

(2012) 01 MP CK 0058

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3597 of 2004

Nagrik Upbhokta Margd Arshan Manch

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 02-01-2012

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21

Citation : (2012) ILR (MP) 446 : (2012) 2 MPJR 57

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Advocate : Dinesh Upadhyay, for the Appellant; Kumaresh Pathak, Dy. A.G. the Respondent No. 1/State. Greeshm Jain, the Respondent No. 2 Vivek Rusia, the Respondent No. 3, for the Respondent

Judgement

Ajit Singh J

1. Petitioner Pro Bono Publico vide this petition seeks mandamus that Bundhs/ strikes called by respondents No. 2 and 3 on 26-08-2004 and 02-09-2004 be declared as illegal. Further direction is sought to the State of Madhya Pradesh and its functionaries to ensure that in future no coercive or forcible Bundhs are called by political parties and ensure protection of citizens, their properties and of public properties during Bundhs/strikes called out by the political party. Bundh on 26-08-2004 and 02-09-2004 as apparent from the pleadings on record and more particularly the admission by respondent No. 1/State of Madhya Pradesh in paragraph 3 of its return was respectively called by respondents No. 2 and 3/ national political parties.

2. As per petitioner, the said Bundh had paralyzed the normal movements in the city as a result whereof no commercial activities took place, the schools were closed and working in the offices was also hampered. It is urged that bundh hampered even the movement of railways as a result whereof there was colossal national loss to the exchequer and has adversely effected the earning of a common man in the town. It is urged that despite of the mandate by the

Supreme Court in Communist Party of India (M) v. Bharat Kumar : AIR 1998 SC 184, the respondents No. 2 and 3, in blatant violation of the said mandate, not only called for the Bundh on 26-08-2004 and 02-09-2004, the State Government and its functionaries turned to be a mute spectator, instead of preventing the Bundh. It is further contended that in pursuance to the Bundh call the members of respondents No. 2 and 3 roamed around in the street preventing the citizens from discharging their daily functions. It is urged that the State Govt. and its functionaries did not take preventive steps to stop the respondents from proceeding with the Bundh call. It is therefore urged that the State Government and its functionaries be directed that no coercive or forcible Bundhs are activated by political parties in future and in respect of loss which incurred because of the two aforesaid Bundhs the respondents No. 2 and 3 be directed to compensate the same to be quantified by the State Govt. and be deposited with the State Govt. or the Municipal Corporation.

3. Respondents on being noticed have filed their respective return.

4. Respondent No. 1 while not disputing the fact that Bundh on 26-08-2004 and 02-09-2004 are at the instance of respondents No. 2 and 3 has to submit that the Bundhs were peaceful, orderly and benign. Respondent No. 1 further denied that the life of the city of Jabalpur was paralyzed because of the Bundhs and also caused financial loss to the Government. It is urged that the State authorities did not receive any report in respect of any loss having been committed to the private or the public property or the person. It is urged that the Bundhs have been voluntary and were out of sympathy of the public at large with the Organizations who organized the Bundhs. It is stated that specific steps were taken to prevent any untoward incident during the call. The respondent No. 1 further denies that any coercive steps tactics were employed by the members of respondents No. 2 and 3 and that any incident to private or public property has taken place. It is also denied that any force was applied to get the schools and colleges closed.

5. Respondent No. 2 in its reply though does not dispute the fact that a Bundh was called on 26-08-2004, it is, however, submitted that the same did not adversely effect the daily life of citizens of Jabalpur. It is urged that no force was applied rather request was made to the common person to support the cause. Respondent No. 2 further denies the alleged loss said to have been incurred during the said Bundh. It is further contended that there was no complaint from any corner of force being used to implement the Bundh call. It is contended that it was a peaceful movement organized with a support of the citizens of the town. It is urged that no industrial activity, commercial activity or educational activity were ever forced to be closed down by workers of respondent No. 2.

6. Respondent No. 3 in its return though denies that any Bundh was called, it is urged that due to wrong decision taken by the Govt. that the respondent with support of local people and shop keepers had lodged the protest in the process whereof certain private establishments were closed down. It is urged that a

voluntary closing down of the establishment by the citizens cannot be termed as Bundh. It is urged that the executive committee of the respondent only decided to host a flag at a place called "Keshav Kuti" after marching through the road. It is contended that the petitioner has concocted the entire facts and has wrongly projected the same as if the respondent No. 3 has taken recourse to Bundh. It is further contended that being a political party it is within its right to hold demonstration as the same is protected under Article 19 (1) (a) and (b) of the Constitution to protest in a democratic manner the wrong policies of the Govt. It is contended that it is within the right of the respondent No. 3 to call for a voluntary support from the citizens against the wrong policies of the Govt. It is urged that if in pursuance to such call, the citizens in support closed down their establishments, the same cannot be said to be the Bundh as is nomenclatured by the petitioner. It is urged that there being no violation of the provisions of the Constitution of India the petition being devoid of substance is liable to be dismissed.

7. Considered the rival submissions.

8. The issue as to whether there can be a fundamental right in a political party to call for Bundh by force, intimidation or coercion is no more *res integra* and has been held to be not a fundamental right of a political party.

9. In *Communist Party of India (M) v. Bharat Kumar* (supra) while approving Full Bench decision of the High Court it was held by the Supreme Court "3.....There cannot be any doubt that the fundamental right of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "Bandh" which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court, particularly those in paragraphs 12, 13 & 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement."

10. In paragraphs 12, 13 & 17 of *Bharat Kumar K. Palicha and another v. State of Kerala and others* (AIR 1997 Kerala 291) the Full Bench of Kerala High Court observed :

12. It is true that there is no legislative definition of the expression "bundh" and such a definition could not be tested in the crucible of constitutionality. But does the absence of a definition deprive the citizen of a 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 ? When Article 19(1) of the Constitution guarantees to a citizen the fundamental rights referred to therein and when Article 21 confers a right on any person-not necessarily a citizen-not to be deprived of his life or personal liberty except according to procedure established by law, would it be proper for the

Court to throw up its hands in despair on the ground that in the absence of any law curtailing such rights, it cannot test the constitutionality of the action? We think not. When property understood, 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 into protect the rights of the citizen so as to ensure that the freedoms available to him are not curtailed by any person or any political organisation. The way in this respect to the Courts has been shown by the Supreme Court in *Bandhua Mukti Morcha Vs. Union of India (UOI) and Others*,

13. It is argued on behalf of the respondents that a bundh could be peaceful or violent and even if the Court were to act, it could act only to curtail violent bundhs and not peaceful bundhs. It is contended that the Court cannot presume or generalise that the calling of a bundh always entails actual violence or the threat of violence in not participating in or acquiescing in the bundh. The decision in *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, is referred to in that context. This theoretical aspect expounded by counsel for the respondents does not appeal to us especially since as understood in our country and certainly in our State, the calling for a bundh is clearly different from a call for a general strike or a hartal. We have already noticed that a call for a bundh holds out a warning to the citizen that if he were to go out for his work or to open his shop, he would be prevented and his attempt to take his vehicle on to the road will also be dealt with. It is true that theoretically it is for the State to control any possible violence or to ensure that a bundh is not accompanied by violence. But our present set up the reluctance and sometimes the political subservience of the law enforcing agencies and the absence political Will exhibited by those in power at the relevant time, has really led to a situation where there is no effective attempt made by the law-enforcing agencies either to prevent violence or to ensure that those citizens who do not want to participate in the bundh are given the opportunity to exercise their right to work, their right to trade or their right to study. We cannot also ignore the increasing frequency in the calling, holding and enforcing of the bundhs in the State and the destruction of public and private property. In the face of this reality, we think that when we consider the impact of a bundh on the freedom of a citizen, we are not merely theorising but are only taking note of what happens around us when a bundh is called and a citizen attempts either to defy it or seeks to ignore it. We are not in a position to agree with counsel for the respondents that there are no sufficient allegations either in O.P. 7551 of 1994 or in O.P. 12469 of 1995 which would enable us to come to such a conclusion. In fact, the uncontroverted allegations in O.P. 12469 of 1995 are specific and are also supported by some newspaper clippings which though could not be relied on as primary material, could be taken note of as supporting material for the allegations in the Original Petition.

17. No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or Nation and is entitled to prevent

the citizens not in sympathy with its view point, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the Nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it. The claim for relief by the petitioners in these Original Petitions will have to be considered in this background.

11. The aforesaid observation having been upheld in *Communist Party of Indian (M) v. Bharat Kumar* (supra) is binding and cannot be digressed by any of the parties before us.

12. A call for Bundh since has the element of coercion cannot be taken recourse to at the cost of fundamental right of the people as a whole. Be there a call for voluntary support but since it has an element of force, it does not lie in the mouth of the respondent that it is the fundamental right under Article 19(1)(a) & (b) of the Constitution to call for Bundh/Hartal/Strike.

13. However, in the case at hand there is a dispute as to whether when a bundh was called on 26-08-2004 and 02-09-2004 any element of force or coercion was displayed by members of respective political parties. Return filed by the State of Madhya Pradesh and its functionaries also nowhere points out that any force or coercion was applied by respondents No. 2 and 3. In view whereof and in absence of any cogent material on record except the newspaper clipping which we refrain to place reliance the relief as claimed by the petitioner to direct for payment of compensation cannot be granted. Further more, it cannot also be held that a force or coercion was applied when a bundh was called on 26-08-2004 and 02-09-2004. To that extent the petition stands dismissed. However, before parting with the matter we observe that, since bundh/hartal/strike involves an element of force which has been declared to be not a fundamental right, it is directed that in future the State of Madhya Pradesh and its functionaries in case where there is a bundh/hartal/strike to take steps to prevent the coercion or the force applied by respective callers. The respondent/State of Madhya Pradesh would also be at liberty in case it finds that public property/private property has been damaged in furtherance of such calls, to quantify the damage and call upon the callers to compensate the same. Individuals whose properties get damaged during such bundh or call are also at liberty to recover damages in accordance with law.