
(2002) 09 KL CK 0011

In the High Court Of Kerala

Case No : O.P. No's. 25517 and 25606 of 2002

George Koshy

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Constitution of India, 1950 — Article 21, 215
Penal Code, 1860 (IPC) — Section 186

Citation : (2002) 09 KL CK 0011

Hon'ble Judges : B.N. Srikrishna, C.J;R. Basant, J

Bench : Division Bench

Advocate : S. Parameswaran, Siby Mathew, A.A. Mohammed Nazir, Philip J. Vettickattu and George Johnson, for the Appellant; V.K. Beeran, A.A.G. and N.N. Sasi, for the Respondent

Final Decision : Allowed

Judgement

B.K. Srikrishna, C.J.—These Writ Petitions under Article 226 of the Constitution raise seminal issues in the matter of administration of justice.

2. In *Bharat Kumar v. State of Kerala* 1997 (2) KLT 287 a Full Bench of this Court held that declaration of a "bundh" and the holding of it is unconstitutional and that political parties and the organisers who call for such bunds and enforce them are liable to compensate the Government, the public and the private citizens for the loss suffered by them. Dealing with fundamental rights under Article 19, the Full Bench observed:

".....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 the right of violating the right of another citizen. 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....."

Though the expression "bundh" is not defined in any law, the Full Bench pointed out that the absence of such a definition could not deprive the citizen of the 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. Analysing the nature of a bundh, this Court held:

"..... the calling 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 in to protect the rights of the citizen so as to ensure that the freedom available to him are not curtailed by any person or any political organisation..... The expression therefore, conveys an idea that every thing 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 stand still on the day of the bundh....."

The Full Bench opined that calling of such a bundh implies a threat to the citizen as it involves violation of the fundamental rights of the citizens.

3. It would appear that, despite the categoric pronouncement by the Full Bench of this Court, political parties, their sympathisers and the State Government and its officers are neither alive to their constitutional obligations nor responsive to their constitutional duties. The agitation is styled as "jail bhara", which implies nothing less than open defiance of the authority of the law and the State machinery and daring the State to take action under the law. The constitutional implications of such an action cannot be ignored for they have serious consequences. In our considered view, irrespective of the label attached to such an agitation, whether it be "jail bhara", "gherao", "bundh", "hartal" or any other, the illegality of such action and the fact that such action infringes the fundamental rights of other citizens cannot be gainsaid;

4. Every citizen is free to approach a Court of law for redressal of his grievance. The grievance may be on account of actions of other citizens or actions of the State. It is therefore the duty of the State to provide a machinery for resolution of such grievances. The Constitution of our country, therefore recognises the judiciary as an essential and inalienable organ of the State. Any attempt to prevent, disrupt or stultify its functioning must therefore be looked at and put down with a heavy hand.

5. From 2.9.2002 the Communist Party of India (Marxist) started an agitation in the name and style of "jail nirakkal (jail bhara)". The programme was stated to

be as a protest against the alleged anti-people policies pursued by the United Democratic Front Government which is in power in the State. Under this programme the collectorates, Taluk Offices and Village Offices were to be blockaded and no one was to be allowed to enter into the said offices. This programme was to commence from 2nd September and continue till 12.9.2002. This agitation was not a clandestine one, but was an openly declared programme much in advance of its commencement. That the agitation was to commence from 2.9.2002 was made known by public declarations, hand bills, posters, banners and newspaper reports.

6. In a number of district centres, taluk headquarters and villages, courts are also situated within the complex of buildings which house Government offices. Intentionally, or otherwise, the blockade of the Government offices resulted in total blockade of the courts. Consequently, neither the judicial officers, nor the court staff, nor the litigants, nor advocates had free ingress to and egress from the court premises. Additionally, free and extensive use of loud-speakers for speeches and demonstrations made it impossible for the courts to function normally. Reports called for by this Court from the different District Judges indicate that during the period of agitation only the District Courts at Thiruvananthapuram, Thodupuzha, Palakkad, Tellicherry, Kozhikode, Kalpetta, Alappuzha and Kasaragod reported that there was no obstruction caused to the normal working of the courts in their districts on account of the blockade organised by the political party. In all other districts, the blockade did affect the normal and smooth functioning of the courts in smaller or larger measure. The petitioner Sri. S. Parameswaran, a practising lawyer of this Court, filed a memorandum before the Registrar of this Court on 6.9.2002 complaining of these facts and seeking appropriate action. This memorandum was converted into a suo motu writ petition and notice was issued to the State Government. In response to the notice, the learned Advocate General appeared before the Court on 6.9.2002 and assured the Court that effective steps would be taken to remove such obstruction "to ensure that the presiding officers, members of the court staff, lawyers and litigants are not prevented from having free ingress to and egress from the court premises". The learned Advocate General has produced before us a copy of the communication issued to the Director General of Police containing such instructions. Reports called for from the District Judges of the different districts even subsequent to 6.9.2002 indicate that normal working of the Courts was affected due to the continued agitation resorted to at the instance of the said political party.

7. Inauguration of two fast track courts which was to take place in the premises of the District Court at Pathanamthitta could not take place there and had to be shifted to a different venue in the city on account of the continued blockade of the District Court premises.

8. Though learned counsel appearing for the petitioners and the interveners have strongly urged that we should initiate action against the State officers and the

respondents in contempt jurisdiction, it appears to us that such action is neither necessary, nor feasible. What is necessary is to drive home the imperative to ensure that court working is not disrupted on account of such political agitations, whatever be their ultimate objective.

9. Merely by giving a different name to the species, the genus does not change. Section 186 of the Indian Penal Code makes it an offence for any person to voluntarily obstruct any public servant in the discharge of his public functions and the offence is punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five hundred rupees or both. That every Judge and every staff of the court is a public servant, and every Advocate is an officer of the court, is beyond cavil. Agitation or no agitation, jail bhara or no jail bhara, their functioning and discharge of public duties cannot be obstructed by anyone, however, laudable his ultimate objective. Such action, apart from being an offence under the existing laws, would be an infraction of the fundamental rights guaranteed to the citizens of this country. It is also an attempt to deracinate a basic feature of our Constitution to have grievances redressed by Courts established in accordance with the Constitution and the laws. It would also amount to a contempt of court within the meaning of Article 215 of the Constitution and the Contempt of Courts Act. Even if, for reasons of political expediency the State does not mind its collectorates and offices being shut down due to blockade by such political agitations, the State is Constitutionally bound to ensure that the courts do not cease functioning because of misdirected, political agitations. Any failure to do so on the part of the State and its officers including the police officers, amount to breakdown of Constitution process and also be actionable on several grounds including in the contempt jurisdiction of this Court. The blockaders or agitators would also be liable to be proceeded against in contempt jurisdiction apart from being prosecuted for criminal offences under the law. It is time for the State authorities to sit up and take serious notice and ensure that, however, laudable the cause for which the agitation is called, it shall, under no circumstances be allowed to disrupt the functioning of the courts in the State.

10. With a view to ensure that the State acts in accordance with what we have stated in this judgment, we issue a writ of mandamus and direct the State and its officers as under:-

- i. The State Government shall ensure that the court premises are kept separate from the Government offices both in the District Headquarters and in other places.
- ii. The Chief Secretary shall formulate and forward a proposal to the High Court within a period of three months from today to effectuate the above direction. The Registry shall monitor the steps taken by the Government in this regard and seek appropriate further directions from this Court to ensure that separation of the courts from the Government office premises is completed within a period of 3 to 5 years.

iii. Until separation of the court premises from the Government premises is done, the State Government shall provide an exclusive entrance for the use of the courts, their officers, staff, lawyers and litigants which shall always be kept secure from obstruction and blockade by adequate police force who shall be responsible to promptly remove any obstruction or blockade and who shall also act as directed by the Judge presiding over the court.

iv. It shall be the duty of the Presiding Officer of any Court, including the District Judges to promptly report to the High Court any attempt made by anyone to interfere with the ingress to and egress from the court premises of Judges, court staff. Advocates and their clerks or litigants.

v. No slogan shouting with or without the use of loud speakers shall be permitted within the vicinity of Court premises which would have the effect of disrupting or disturbing the working of the court premises. As to whether there is such disturbance, the Presiding Officer of the Court shall be the sole Judge. The District Collector and the Superintendent of Police shall be responsible to forthwith remove the cause for such disturbance.

vi. They shall also ensure the implementation of the noise pollution rules in this regard.

11. We have refrained from initiating contempt action against the State and its officers with the hope that they would become alive to their responsibilities and discharge their legal and constitutional duties more effectively in the manner as indicated in this judgment. If there is any failure to do so, it shall be our painful duty to take stringent action against such defaulters as envisaged by law. The different political parties in the State, their supporters and fellow travellers are also be reminded that the rule of law is the linchpin of democracy and, "however high you be, the law is above you". He who defies the law shall feel the sting of the law in full measure; he who defies the courts shall do so at his sole peril.

12. Learned counsel for the petitioners strenuously urged that this Court should direct compensation to be paid by the State Officers for their failure to discharge their duties. In our view, this is a matter which would require making of factual findings. We, therefore, leave the question open and grant liberty to the petitioners to seek such damages by any appropriate action in any appropriate forum.

The Original Petitions are accordingly allowed. However, considering the nature of the petitions, there is no order as to costs.

Copies of this Judgment be circulated by the Registry to the Chief Secretary, all Judicial Officers, District Collectors, Commissioners and Superintendents of Police of all the Districts for information and compliance.