

(2020) 02 BOM CK 0040

In the Bombay High Court

Case No : Criminal Writ Petition No. 223 Of 2020

Iftekhar Zakee Shaikh

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 13-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 149 Maharashtra Police Act, 1951 —
Section 37(1)(3)
Constitution Of India, 1950 — Article 14, 19, 21

Citation : (2020) 02 BOM CK 0040

Hon'ble Judges : T.V. Nalawade, J;M.G. Sewlikar, J

Bench : Division Bench

Advocate : Salunke Sudarshan J., R.V. Dasalkar

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. The present proceeding is filed to challenge the order made by Police Inspector, City Police Station, Majalgaon, District Beed dated 21.01.2020

which is shown to be passed under Section 149 of the Cr.P.C. The relief is also claimed for quashing the order passed by Additional District

Magistrate, Beed dated 31.01.2020 and also for direction to respondents to see that the petitioner and companions are allowed to hold peaceful

demonstrations and agitations at old Idgah Maidan at Majalgaon, District Beed for indefinite period between 6 pm to 10 pm daily for such agitation

permission was requested in the past but the same was refused by police station concerned by giving some grounds and by taking the base of the

aforesaid order made by Additional District Magistrate. The learned A.P.P. has filed reply affidavit of Sub-Divisional Magistrate, Majalgaon. The

learned A.P.P. was expected to make submissions on behalf of both Police and the District Magistrate. The learned A.P.P. herein submitted during arguments that the authority does not intend to prohibit the petitioner and companions from sitting for aforesaid agitation. He also submitted that like at other places police will be giving necessary protection to the persons who will be sitting for agitation. In view of this submission, the only question which remains to be decided is whether the aforesaid order issued under Section 37(1)(3) of Maharashtra Police Act, 1951 could have been issued to prevent such agitation. That decision will directly decide the other point like challenge to the order made by the police by which the permission for agitation is refused.

3. This Court has carefully gone through the order dated 31.01.2020 made by the learned Additional District Magistrate. The order shows that the District Superintendent of Police had informed by letter dated 30.01.2020 to the District Magistrate that in that district many political parties and associations had started agitations which included blockade of roads, taking out morchas etc for many causes including protest against the Citizenship Amendment Act (CAA). Apprehension was expressed by the District Superintendent of Police that due to such agitations there was a possibility of some untoward incident and there was a possibility of creation of law and order problem. Some specific possible agitations are mentioned in the order which are as under:

- I) Due to crop damaged by excessive rains the farmers had suffered and their associations were likely to start agitation.
- II) Due to the increase in prices of essential commodities political parties and social organisations were likely to start agitation.
- III) The persons of community like Dhangar, Muslim, Bhoi and others were likely to start agitation for getting some social protection. IV) The people of all religions were likely to start agitations to show protest against CAA.

4. In the aforesaid order, the District Magistrate prevented many activities which include the carrying of arms etc. but at clause no.6 the Additional District Magistrate has prevented sloganeering, singing, beating drums also. It can be said that though the order on face appears to be against everybody, in reality the order is against persons who want to agitate, to protest against CAA. At present such agitations are going on everywhere and

there was no whisper of agitations of other nature in this region. Thus, it can be said that there was no fairness and the order was not made honestly.

5. It appears that some proceedings are pending in the Honâ??ble Apex Court in which there is a challenge to CAA on the ground that it is not

constitutionally valid. This Court is avoiding to touch the contents of CAA and that is also not necessary in view of the reliefs claimed in the present matter.

6. When we are considering the proceeding like present one, we must keep in mind that we are a democratic republic country and our constitution has

given us rule of law and not rule of majority. When such act is made, some people may be of a particular religion like Muslims may feel that it is

against their interest and such act needs to be opposed. It is a matter of their perception and belief and the Court cannot go into the merits of that

perception or belief. The Courts are bound to see whether these persons have right to agitate, oppose the law. If the Court finds that it is part of their

fundamental right, it is not open to the Court to ascertain whether the exercise of such right will create law and order problem. That is the problem of

a political government. In such cases, it is the duty of the Government to approach such persons, have talk with them and try to convince them.

7. When such matter comes before the Court, the Court also cannot go with the presumption that only particular community or religion has interest in

opposing such law. In the aforesaid order of Additional District Magistrate itself, it is mentioned that persons of all religions have started the agitation.

Thus, many persons of all the communities may feel that it is against the interest of mankind, humanity or the basic human values. We need to

remember the constitutional and legal history when we consider the provisions of constitution. We need to keep in mind the freedom struggle and the

causes which were taken up by the freedom fighters. In the British period there was â??Khilafat Movementâ?? to support the authority of Sultan of

Ottoman to act as Khalif of Islam. That agitation was against the britishers who were affecting the authority of Khalif but freedom fighters had taken

up that cause. Thus when no interest of Indian Muslims were affected due to the act of british against that Sultan the agitation was started by our

ancestors. This agitation was led by Mahatma Gandhi and it was for the purpose of expressing solidarity and support to the cause of Muslims of that

country. Thus the agitation can be for cause of foreigners also.

8. India got freedom due to agitations which were non-violent and this path of non-violence is followed by the people of this country till this date. We

are fortunate that most of the people of this country still believe in non-violence. In the present matter also the petitioners and companions want to

agitate peacefully to show their protest. In British period our ancestors fought for freedom and also for the human rights and due to the philosophy

behind the agitations, we created our constitution. It can be said that it is unfortunate but the people are required to agitate against their own

Government now but only on that ground the agitation cannot be suppressed.

9. The submissions made show that there will be no question of disobedience of provisions of CAA by such agitation. Thus, this Court is expected to

consider the right of such persons to start agitation in a peaceful way. This Court wants to express that such persons cannot be called as traitors, anti-

nationals only because they want to oppose one law. It will be act of protest and only against the Government for the reason of CAA.

10. In such matters the Court needs to consider whether fundamental rights of citizens are breached by the order under challenge. In view of the

nature of the order, one needs to see the rights given under Article 19 and 21 of the Constitution of India. If the persons agitating believe that it is

against the equality provided under Article 14, they have the right to express their feelings as provided under Article 19 of the Constitution of

India. They may feel that it will not be possible for them to enjoy the fundamental rights due to such act, they cannot enjoy life as mentioned in

Article 21 of the Constitution of India as interpreted by the Honorable Apex Court. In such a case it is not a matter of belief of Judicial Officer

presiding over a particular Court when the matter is being decided but it is a matter of belief of the persons who want to raise grievance by starting

such agitation. In such a case the ground of the respondent like possible problem of law and order cannot be considered by the Court particularly for

reason that it involves the exercise of fundamental right.

11. It is already mentioned that many persons of all the religion and all the communities are agitating to oppose the aforesaid act. In preamble there is

a mention of fraternity. The circumstance that the persons of other communities, religions are supporting the minority community show that we have

achieved fraternity to great extent. Doing something against this will hurt the fraternity and will create danger to the unity of the country.

12. It also needs to be kept in mind that it is the dissent of people against the act made by the Government and the bureaucracy needs to be sensitive

when it exercises powers given by law. Unfortunately, many laws which ought to have been scrapped after getting freedom are continued and the

bureaucracy is exercising the powers given under those laws and now against the citizens of free India. The bureaucracy needs to keep in mind that

when the citizens who believe that particular act is an attack on their rights which were achieved by freedom struggle and when it is against the

provisions of constitution which people have given to themselves, they are bound to defend that right. If they are not allowed to do so, the possibility of

use of force is always there and the result will be violence, chaos, disorder and ultimately the danger to the unity of this country. That seriousness

needs to be kept in mind by the bureaucracy while making such orders. This Court is observing with all possible seriousness that officers from

bureaucracy who are vested with powers of aforesaid nature need to be sensitized by giving them proper training on human rights which are

incorporated as fundamental rights in the constitution.

13. For the aforesaid reasons, this Court holds that the main order, the order of learned Additional District Magistrate is illegal and needs to be

quashed and set aside and consequently the order made by the concerned police station also is illegal and needs to be quashed and set aside.

Statement is made by the learned A.P.P. on behalf of both the authorities that necessary protection will be given to the persons who want to agitate

and such permission will be given. The representation recently given shows that they have undertaken to see that no slogans will be raised against the

country, against any religion, against the unity and integrity of the country.

14. In the result following order is passed:

ORDER

i) The petition is allowed.

ii) The order made by the learned Additional District Magistrate dated 31.01.2020 which is challenged in the present proceeding is quashed and set and aside.

iii) The order made by the concerned police station on 21.01.2020 by which the representation given by the petitioner came to be rejected is also quashed and set aside.

iv) The relief of permission to sit at the place mentioned in application for indefinite agitation is hereby granted.

v) The place where the agitation is to take place i.e. Old Idgah Maidan apparently is a Wakf property and so before starting agitation the permission

of the concerned needs to be taken. Present permission will be as per the time mentioned, on the conditions mentioned in the representation and usual

conditions for such agitation.

vi) Rule made absolute in those terms.