

(2021) 11 OHC CK 0083

In the Orissa High Court

Case No : Writ Petition (Civil) No. 35608 Of 2021

Naresh Kumar Mishra

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 11-11-2021

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a), 19(1)(b), 19(1)(g), 141

Citation : (2021) 11 OHC CK 0083

Hon'ble Judges : Dr. S. Muralidhar, CJ;A.K. Mohapatra, J

Bench : Division Bench

Advocate : Milan Kanungo, D. Acharya, S.R. Mohanty, Ashok Parija, Debakanta Mohanty

Final Decision : Disposed Of

Judgement

Dr. S. Muralidhar, CJ

1. On an urgent mentioning before this Court, this writ petition filed by Naresh Kumar Mishra, a shop owner in Cuttack, was taken up by this Court and listed for hearing at 4 pm today. An advance copy of the petition was asked to be served on Opposite Party Nos. 1 and 2 viz., the State of Odisha and the Director General of Police, Odisha, Cuttack. A copy was also asked to be served on Opposite Party No.3 i.e. the Odisha Pradesh Congress Committee of the Indian National Congress, Odisha, represented by its President Sri Niranjana Patnaik.

2. Mr. Mishra explains in his petition that around 11 am today a mob of 20-25 persons claiming themselves to be the workers of Opposite Party No.3 warned the market establishment in and around College Square and Ranihat areas of Cuttack to desist from opening their shops tomorrow, failing which their shops will be forcibly closed down. Apprehending that this threat might be real, Mr. Mishra has approached this Court in the present petition for appropriate orders.

3. Enclosed with the petition is a copy of a news item that appeared in "The Sambad" English edition on 10th November, 2021 stating that the Congress Party

had given a call for 'Odisha Bandh' on 12th November, asking for resignation of a Minister in the Odisha Cabinet, in connection with a recent incident of murder.

4. The attention of this Court has been drawn by Mr. Milan Kanungo, learned Senior Counsel appearing for the Petitioner to the fact that the legal position as regards the calling of Bandh stands settled by virtue of the judgment of the Full Bench of Kerala High Court in *Bharat Kumar K. Palicha v. State of Kerala* AIR 1997 Kerala 291 which was upheld by the Supreme Court in *Communist Party of India (M) v. Bharat Kumar* AIR 1998 SC 184. While agreeing with the distinction drawn by Kerala High Court between 'Hartal' and 'Bandh' the Supreme Court approved the conclusion of the High Court that "there cannot be any right to call or enforce the Bandh which interferes with the exercise of the fundamental freedom of the other citizens in addition to causing national loss in many ways."

5. Subsequently, in the context of a Bandh call given in Tamilnadu, which threatened the peaceful conduct of the NEET Examination, the Supreme Court of India on 8th September, 2017 in Writ Petition (Civil) No.133 of 2017 (*G.S. Mani v. Government of Tamilnadu*) reiterated the above legal position and directed the Chief Secretary, Government of Tamil Nadu and the Principal Secretary, Department of Home "to ensure that law and order is maintained throughout the State in the wake of the situation in respect of the NEET Examination". The Chief Secretary was asked to see that "anyone involved in any kind of 'Bandh' or activity that disrupts the normal life and detrimentally affects law and order in the State of Tamil Nadu, shall be booked under the appropriate law." The Supreme Court then explained clearly the legal position as under:

"We may clearly state here that a peaceful protest or criticism or dissent is different than creation of a law and order situation. Every citizen of this country has a fundamental right to peacefully protest and demonstrate, but not to cause a situation that results in violence and paralyzes the law and order situation."

6. As rightly pointed out by Mr. Ashok Parija, learned Advocate General on behalf of the State assisted by Mr. Debakanta Mohanty, learned Additional Government Advocate who are appearing on behalf of Opposite Party Nos. 1 and 2 the above exposition of the law balances the rights and freedoms under Articles 19(1)(a) and (b) on the one hand and those under Article 19(1)(g) of the Constitution of India on the other.

7. Mr. Chiranjib Biswal, the working President of the Odisha Pradesh Congress Committee (Opposite Party No.3) appeared in virtual mode and assured this Court that the Indian National Congress Party and its constituent the Odisha Pradesh Congress Committee, its workers and members, will strictly abide by the laws of this country including the law as explained in the above judgments of the Supreme Court of India which are binding on everyone under Article 141 of the Constitution of India. He has assured the Court that Opposite Party No.3, its workers and members will only organize a peaceful protest tomorrow i.e. 12th November, 2021 in exercise of their rights under Articles 19(1)(a) and (b) of the

Constitution of India without causing any inconvenience to anyone and without compelling anyone to shut their shops, or join the protest or prevent the plying of buses and trains and all forms of public transport and ensure that there is no disruption of the normal activities of the people. He has further stated that if anyone tries to compel any shopkeeper or any businessman to shut their shops or business activity or force any person to participate in a 'Bandh', or interfere with the normal activities of the people in any manner, or create a law and order situation, it will be open to the Police to take strict action against such persons in accordance with law.

8. The Court places on record the assurances given by Opposite Party No.3 to this Court.

9. The Court is conscious that on certain occasions when a public protest is organized and is intended to be peaceful, certain unruly elements take advantage of the situation to create a law and order problem. This must be met with an appropriate response by the law enforcement agencies of the State. The Commissioner of Police and the Director General of Police, both of whom have joined the hearing in virtual mode, have assured the Court that all possible steps will be taken by them, particularly in light of the assurances given by Opposite Party No.3, to ensure that no law and order situation inconveniencing the public, and disrupting the business and the general and normal activities of the people is allowed to be created and that any such attempt by anyone will be prevented by legal means.

10. In view of the above assurances by Opposite Party No.3, and the police, the Court directs that whatever protest is organized tomorrow i.e. 12th November, 2021 anywhere in the State of Odisha shall be peaceful and without any inconvenience or disruption in any manner whatsoever to any member of the public. In particular there shall be no attempt to forcibly close or prevent any lawful activity or any shop or establishment or prevent the plying of buses, trains and all forms of public or private transport.

11. The writ petition is disposed of in the above terms.

12. An urgent certified copy of this order be issued as per rules. This order be widely circulated for information of the general public.

.....