers, police and staff employed for sample testing of the pilgrims, buffer zones and first-aid camps, checking of vaccination status and vaccination, sample testing of people deployed on duty, modus operandi of ambulance deployment, green corridor identification, transferring the COVID positive patients to the safe homes, transferring the COVID positive patients to the COVID hospitals, caring of SARI cases, contact tracing, water and air ambulance arrangement, insurance claim, biomedical waste management, COVID material management plan, COVID control room, call centre and information management and rapid response team and IT applications have been disclosed.

6. Learned Counsel for the petitioner as well as the Counsel representing the Doctors Forum have seriously doubted that any of these measures will in fact be taken by the State Government and their submission is that this affidavit is a mere eyewash to continue the Mela. They have pointed out that even the infrastructural facilities which are mentioned in this affidavit are not adequate to take care of the lakhs of pilgrims who are expected to visit the Mela.

7. Submissions of the learned Counsel for the petitioner are that having regard to the wide spread and severity of the COVID virus in the State and especially in Kolkata, Mela should be stopped and restricted. He has submitted that the positivity rate in West Bengal is 23.17 per cent and today there is 55 per cent increase in COVID infected persons as compared to yesterday and even double vaccinated persons are getting infected and that the State is not interested in protecting the health of the people. He has submitted that several doctors and police personnels are infected and will get infected if Mela is held but the affidavit of the State is silent about it. He has

submitted that in terms of Gangasagar Mela Act, 1976 entire Sagar area should be declared as notified areas.

8. Learned Counsel for the West Bengal Doctors' Forum has also supported the petitioner's case and has submitted that in Gangasagar there

is only a small 60-bedded hospital with 11 doctors and all other hospitals which are disclosed in the affidavit are located at far off places. He has

submitted that implementation of the measures which have been suggested in the affidavit is not possible and that already a large number of doctors of

different hospital in Kolkata are infected. He has placed reliance upon an order of the Hon'ble Supreme Court dated 20th July, 2021 in suo motu

Writ Petition (C) No. 5 of 2021 and has submitted that life of the people is more important than anything else.

9. Learned Advocate General has submitted that to prevent the spread of virus due to gathering in Gangasagar various measures have been planned

which are mentioned in the affidavit dated 06th January, 2022. He has referred to those measures and has submitted that these measures duly take

care of the concerned as pressed by the petitioner.

10. We have heard the learned counsel for the parties and perused the record.

11. It is not in dispute before this Court that between 08th January and 16th January, 2022 there will be a gathering of large number of pilgrims at

Sagar Islands known as Gangasagar, which is in the radius of only two kilometers. The material placed on record indicates that the number of COVID

cases in the State especially in Kolkata are increasing at a rapid rate. On 3rd January, 2022 the number of cases were 6078 which increased to 9073

on 04th January, 2022 and further increased to 14022 on 05th January, 2022. The galloping speed of increase of COVID cases is a warning signal

which cannot be ignored. A press release has been placed on record disclosing that the State Government has postponed the 27th International

Kolkata Film Festival scheduled to be held between 07th and 14th January, 2022 owing to the fact that number of Cine personalities and many others

attached to the film festival committee were infected by COVID. This fact also cannot be denied that large number of doctors, frontline workers and

police personnel are also suffering from COVID infection.

12. Under Article 21 of the Constitution of India it is the responsibility of the State to protect the life and liberty of the people. In terms of the Article

39(e) it is the responsibility of the State to direct its policy towards securing that the health and strength of workers, men and women and the tender

age of children are not abused and Article 39(f) requires the State to give opportunity and facilities to children to develop in healthy manner. Under

Article 47 it is the duty of the State to raise the standard of living and to improve public health.

13. In the previous year, in 2021 also, similar issue of safety of the pilgrims visiting Gangasagar during Makar Sankranti had come up before this Court

in WPA (P) 23 of 2020 in the case of Ajay Kumar De vs. State of West Bengal and others. At that time the second wave of COVID pandemic had

not started in Kolkata and surrounding areas but considering the spread of virus, this Court by order dated 8th January, 2021 had issued following

directions:

¶6. While we are primarily satisfied with the administrative arrangement and the policing arrangements for crowd management and for

dissemination of information as to the protective steps to be taken by the visiting pilgrims in the wake of the COVID pandemic, we have susceptible

apprehension about the modality in which the effectuation of the measures stated in the report of the DHS could be achieved. We say this because

the report of the DHS does not provide any specific negative response to the apprehension expressed in the earlier judicial order about the possibility

of contamination spreading amidst people in close proximity within the water bodies as well. That being so, learned Additional Solicitor General has

pointed out that it is noteworthy that the report of the DHS speaks of about 13 Rapid Antigen Testing Centres, 5 RTPCR Testing Facilities apart from

the thermal checking facilities at all entry points including the railway stations Howrah and Sealdah. We have noted this aspect at this point of time to

underscore the need to completely utilize the facility of thermal checking through the medical screening camps including the entry points at Howrah

and Sealdah Railway Stations. The Rapid Antigen Testing Centres, the RTPCR facilities and other facilities mentioned in paragraph 6(a) of the report

of the DHS would be properly utilized.

7. However, the fundamental issue is as to the entry of the pilgrims into the waters. We see from the report of the DHS that the State is facilitating

the e-snan (e-bathing) through doorstep delivery of packaged holy water which

would be made available, apart from arrangement for online broadcasting (edarshan) of Gangasagar Mela.

8. The administration will ensure that there is wide spread publicity over microphone and otherwise, informing the pilgrims that it is for their own good that they should stay away from the Ganges water. Having in mind the safety of their health, the State has made arrangement for e-snan and they should opt for that. It cannot be overemphasized that a dip in the water may contaminate the water if the person concerned has infection within him/her and it does not matter how long that person stays in the water. A dip for a second may be enough to cause the damage that is apprehended.

9. The publicity referred to above should start immediately and from today itself so that the people who are proposing to attend the Gangasagar Mela may dissuade themselves from entering into the water. What is important is that the administration should keep all persons concerned informed about the danger to which they may expose themselves if they enter the water.

10. All the protective and precautionary measures referred to above and in the report of the DHS should also be implemented at all places in and around Kolkata and anywhere else in the State of West Bengal where people are congregating en route to the Gangasagar. It is seen that large congregations have already started in the city of Kolkata and there are large gatherings on the banks of river Ganges. Appropriate safety measures must be taken by the administration in that regard also.

11. Whatever has been stated in the report of the State Government filed through the DHS should be scrupulously adhered to and we record the statements made in such report as an undertaking given to the Court by the State Government. Needless to say, such undertaking would bind all wings of the State Government including the police. After all, we are dealing with an issue touching the health and lives of people at large and no effort can be spared to ensure the safety of the people.

12. We note with appreciation the stand of the State Government that no fees would be imposed on the pilgrims under Section 4 of the Gangasagar Mela Act, 1976. However, the State may consider, in larger public interest, to give such incentive as it may decide, to pilgrims who opt for e-snan rather than actual physical dip in the water.

13. We have no hesitation in saying that during the festival period in October/ November, 2020, that is, during Durga Puja, Kali Puja and Chhath Puja,

the State administration managed and controlled the situation admirably thereby perhaps averting a possible disaster in the form of spiking up of

COVID-19 cases. We have no doubt that in so far as the Gangasagar Mela is concerned, the State machinery shall also rise to the occasion and

ensure that the festival is conducted in such a manner that there is no spread of the disease.â??

14. Since the facts placed on record in the present case indicate that this year there are already large numbers of person infected in the 3rd wave of

COVID virus therefore the above measures which are reflected in the earlier order are not adequate.

15. With the object to safeguard the health, safety and welfare of pilgrims attending Gangasagar Mela, State has enacted the Gangasagar Mela Act,

1976. Section 2(b) of the Act defines â??notified areaâ? to mean the area declared as such by Notification under Section 3(1) of the Act. Section 3

of the Act reads as under:

â??3. (1) If the State Government is satisfied that as a result of high influx or too many pilgrims at a time at the Sagar Islands on the occasion of the

Gangasagar Mela the health, safety and welfare of these pilgrims are likely to be endangered the State Government may, by notification in the Official

Gazette, declare that the whole or any portion of the area within the Sagar Islands shall be a notified area.

(2) Upon the publication of a notification under sub-section (1) it shall be competent for the State Government to take such measures for safeguarding

the health, safety and welfare of the pilgrims as the State Government thinks necessary.

(3) The details of the measures to be taken under sub-section (2) and the manner in which they shall be executed shall be laid down by the State

Government by rules made in this behalf.â??

16. Having regard to the situation, which is prevailing at present and also considering the expected footfall in the Gangasagar Mela, we are of the

opinion that the circumstances exist for issuance of Notification in terms of Section 3 of the Act for safeguarding the health, safety and welfare of the

Pilgrims.

17. It is worth noting that the State of West Bengal has issued the order dated 2nd January, 2022 under the provisions of the Disaster Management

Act, 2005 read with West Bengal Epidemic Disease, COVID-19 Regulation, 2020 providing for the restrictions due to high rate of infectivity and

multiple cases of new COVID-19 variant Omicron in the State. This order clearly provides that:

“(10) Not more than 50 persons at a time shall be allowed for any social, religious and cultural gatherings.”

18. Gangasagar Mela is also in the nature of social religious and cultural gathering. Therefore, this order clearly applies and it is required to be

implemented by the State Authorities with full force.

19. That apart, it is the responsibility of the State to make the general public aware by various means of publication and announcements about the

adverse consequence of visiting a small island in large number.

20. Since an apprehension has been expressed that the measures which are disclosed before this Court by the State in the affidavit are only paper

suggestions and will not be implemented in practice, therefore, we are of the opinion that there should be an independent committee to look into the

implementation of these measures and in case, if any violation or shortcoming in implementation is found then to submit a report to the State for

completely banning the Mela.

21. In the aforesaid circumstances, we dispose of the present petition with following directions:

(1) The competent authority of the State will take a decision to issue the Notification in terms of Section 3 of the Gangasagar Mela Act, 1976

declaring the Sagar Island as “Notified area” within a period of 24 hours from pronouncement of this order.

(2) The Home Secretary of the State of West Bengal will ensure that the restrictions, especially the restriction No. 10 contained in the order dated

02nd January, 2022 issued by the State is duly implemented without any lapse in Gangasagar Island during the Mela period.

(3) The concerned authorities of the State will fully implement the directions which are contained in the order dated 8th January, 2021 passed in

W.P.A. (P) No. 23 of 2020 in the case of Ajay Kumar De vs. The State of West Bengal & Ors.

(4) The Home Secretary of the State will issue advertisements in the daily newspapers having wide circulation in the State of West Bengal and also

through the electronic media making the public aware of the risk of visiting Gangasagar Island between 08th and 16th January, 2022 in large gathering

and will make an appeal to them to stay safe and desist from visiting the Gangasagar Island during this period.

(5) A three Member Committee comprising of (i) Leader of Opposition in the State or his representative, (ii) Chairman, West Bengal Human Rights

Commission or his representative and (iii) representative of the State is constituted which will keep vigil in respect of compliance of the above

directions as also measures suggested by the State in the affidavit dated 06th January, 2022. In case if any shortcoming in compliance is noticed, then

the Committee will make a recommendation to the State without any delay to ban entry in the island, on which the competent Authority of the State

will take immediate action. Secretary of the West Bengal Human Rights Commission will coordinate between the Members of the Committee.

22. The writ petition is accordingly disposed of.