

(2003) 10 CAL CK 0004

In the Calcutta High Court

Case No : A.S.T. No. 1000 of 2003 and M.A.T. No. 3037 of 2003

In Re: State of West Bengal and etc.

Date of Decision : 13-10-2003

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Contempt of Courts Act, 1971 — Section 14, 15, 19

Citation : (2004) CriLJ 1594

Hon'ble Judges : S.P. Talukdar, J;A.K. Ganguly, J

Bench : Division Bench

Advocate : Balai Roy, General, Robilal Moitra, Govt. Pleader, Tarun Roy and Haridas Das, for the Appellant;

Judgement

1. Heard the learned Advocate General for State. This Court has also heard some other learned counsel, viz. Mr. Rajesh Kumar Ganguly, Mr. Chitta Ranjan Panda, Mr. Sumanta Chakraborty, Mr. Supradip Roy, Mr. Soumitra Bandopadhyay, Mr. Kallol Guha Thakurta, Mr. Idris Ali, even though the parties for which those counsel addressed this Court, are not on record. This Court has heard those learned counsel since the matter has generated some amount of public interest.

2. This appeal has been filed by the State under Clause 16 of the Letters Patent against the order dated 29th September, 2003, passed by the learned single Judge in exercise of suo motu power, under the contempt of Courts Act. An application has also been filed for stay of the said order. The learned Advocate General while arguing in support of the appeal and the application for stay has made it clear that the contempt proceedings, which have been initiated against the police authorities, are not maintainable in law. The learned Advocate General further submitted that in the said proceedings, which are not maintainable, the learned Judge has issued certain directions which are virtually directions on the State. As the State is finding difficulties to carry out those directions, this appeal has been filed. We have looked into the records and found that on 2nd October, 2003, another Division Bench, during vacation, was moved against the very same order and an application for stay was also filed. But the learned Division Bench did not have the benefit of perusing the reasoned order, passed by the

learned single Judge and, as such, the learned Judges of the Division Bench, did not consider the question of stay of the said order, except however, making some modifications and the directions given in the order under appeal were relaxed in so far the religious processions are concerned. Now, the order of the learned single Judge has been placed before us and the learned Advocate General has also filed additional grounds of appeal as also a Supplementary Affidavit, containing additional averments. From the perusal of the order passed by the learned single Judge, it appears that on 24th September, 2003, while the learned single Judge was coming to High Court, the learned Judge's car was caught in a traffic snarl and the car could not move further. From the facts stated in the judgment and order under appeal, it appears that security personnel of the learned Judge made a request to the police officer on duty so that the car can proceed towards the High Court. The police officer on duty asked the personal security of the learned Judge to wait a little and even reportedly requested the personal security of the learned Judge to control the traffic dislocation. However, the learned Judge had to wait in his car for sometime and the learned Judge felt humiliated. After waiting in the car for sometime, when the movement of the traffic on the road became normal, the learned Judge proceeded towards the High Court. The learned Judge has also recorded in the order that when the learned Judge sat in Court, the learned Judge found that the attendance in the Court was not usual like other days. The attendance was rather thin and on enquiry, the learned Judge came to know that because of the same procession which blocked the movement of learned Judge's car, the members of the Bar were also inconvenienced and there was delay on their part in coming to Court. This is broadly the factual background of the case and in the learned Judge's order it has been recorded that his Lordship's car was blocked in front of Akashbani Bhawan, which is at some distance from the High Court. The learned Judge in the aforesaid factual background exercised his Lordship's suo motu power under the Contempt Jurisdiction and in doing so, the learned Judge made the following observation.

"Every Judge is a citizen of the country but every citizen is not the Judge. A Judge has at least two compartments of mind. One is personal mind and another is Judge's mind. Judge's mind is based on reasons and applicable not only to the others' cause but also to his own cause. The own cause does not mean any private cause -- public cause. This is the source of suo motu power of contempt".

3. Again, the learned Judge made some observations about the source of Court's contempt power at page 4 of his Lordship's Judgment, which are set out hereinbelow :

"I am not unmindful about the source of power of the Court given under the Constitution particularly under Article 215 of the Constitution of India and Section 14 of the Contempt of Courts Act read with various Sections, Rules and Appendix. However the Constitutional authorities have inherent power to uphold the dignity and majesty of the Court of law. The line between Civil and Criminal

Contempt is very hazy. Whether it is civil contempt or criminal contempt or whether it is a public interest litigation or ordinary writ is only the input but not the output. The output is to give appropriate relief in the circumstances".

4. The learned Judge, therefore, issued a suo motu Rule for contempt on 24th September, 2003 and asked the Deputy Commissioner of Police [Traffic], as well as, the Assistant Commissioner/Officer-in-charge/ Sergeant, whoever is involved, to be present before his Lordship on 29th September, 2003, accompanied by certain police officers.

5. Thereafter, on 29th September, 2003, the learned Judge examined two police officers. They are Mritunjay Kumar Singh, Deputy Commissioner of Police and Mr. Saroj Roy Chowdhury, Inspector (Officer-in-charge. Traffic Guard). The learned Judge himself asked all the questions to those officers and the deposition in a question-answer form has been recorded by the learned Judge in the judgment and order under appeal. In the course of the deposition before the Court, Mr. Mritunjay Kumar Singh explained the position as follows :

"Around 10 a.m. a particular procession stated coming from the Strand Road side and following the main thoroughfare of the road and reached the point near Akash Bani Bhaban and forced their way towards the Rani Rashmani Avenue. Although they were to be taken towards the Maidan area (Talbagam Maidan) but they broke order of Section 144 and started turning violent and were smashed some cars and chased common public who were standing by the side of the road, to cross the road on their way to their respective offices or business places. As the processionists turned violent when the Police personnel tried to pacify their leaders and requested them to allow the vehicular traffic to pass at certain intervals, which they did not agree and by brandishing lathis and their traditional weapons forced their way through the main road. As a result of which all the cross roads near the Akash Bani Bhaban and Netaji statue near south gate of Governor's house were blocked by the vehicles coming from Red Road, Mayo Road, Rani Rashmani Road etc. There were several cars carrying Hon'ble Judges and other dignitaries and V.I.Ps, and member of the public waiting to cross the road to reach their places of work, the processionists were allowed to move out of the area as a prevention action and to avoid any untoward incident at that point of time. The procession consisting some 12,000 to 14,000 people mainly tribal people coming with traditional weapons were quite aggressive and were misbehaving with the public, who tried to cross road by their procession. As there were very less number of police personnel posted over the place, it became unimaginable at time to confront the leaders leading the procession".

6. Similar explanation was given by Mr. Saroj Roy Chowdhury, the other officer who was examined by the learned Judge. The learned Judge after examining those two officers, further directed them to file Affidavit by 9th February, 2004 and made the matter again returnable before his Lordship on that date and, in the meantime, the learned Judge gave certain guidelines, which were in the nature of direction. Those guidelines, against which the learned Advocate

General has made his submission are set out hereinbelow :

(a) The vehicular movement and access of the people who are inclined to work should be adequately protected by giving priority over any organized public meeting and procession.

(b) Public meetings can be held in three restricted areas i.e. Brigade Parade Ground, Rani Rashmani Avenue and Saheed Miner (Maidan) and that too only from 8 p.m. in the night till 8 a.m. in the morning in the weekdays. However, this restriction will not be applicable in the case of Sundays and other holidays. A public notice can be issued to that extent.

(c) Procession, other than leading to the meetings as aforesaid, can only be allowed by the one side of the road without blocking the entire area of the road stopping traffic or public movement. The religious festive and cultural procession can also be allowed in such manner.

(d) In case people belonging to any religion or tribe who want to make procession with their traditional weapons, the police authorities will take adequate measures well in advance to protect the Interest of the people as well as the procession to pass on with the help of other police departments i.e. the Rowdy Section etc. as well as R.A.F. There will not be total blockage of road.

(e) The traffic police will also be adequately armed to control the situation more instead of justifying the cause that they can not able to control the processions due to inadequacy of arms, weapons and man power.

(f) It will be remembered that due to uncontrollable situation of public meetings and processions there might be possibility of public harassment i.e. in attending train, plane, bus, hospital, examination hall, works of fire brigade, ambulance etc. Therefore, it is suggested that an administrative policy can be adopted to collect the security money from the organizers to meet the exigencies so that a compensatory benefit can be attributed. After the meeting expenses remaining amount can be refunded by the police authorities to the organizers. The quantum of security deposit will be fixed by the police authorities.

(g) Police may be called upon in respect of abovementioned clause (f) to pay off their respective claims failing which a suit or proceeding can be initiated in the civil Court to measure the amount of compensation with the guidance of principles of tort. In such case, such type of suit can be proceeded in a summary manner within a period of three months time from the date of filing of the same.

(h) During the interregnum period the D. C. (Traffic) will write respective letters to his counter-part of the police authorities of the adjoining districts i.e. 24-Parganas (North), 24-Parganas (South), Howrah and Hooghly in respect of the nature of their adequate measure and what type of relative steps they are taking to prevent the procession during the Court and office hours. The Railway and other authorities will also be informed accordingly. This will be directed to know apart from any other measures whether such procession etc. can be stopped

from the place of origin during the Court : office hours on the weekdays or not.

(i) The rehearsal of parades of military, police and others is creating huge difficulty to proceed towards the Court if the situation is not normalized with the adequate measures. Therefore, the D.C. (Traffic) will be entitled to talk to the defence authorities and others to complete the course of rehearsal by 8 a.m. in the morning by expanding the number of days instead of continuing up to 9 a.m. 10 a.m. or so causing visible disturbances to the public at large. Since the civilians are largely affected in getting their access towards the Court and adjacent areas, D. C. (Traffic) will take into account the matter and make a try to implement the same. In case there is any conflict of opinion, the decision of the D.C. (Traffic) will prevail because he is entrusted with the work for protecting the interest of traffic or people's movement.

(j) In the course of Implementation of any guideline the suggestions given by the D.C. (Traffic) will be respected. In case of any conflicting situation judicial order will prevail.

(k) Since various Learned Advocates wanted to intervene in the matter with their respective complaints I have directed to the Registrar General to make a separate file of complaint letters by treating the same as part and parcel of the record. However, if he is otherwise occupied, he will have the power of delegation to entrust any (sic) Registrars of the Court Including the Registrar, Original side to maintain the records properly for the purpose of coming into conclusion, if any, by this Court.

(l) In the process of protecting interest of the Court's business, if people at large is benefited, nobody can stop it because both cannot be segregated."

7. Now, the question is whether those guidelines can be issued by the learned Judge in exercise of suo motu jurisdiction under the provisions of the contempt law. The learned Judge in the course of his aforesaid Judgment and order observed that the dividing line between civil and criminal contempt is hazy. The aforesaid observation may be theoretically correct, but in the facts of the case, there seems to be no dispute in the matter. It is nobody's case that in the present situation there was any order passed by any Court or any authority, in somebody's favour, for his benefit and/or advantage and that there has been a violation of that order. The concept of civil contempt under the statutory definition of Section 2(b) of Contempt of Courts Act, 1971, is clear that in order to constitute civil contempt, there must be wilful violation of a Court's order or direction or decree, writ or other process of Court or breach of an undertaking given before any Court. Therefore, initiation of a contempt proceeding, under civil contempt would pre-suppose the existence of such an order. In the instant case, there was no such order. Therefore, the contempt proceedings, which has been initiated in this case, must be a proceeding for criminal contempt. In fact, the learned Judge has referred to Section 14 of the Contempt of Courts Act, in the course of his Lordship's judgment. Section 14 refers to contempt in the face

of the Court and it is criminal contempt. The learned Advocate General submitted that there has been no case of criminal contempt in the facts and circumstances, which have been recorded in his Lordship's order. The entire assumption of jurisdiction by the learned Judge, is wholly untenable in law. Before going into this question, the Court proposes to examine whether this appeal under Clause 15 of the Letters Patent is maintainable.

8. It has been Judicially determined that in order to make an appeal maintainable under clause 15 of the Letters Patent, the order appealed against must be a judgment, within the meaning of clause 15 of the Letters Patent. Now, what is a judgment under clause 15 of the Letters Patent, has been judicially construed by the Supreme Court, in the case of *Shah Babulal Khimji Vs. Jayaben D. Kania and Another*, . In paragraph 115 of the said judgment the learned Judges have laid down the tests which are to be satisfied in order to call an order, a judgment. Applying those tests, this Court is of the view that the judgment and order dated 29th September, 2003, is a judgment.

9. The next question is whether it is appealable under clause 15 of the Letters Patent. In this connection, the learned Advocate General has cited a Judgment of the Hon'ble Supreme Court in the case of *The State of Bombay and Others Vs. The Lasalgaon Merchant's Co-operative Bank Ltd. and Others*, . From paragraph 7 of the said judgment it is clear that where questions of public Importance are involved, an appeal under Clause 15 of the Letters Patent is admissible. Since the question of public importance is involved in the directions, given by the learned Judge, this appeal is maintainable under clause 15 of the Letters Patent.

10. The controversy in this aspect of the matter, seems to have been settled by the Supreme Court in a later judgment, rendered in the case of *Umaji Keshao Meshram and Others Vs. Radhikabai and Another*, . At paragraph 91 page 1314 of the report, the following observations have been made by the Supreme Court:

"The position which emerges from the above discussion is that under clause 15 of the Letters Patent of the Chartered High Courts, from the Judgment (within the meaning of that term as used in that clause) of a single Judge of the High Court an appeal lies to a Division Bench of that High Court and there is no qualification or limitation as to the nature of the jurisdiction exercised by the single Judge while passing his judgment, provided an appeal is not barred by any statute (for example. Section 100-A of the CPC 1908) and provided the conditions laid down by clause 15 Itself are fulfilled. The conditions prescribed by clause 15 in this behalf are : (1) that it must be a judgment pursuant to Section 108 of the Government of India Act of 1915, and (2) it must not be a judgment falling within one of the excluded categories set out in clause 15."

11. Following the aforesaid principles of law, this Court has no hesitation in accepting the contention of the learned Advocate General that this appeal, at the instance of the State under clause 15 of the Letters Patent is maintainable.

12. Now, the question is whether the learned Judge was right in Invoking the

contempt Jurisdiction, In the facts of the case. It is clear from Section 2(c) of the Contempt of Courts Act, which defines criminal contempt, inter alia, to the effect that if there is any act which interferes or tends to interfere or obstruct or tends to obstruct the administration of justice, in any manner, the same amounts to contempt. Section 14 deals with the procedure where such contempt is in the face of the Supreme Court or High Court and Section 15 deals with the procedure of cognizance of criminal contempt in other cases.

13. The learned Advocate General submitted that from the facts of the case, it cannot be said that on the date on which the learned single Judge found it difficult to reach the Court, in time, there was any intentional act on anybody's part to prevent the learned Judge from coming to Court. The learned Advocate General also submitted that from the entire facts which have been recorded by the learned Judge, there was nothing to suggest that there was any deliberate design on anybody's part in preventing the learned Judge from coming to Court. There was at the most, a violation of the law and order system. The police officers might have failed to control the processionists. That may be an unfortunate state of affair, but from this state of affairs, it cannot be concluded that any interference was deliberately caused in the administration of justice. The learned Advocate General has also submitted that nothing was done within the Court building or Court premises. Failure to maintain traffic or movement of vehicles near Akashbani Bhawan cannot be construed to be something happening in the face of the Court. This Court finds considerable force in the aforesaid submission of the learned Advocate General. This being the admitted factual aspect, the validity of assumption of jurisdiction by the learned Judge, under criminal contempt is also not beyond doubt. However, we are passing this order at an interim stage and this matter may be gone into in greater detail, at an appropriate stage.

14. Now, coming to the question of the directions, which have been given by the learned Judge, the learned Advocate General relying on a judgment of the Supreme Court in the case of D. N. Taneja v. Bhajan Lal reported in 1988 SCC (Cri) 546 submitted that in a case of criminal contempt the Court's jurisdiction is confined to the awarding of punishment to the contemner. In the instant case, no punishment has been awarded. We are of the view, that this judgment in the case of D. N. Taneja, is therefore, not attracted in the facts of the case. Since the contempt proceedings have not been concluded, as yet, therefore, the question of punishment cannot be considered at this stage. Further, the learned Advocate General submitted that the directions which have been given virtually affect the fundamental rights of the citizens and those directions cannot be given by the Court. This submission of the learned Advocate General requires some consideration.

15. Under the Constitution of India, every citizen of a sovereign, socialist, secular democratic republic, that our country is, is entitled under Article 19(1)(b) of the Constitution to assemble peaceably and without arms. This right is virtually a

right which is available to the citizens of the country, even before the Constitution has come to existence. The Constitution has recognised this right and placed it under the category of fundamental right, Now, the Constitution has provided that such right can only be subjected to reasonable restriction under Sub-article (3) of Article 19 of the Constitution. Sub-article (3) of Article 19 is set out below :

"Nothing in Sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said Sub-clause."

16. It is clear from the aforesaid constitutional dispensation that the right under Article 19(1)(b) can only be subjected to law created by the State, by way of reasonable restrictions. The ambit of such reasonable restriction in the context of Article 19(1)(b) came up for consideration before a Constitution Bench of Supreme Court In the case of Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad and Another, and the learned Judges of the Supreme Court struck down one of the regulations which were framed by the State Government, purporting to restrict the right under Article 19(1)(b). While dealing with this right, Chief Justice Sikri, also speaking for Justice A. N. Ray and Justice Reddy, in paragraph 31, page 95 of the report made the following observations :

"31. It seems to us that it follows from the above discussion that in India a citizen had, before the Constitution, a right to hold meeting on public streets subject to the control of the appropriate authority regarding the time and place of the meeting and subject to considerations of public order. Therefore, we are unable to hold that the impugned rules are ultra vires Section 33(1) of the Bombay Police Act insofar as they require prior permission for holding meetings."

17. Justice Mathew, in a concurring opinion based on different reasons, after copiously quoting from Dicey's Law of Constitution, at paragraph 60 at page 101 of the report made the following observations :

"60. Freedom of assembly is an essential element of any democratic system. At the root of this concept lies the citizen's right to meet face to face with others for the discussion of their ideas and problems -- religious, political, economic or social. Public debate and discussion take many forms including the spoken and the printed word, the radio and the screen. But assemblies face to face perform a function of vital significance in our system, and are no less important at the present time for the education of the public and the formation of opinion than they have been in our past history. The basic assumption in a democratic polity is that Government shall be based on the consent of the governed. But the consent of the governed implies not only that the consent shall be free but also that it shall be grounded on adequate information and discussion. Public streets are the "natural" places for expression of opinion and dissemination of ideas. Indeed it

may be argued that for some persons these places are the only possible arenas for the effective exercise of their freedom of speech and assembly."

18. In paragraph 61 Justice Mathew made it clear that the right to hold public meetings in open space and public streets forms part of tradition of our national life.

19. These observations of the Constitution Bench of the Supreme Court still hold the field. Having regard to those observations of the Supreme Court and also having regard to the constitutional provisions, this Court is of the view that the directions which were given by the learned Judge in the order dated 29th September, 2003, *prima facie*, cannot be sustained. The ambit of fundamental right granted under the Constitution can only be reasonably restricted by valid law made by the State. The directions by the learned single Judge restricting the fundamental right of the citizens are, therefore, *prima facie*, untenable in law. (See the decision of Supreme Court in *Bijoe Emmanuel and Others Vs. State of Kerala and Others*,). Even laws made by State can only reasonably restrict such right in the interest of public order, (See *Himat Lal* (1973 Cri LJ 204) (SC) (*supra*) at paragraph 33).

20. The learned Advocate General has of course assured the Court that the State Government is also anxious to control the manner in which sometime the processions are taken out, by causing disruption to traffic and also causing serious inconvenience to the members of the public. It has also been submitted before us that the enjoyment of fundamental right of some cannot cause total detriment of others and the State is aware of this position and the State is trying to evolve some reasonable solution to this problem by enacting a law by way of a consensus. This has been stated in paragraph 8 of the stay application which has been filed before us today. We hope and expect that State Government would evolve such consensus, as early as possible.

21. For the reasons discussed above, we stay the operation of all the directions given by the learned single Judge in the order dated 29th September, 2003, numbered (a) to (1). All those directions shall remain stayed till the hearing of the appeal.

22. The learned Advocate General undertakes to have the informal Paper Books filed by 12th November, 2003, including therein all the papers used in this proceeding and all the learned Advocates who have addressed the Court today, may be served with a copy of the Paper Book, so that they may assist the Court at the time when the appeal may be heard by the appropriate Bench.

23. This application for stay is accordingly disposed of.

24. The ordering portion of this judgment and order may be communicated by the parties and the appropriate authority will act on the basis of such communication.