
(2020) 01 CAL CK 0116

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 1074 (W) Of 2020

Ganesh Das

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Citation : (2020) 01 CAL CK 0116

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Dhiraj Trivedi, Vikash Singh, Sudarshana Dutta, Kishore Dutta, Sirsanya Bandopadhyay

Final Decision : Dismissed

Judgement

Sabyasachi Bhattacharyya, J

The original grievance of the writ petitioner is that, despite having applied for permission to hold a meeting at the Gouripur Chowmatha at Barrackpore, on January 06, 2020, the police authorities have been sitting tight over the matter. However, during the course of hearing, it transpired that only today at 2.00 P.M., a communication was made by the Officer-in-Charge of the Naihati Police Station to the petitioner, refusing permission for the congregation proposed to be held by the petitioner.

A printout of the said communication is handed over to the Court, which shows that the permission for holding the meeting was refused since the location of the meeting was situated by the side of Naihati-Kanchrapara Road (R.B.C. Road) near a five-point crossing. It was stated therein that there is every chance of traffic congestion leading to obstruction of vehicular movement. As such, the police requested the petitioner to change the venue of the meeting scheduled to be held on January 18, 2020 at Gouripur Chowmatha.

Learned counsel appearing for the petitioner submits that in view of receipt of such communication today, whereas the scheduled date of the meeting is only

tomorrow, this Court may take lenient view regarding the scope of the writ petition, by incorporating a deemed challenge to the decision taken by the police today.

In this context, learned counsel appearing for the petitioner cites an unreported judgment, dated January 10, 2018 in W.P. No. 563 (W) of 2018 passed by a co-ordinate Bench of this Court in the case of Debjit Sarkar vs. State of West Bengal & Ors., as well as another co-ordinate Bench judgment of this Court reported at (2017) 4 WBLR (Cal) 338 in the case of Sasanka Sekhar Dey & Ors. Vs. State of West Bengal & Ors., for the proposition that the right to hold rallies of a political party is a democratic right and the same cannot be denied only on the ground of administrative inconvenience, since administrative inconvenience should yield to the rule of law.

It is further submitted on the strength of such judgements that the mere citation of traffic congestion on the relevant date at the site of the meeting cannot, ipso facto, be a ground for refusal of permission to the petitioner to hold a meeting there.

Learned counsel appearing for the respondent-authorities submits that the limited scope of the writ petition is confined to the police authorities sitting tight over granting permission for holding a congregation, which has redressed by communicating the decision of the police authorities today.

As such, it is argued that the writ petition has spent its force and should be disposed of on such ground alone.

That apart, learned counsel cited a judgment, reported at (2018) 17 SCC 324 (Mazdoor Kisan Shakti Sangathan vs. Union of India & Anr.), for the proposition that, traffic congestion could be held to be a valid ground for refusal to grant permission for holding of dharna.

Upon hearing both sides and going through the materials-on-record, it is evident that the petitioner sought to hold a public meeting at the 'Gouripur Chowrastha' on January 18, 2020. Nothing is disclosed in the said application as to any emotional attachment being connected with the said 'Chowrastha' vis-à-vis the message sought to be spread at the public meeting. As per the application of the petitioner, the congregation is to be held with an intention to spread public awareness about the present local scenario on behalf of the petitioner's political party. As such, no emotional connect with the 'Chowrastha' can be related to the performance of the congregation. In the judgment of Sasanka Sekhar Dey (supra), the learned Single Judge has held that the drill, which was refused by the authorities in that case, was to be held on the date of Makar Sankranti and there was an emotional attachment with the specific date. As such, it was observed that the mere reason that there would be assemblage of men and vehicular traffic near the 'Maidan' during Gangasagar Mela, where the drill was supposed to be held, was not a valid ground for refusal.

However, as opposed to such case, there is no emotional connect between the purpose of the meeting proposed by the petitioner and the locale or date of the proposed meeting. Moreover, it is seen from the application dated January 06, 2020 that several leaders of the political party, whom the petitioner represents, would be gathered on that date and no specific time or the approximate strength of the gathering was disclosed in the application itself.

Next, taking into account the language of the unreported judgment, cited by the petitioner, it is evident that the said judgment also held that right to hold rallies of a political party, although cannot be denied, is not absolute and is subject to reasonable restrictions. It was held in the said judgment that the State should not discriminate while considering the application for grant of permission and administrative inconvenience should yield to the rule of law.

In the said cited case, the permission, which was refused, pertained to a motor cycle rally converging in Cooch Behar, which was near the place where the Gangasagar Mela was to be held. The learned Single Judge held that although the Gangasagar Mela coincided with the time of rally, the locality of the Gangasagar Mela was different from the place where the petitioner sought to converge at the end of their motor cycle rally.

As such, even as per the second cited judgment, reasonable restrictions could be looked into for the administrative convenience for granting permission.

That apart, unlike the present case, the convergence of a motor cycle rally would be easier to disperse than a full-fledged meeting of people of undisclosed number. That apart, the location of the spot chosen by the petitioner coincides with the trouble-spot of traffic congestion, unlike the unreported judgment, where the locales of the convergence of the rally and the Gangasagar Mela were different.

Moreover, in the present case, as per the application of the petitioner itself, the chosen location of the meeting was a crossing, which is submitted to be a five-point crossing on behalf of the respondent authorities. The reason for refusal given by the authorities is that there is every chance of traffic congestion leading to obstruction of vehicular movement due to the situation of the chosen location of the meeting, being near the five-point crossing situated by the side of Naihati-Kancharapara Road.

In the judgment cited on behalf of the respondent authorities, in particular, at paragraph 68 thereof, it was held that whenever such a request is made, the authority is to examine the same and take a decision as to whether it should allow the proposed demonstration, public meeting, etc. or not, keeping in view its likely effect, namely whether it would cause any obstruction to traffic or danger to human safety or disturbance to public tranquility, etc.

In view of a conjoint interpretation of the judgments cited by both parties, it is seen that there has to be as balance struck between the democratic right of

individuals and organizations to hold public congregations and the inconvenience of the public at large, which are both on a similar footing.

Merely because the petitioner chose a five-point crossing as the venue of the meeting, it was not incumbent upon the police to accede to such request only on the basis of the democratic right, as argued by the petitioner. All democratic rights are subject to non-infringement of the democratic right of the peaceful existence of other citizens. As such, in the present case, the balance is not in between arbitrariness and democratic rights, but a conflict between a 'democratic right' to hold a meeting of the petitioner and the political party he represents on the one hand and tranquility of the public at large on the other.

In the case at hand, the reason given by the police authorities for refusal of the rally at the chosen venue of the petitioner is, on the face of it, plausible and valid, as the locale itself indicates that it would attract tremendous traffic congestion if the congregation is held there; more so, since the exact, or even a tentative, number of cadre and the participating members of the political party was not disclosed in the application at all.

Such an inconvenience to the public in general, that too during full office hours on a working day, being a third Saturday of the month, has to be seen on a higher footing than the right of the petitioner to hold a rally. Since it is open to the petitioner and the political party, which he represents, to choose any other venue and date, which would be more convenient from the point of view of traffic movement and maintenance of law and order, the police authorities cannot be faulted in refusing permission for a meeting to be held at the busy crossing-in-question.

It is required to be noted here that this Court, at the behest of the petitioner, has chosen to enter into the merits even of the decision taken by the police authorities, although strictly speaking beyond the scope of the writ petition, as the writ jurisdiction is much wider than an ordinary civil remedy in the event fundamental rights of citizens are violated, in which case the court can mould the reliefs and protect such rights.

However, such being not the case in the present lis, there is no question of attributing any mala fide intention or discrimination on the act of the police in refusing the congregation as prayed for by the petitioner. This is all the more true, as the petitioner could not produce anything before this Court to show that any other individual or organization was granted similar permission at the locale-in-question, while the petitioner was being denied so.

In such view of the matter, there is no scope of interference in the present writ petition.

Accordingly, W.P. No. 1074 (W) of 2020 is dismissed without any order as to costs.

Urgent photostat certified copies of the order, if applied for, be made available to

the parties upon compliance of all requisite formalities.