

(2018) 09 CAL CK 0064
In the Calcutta High Court
Case No : Writ Petition No.19370 (W) of 2018

Md. Amin & Ors

APPELLANT

Vs

Bharatiya Janata Party & Ors

RESPONDENT

Date of Decision : 26-09-2018

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)(a), 19(1)(b), 19(1)(d), 226

Citation : (2018) 09 CAL CK 0064

Hon'ble Judges : Debasish Kar Gupta, J;Shampa Sarkar, J

Bench : Division Bench

Advocate : Ashis Sanyal, Prasun Ghosh, S. Biswas, Madhu Jana, Goutam Sardar, Brajesh Jha, Arijit Bakshim, Shambhu Nath Roy, Kishore Dutta, Kaushik Chanda, Anirban Mitra

Final Decision : Disposed Off

Judgement

On the prayer made on behalf of the petitioners, leave is granted to correct the typographical error in the cause title so far as the description of the

respondent No.2 is concerned. Let affidavits of service filed on behalf of the petitioners be kept on record.

This is an application filed under Article 226 of the Constitution of India. The writ application is filed by three writ petitioners. One of them, namely the

petitioner No.1 identifies himself as a social worker and the petitioner No.2 identifies himself as a member of AI-I India Minority Forum and the

petitioner No.3 identifies herself as a small businesswoman. This writ application is filed in the nature of Public Interest Litigation. The subject matter

involved in this writ application is a call of â??Bandhâ? of 12 hours today, i.e., on September 26, 2018 from 6.00 a.m. to 6.00 p.m. at the instance of

the respondent No.1, i.e. Bharatiya Janata Party in the State of West Bengal. The

main prayer made in this writ application is to ensure smooth functioning of the routine affairs in the State during the aforesaid period of â?? Bandhâ? by directing the State respondents to ensure smooth functioning of all organisations and institutions in the State and to prevent any sort of untoward incident at the instance of any miscreant.

It is submitted by Mr. Idrish Ali, learned Advocate appearing for the petitioners, according to the settled principles of law, that fundamental rights of

the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of people. Therefore, nobody can

restrain a citizen of an independent country to enjoy his fundamental right to move freely and to discharge his function in accordance with law. It is

also submitted by Mr. Ali that it is the responsibility of the State machinery as also the Central machinery to ensure such fundamental right of the

citizens of India. A prayer is made by Mr. Ali to give necessary directions upon the administration, namely the Central Government and the State

Government to take all necessary measures for ensuring the enjoyment of the aforesaid fundamental rights by the citizens of India during the period

for which the â??Bandhâ?? has been called by the respondent No.1.

It is submitted by Mr. Ashis Sanyal, learned Senior Advocate appearing for the respondent No.1, that the right of a citizen or an organisation to

express himself or themselves freely is a fundamental right guaranteed under Article 19 of the Constitution of India. In his usual fairness, he further

submits that it does not include forcefully restraining a citizen of a country from expressing his free opinion or to act on his volition. According to Mr.

Sanyal, the right to support a call of â??Bandhâ? by a citizen on his own volition is not against any fundamental right guaranteed under the

Constitution of India. It is submitted by Mr. Sanyal, on instruction, that the respondent No.1 has given a call for â??Bandhâ? in the State of West

Bengal today for 12 hours from 6.00 a.m. to 6.00 p.m. relying upon the volition of the citizen of the State and not by applying any force to compel

them to support such a call of â??Bandhâ??.

It is submitted by the respondent No.2, namely Rashtriya Swayam Sevak Sangh, on instruction, that the respondent No.2 has not called any

â??Bandhâ? today. The allegation made in the writ application to that effect is baseless. According to him, it is the fundamental right of a citizen of

India either to support or oppose a call of â??Bandhâ? peacefully. But the respondent No.2 has not taken any decision in this regard as an organisation.

It is submitted by Mr. Kishore Dutta, learned Advocate General, State of West Bengal, on instruction, that the State Government has already taken a decision to ensure smooth functioning of all affairs of the State today from 6.00 a.m. to 6.00 p.m. taking into consideration the call of â??Bandhâ? by the respondent No.1. According to him, all measures have been taken to maintain smooth running of the public vehicles and maintaining law and order situation in each and every corner of the State. Drawing our attention towards the publication made in all the leading daily newspapers, it is submitted by the learned Advocate General that emergency helplines are disclosed, insurance for any damage caused to the vehicles have been announced, helplines for transport facilities have also been provided. Extra buses, trams and vessels have been arranged. Extra police force has also been deployed to prevent any sort of untoward incident in the State.

It is submitted by Mr. Kaushik Chanda, learned Additional Solicitor General, Eastern Region, on instruction, that adequate instructions have already been given to the Railway Protection Force and similar forces of the Metro Railways to ensure smooth running of the trains and Metro Rails during the period of â??Bandhâ?. He assures that helpline numbers will be provided within a short period of time so that the people may know whom to contact in case of emergency during or after the period of aforesaid â??Bandhâ?. We have heard the learned Counsels appearing for the respective parties and we have given our anxious consideration to the facts and circumstances involved in this case.

India is a Democratic Country having its Constitution. The Constitution of India created three pillars for preservation of India as a Sovereign Democratic Republic. Under Entry 2, List II, of 7th Schedule to the Constitution of India, police including railway and village police subject to the provisions of Entry 2A of List I is within the domain of the State Government. Therefore, it is the responsibility of the State Government mainly to ensure prevention of all sorts of untoward incident in the State at any point of time.

According to the settled principles of law, as decided in the decision of Anita

Thakur & Ors. vs. Government of Jammu & Kashmir & Ors. reported in (2016) 15 SCC 525, Article 19(1)(a) of the Constitution of India confers freedom of speech to the citizens of this country and ensures that any person can raise any slogans in protestalbeit, in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and thus guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely is guaranteed under Article 19(1)(d). However, the Honâ??ble Supreme Court was aware of the recent happenings. According to the Honâ??ble Apex Court, there has been an unfortunate trend where such demonstrations and protests are on the increase. There are all kinds of protests on social issues, on political issues and on demands of various sections of the society of varied kinds. It is also becoming a common ground that religious, ethnic, regional language, caste and class divisions are frequently exploited to create violence whenever mass demonstrations or dharnas etc take place. Relevant portions of the above decision are quoted below:

â??8. We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19 (1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech -to th-e citizens of this country and , thus, this provisin ensures that the petitioners could raise slogans, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to m-ove freely given under Article 19(1)(d), again, ensures that the petitioners could take out peaceful march. The â??right to assembleâ?? is beautifully captured in an eloquent statement that â??an unarmed, peaceful protest process in the land of ?salt satyagrahaâ??, fastuntodeath and â??do or dieâ?? is no jural anathema.â? It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, nonviolent protest marches were a key weapon in the struggle for independence, and the right to peaceful protest is now

recognised as a fundamental right in the Constitution.

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12. Before advertng to the issue at hand, we would like to make some general remarks about the manner in which these demonstrations are taking

shape. Recent happenings show an unfortunate trend where such demonstrations and protests are on increase. There are all kinds of protests : on

social issues, on political issues and on demands of various sections of the society of varied kinds. It is also becoming a common ground that religious,

ethnic, regional language, caste and class divisions are frequently exploited to foment violence whenever mass demonstrations or dharnas etc take

place. It is unfortunate that more often than not, such protestors take to hooliganism, vandalism and even destroy public/private property. In the

process, when police tries to control, the protestors/mob violently target policemen as well. Unruly groups and violent demonstrations are so common

that people have become to see them as an appendage of Indian democracy. All these situations frequently result in police using force. This in turn

exacerbates public anger against the police. In Kashmir itself there have been numerous instances where separatist groups have provoked violence. In

this scenario, task of the police and law enforcing agencies becomes more difficult and delicate. In curbing such violence or dispersing unlawful

assemblies, police has to accomplish its task with utmost care, deftness and precision. Thus, on the one hand, law and order needs to be restored and

at the same time, it is also to be ensured that unnecessary force or the force beyond what is absolutely essential is not used. Policemen are required to

undergo special training to deal with these situations. Many times the situations turn ugly or go out of control because of lack of sufficient training to

the police personnel to deal with violence and challenges to their authority. There are various documents in the form of police manual and even

international covenants prescribing use of unnecessary force and mandating that force should only be used when it is absolutely necessary (These

documents, inter alia, are : - -

(a) Model Rules on the Use of Force by the police against unlawful Crowds (Adopted by the Inspectors General of police Conference, 1964)

(b) Police Manuals : For -instance, the Kerala police manual, 1970 lays down a stepbystep procedure to deal with unlawful assemblies:

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The police must invariably secure the presence of a magistrate where it anticipates a breach of peace The decision to use force and the type of force

to be used is to be taken by the magistrate Once the order for the use of force is given by the magistrate, the extent of force to be used will be

determined by the seniormost police officer The extent of force used must be subject to the principle of minimum use of force Use of force should be

progressive i.e. firearms must b-e used as a last resort if tear smoke and lathi charge fail to disperse the crowd Common tearsmoke which causes no

bodily injury and allows recovery of affected persons should be used When the crowd is large and the use of tearsmoke is likely to serve no useful

purpose, the police may resort to lathi charge Lathi charge can only begin if the crowd refuses to disperse after suitable warning Clear warning of the

intention to carry out a lathi charge should be given through a bugle or whistle call in a language understood by the crowd. If available, a riot flat must

be raised. If the police officer in charge is satisfied it is not practical to give a warning, s/he may order a lathi charge without warning.

Lathi blows should be aimed at soft portions of the body and contact with the head or collarbone should be avoided as far as practicable. The lathi

blows must not cease until the crowd is completely dispersed If the crowd fails to disperse through the lathi charge, the magistrate or the competent

officer may order firing The fullest warning in a clear and distinct manner must be given to the crowd to inform them that the firing will be effective If

after the warning, the crowd refuses to disperse the order to fire may be given The police are not on any account allowed to fire except on a

command given by their officer A warning shot in the air or firing over the heads of the crowd is not permitted An armed force should maintain a safe

distance from a dangerous crowd to prevent being overwhelmed, or increasing the chances of inflicting heavy casualties Aim should be kept low and

directed at the most threatening part of the crowd Firing should cease the moment the crowd show signs of dispersing All help should be rendered to

convey the wounded to the hospital Police officers must not leave the scene of disturbance before satisfying themselves beyond reasonable doubt

about the restoration of tranquility An accurate diary of all- incidents, order and action- along with the time of occurrence should be maintained by the

police. This will include an individual report by all officers involved in the firing.

The number of fired cartridges and the balance of unfired cartridges should be verified to ensure ammunition is accounted for (c) The Commonwealth

Human Rights Initiative (CHRI) is an independent, nonpartisan international nongovernmental organisation, mandated to ensure the practical

realisation of human rights in Commonwealth countries. CHRI is headquartered in New Delhi and has offices in London and Accra (Ghana). (d)

Various orders passed by the National Human Rights Commission). Even when used, it should be minimum and proportional to the situation and its

used to be discontinued as soon as the danger to life and property subsidised.â??

In recent past the Honâ??ble Supreme Court in the matter of Bimal Gurung & Ors. vs. Union of India (UOI) & Ors. reported in AIR 2018 SC 1459

repeated and reiterated the aforesaid views. Therefore to sum up, the right to ask the citizens of India to restrain from participation and in discharging

their routine functions as a matter of protest has been recognised in the light of the provisions of Article 19 of the Constitution of India, subject to a

rider that such call must be based on placing reliance on the volition of the citizens of the country or a particular State without hampering the routine of

a State either by supporting or opposing the â??Bandhâ?. The basis is, once again, the provisions of Article 19 of the Constitution of India in order to

ensure that a peaceful protest or demonstration should not result in violence and paralyze the law and order situation.

In view of the above, the following directions are given upon the State authorities:

(i) The Secretary to the Government of West Bengal, Department of Home Affairs and Director General and Inspector General as also the District

Magistrates are directed to ensure that in the whole organisation of the â??Bandhâ?, no use of force or intimidation is made, no interference with

road and rail traffic or free movement of the citizens of the State of West Bengal is made during the period of such â??Bandhâ?? today.

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(ii) Supply of essential services like water supply, milk distribution, power supply, fire services, newspapers shall be ensured. Hospitals, schools and

colleges including the institutions under the judiciary shall be ensured to function and adequate protection is given.

(iii) Actions must be taken against antisocial elements and persons indulging in acts of violence and vandalism.

(iv) Adequate police arrangements be made outside the railway station, bus depots, main roads, main junctions, hospitals, Courts, schools, colleges etc and necessary protection to market and business places shall be given.

(v) To make arrangement for commencement of the helplines for getting police assistance and in case of disruption in transport system though out the

day, or in particular during the period of the aforesaid â??Bandhâ? and also thereafter and to ensure proper response to the calls from deserving

persons in those helplines.

The similar direction is also given to the different authorities of the respondent No.4, namely the railway authorities and Metro Railway authorities,

Telephone and Telecommunication authorities to ensure from smooth functioning. Since nothing remains to be decided in the writ application, the same

stands disposed of with the observation that in the event further consideration of any aspect is required in future, the parties will be at liberty to take

appropriate steps in accordance with law. There will be, however, no order as to costs. Let photostat plain copy of this order duly countersigned by

the Assistant Registrar (Court) be furnished to the office of the learned Advocate General as also in the office of the leaned Additional Solicitor

General for sharing it with the learned Advocates representing difference parties on usual undertakings.