

(2003) 09 SIK CK 0001
In the Sikkim High Court
Case No : Writ Petition (C) No. 9 of 2001

O.P. Bhandari

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Citation : AIR 2004 Sikk 24

Hon'ble Judges : Radha Krishna Patra, C.J;N. Surjamani Singh, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; Joyjit Choudhary, N.B. Khatiwada, Addl. A.G., for Respondent 5, J.B. Pradhan, Proxy Counsel on behalf of S.P. Wangdi, Sr. Central Govt, S.C. for Respondents 6 and 7, for the Respondent

Final Decision : Dismissed

Judgement

N.S. Singh, J.—Initially the present petitioner filed a writ petition with a prayer for issuing writ in the nature of mandamus directing the respondents to take immediate steps to remove the blockade, bandh, strikes and any other hurdles over the National Highway 31-A in any manner whatsoever forthwith, alternatively, to provide free air transport and air passage to the people of Sikkim until and unless the said blockade, strikes and bandh are removed from the National Highway 31-A and further directing the respondents to take steps against the organisers of such blockades, bandh and strikes u/s 8A of the National Highway Act, 1956 (in short Act of 1956) and for other reliefs by contending, inter alia, that on account of such strikes etc. general people of Sikkim had been facing hardship inasmuch as free movement of the vehicular traffic and the ingress and egress to and from the State of Sikkim had become a halt, thus affecting the normal life of the people of Sikkim, particularly, the students who study outside Sikkim and whose movement had been seriously affected and that being the position, necessary action be taken by the respondents concerned by deploying Military, Para-military Force or Central Reserve Police Force and to provide the alternative way by free air-trip to and

fro, Sikkim so that the blockade and other strike and bandh can be by-passed by the Sikkimese. Subsequently, the said writ petition was amended by the petitioner and sought for the following reliefs:--

"(a) Writ in the nature of Mandamus directing the Respondent Nos. 6 and 7 to take immediate steps to remove the blockade, bandh, strikes and any other hurdles over the National Highway 31A in any manner whatsoever forthwith alternatively to provide any other alternative arrangement to the people of Sikkim until and unless the said Blockade, strike and bandh are removed from the National Highway 31A and further directing the Respondent to take steps against the organizers of such blockade, bandh and strikes u/s 8A of the National Highway Act.

(b) Writ in the nature of Certiorari directing the Respondent Nos. 6 and 7 to bring before this Hon"ble Court all papers and documents in connection with the instant case within such time as Your Lordships will deem fit and proper and pass the necessary order to remove all such blockade, bandh and strikes over the National Highway 31A.

(c) An order directing the Respondent Nos. 6 and 7 to take immediate steps to remove all works of obstacles, bandh, strikes and hurdles on the National Highway 31A and to deploy Military, Paramilitary and C.R.P.F. and any other defence personnel to remove such blockade immediately;

(d) An order of injunction restraining all such organization who are creating such bandh, strikes, hurdles and obstacles from blocking and or calling any hurdles over the said National Highway 31A in any manner whatsoever;

(e) Rule nisi in terms of prayers (a), (b), (c) and (d);

(f) Interim order in terms of prayers (c) and (d) above;

(g) Costs;

(h) Any other order or orders as to Your Lordships may deem fit and proper;

(i) Any other writ or writs, orders or directions which the petitioner may be found entitled to in law and equity."

2. The petitioner appeared in person and conducted the case. According to the petitioner, he is a social worker who is deeply interested in the upliftment and development and overall welfare of the State of Sikkim. The petitioner submitted that due to political reason and disturbance in the District of Darjeeling, there are/were strikes and bandhs by various political parties of West Bengal and as a result of which all incoming and outgoing vehicles from and to Sikkim has come to a halt by the illegal activities of the political organisations who have been picketing on the National Highway 31A by preventing all vehicles to move to and fro from Sikkim and such situation prevailing in the State of West Bengal, particularly in the District of Darjeeling on and from 11th Feb. 2001 all sorts of movement of essential commodities from outside the State has been totally

paralysed causing hardship to the day to day life of the general people of Sikkim. The petitioner also argued that in the event, the State Government of West Bengal is unable to remove such blockade on the National Highway 31A then it must provide its alternative way by free air trip to and fro Sikkim so that the blockade and other strike etc. can be by-passed by the Sikkimese people to lead their normal life and such air passage must be free because it is the statutory duty of the State either to provide free movement over the National Highway 31A or to make alternative way for the people of Sikkim at the cost of the State of West Bengal. It is further contended that the respondent's authorities are to take immediate steps to remove all works of obstacles, bandh, strikes and hurdles on the National Highway 31A and to deploy Military, Paramilitary, Central Reserve Police Force and any other defence personnel to remove such blockade immediately and to issue an order of injunction restraining all such organisations who are creating such bandh, strikes, hurdles and obstacles etc. etc. from blocking and/or calling any bandh, strikes etc. on the said National Highway 31A in any manner whatsoever. While arguing the case, the petitioner supported all these statements and allegations made in the amended writ petition. The petitioner also submitted that the present writ petition is a Public Interest Litigation.

The case of the writ petitioner is resisted by the respondents, particularly, respondent Nos. 1 to 6 by filing counter affidavits. According to the respondent Nos. 1 and 2, 3 and 4, having regard to the administrative capabilities and strength and also having regard to the length of the National Highway 31A being subject matter of the instant writ petition, it is not administratively possible to prevent sporadic and/or isolated instances of blockade of roads and stoppage of vehicular traffic on the said National Highway because of constraints of manpower and adequate police personnel even though, the administration admits that vehicular traffic cannot be obstructed and/or ought to be obstructed even on days of bandhs/strikes yet effective measures to keep such highways open are always not be possible but on the contrary, it is the endeavour of the administration of the State of West Bengal to ensure that there are no obstruction and/ or blockades resulting any disruption of traffic in the aforesaid highway during such days of bandhs/strikes. It is also the case of the respondent Nos. 1, 2, 3 and 4 that in so far as vehicular traffic pertaining to the essential and life saving services are concerned, they are always kept outside the purview of the bandhs/strikes called by any political parties and, there has been no instances which has been as yet reported to the police authorities in the Hill Sub Divisions of Kalimpong and Darjeeling wherein it has been alleged that ambulances and vehicles of doctors or medical practitioners have been forcibly stopped during the bandhs/strikes and in case, if and when such an incident is brought to the notice of the administrative authorities suitable measures will be taken in accordance with law against the offenders. Keeping in view of the inadequacy of the police force, the said respondents urged that it becomes a Herculean task for the administration to prevent blockade and/or picketing at

each and every stretch of the Highway since on days of bandhs/strikes, the service of the police authorities is otherwise required also for maintaining law and order situation at various sensitive places. But the State of West Bengal has extended and is ready to extend all cooperation, help and support despite scarce resources in ensuring that the National Highways are not closed during the bandhs/strikes which may be called in future in the District of Darjeeling so as to ensure that there is no disruption caused in the State of Sikkim subject however, to the limitations mentioned above.

3. The case of the respondent No. 5, the State of Sikkim is that as far as the State of Sikkim is concerned, the National Highway 31A up to Rangpo is within the State of Sikkim and the State Government of Sikkim has been able to ensure so far the road is not disrupted from any action of disturbances, but beyond the point from Rangpo towards West Bengal, it has no control at all and as such Government of Sikkim has been pursuing with the Government of West Bengal and Central Government for taking necessary steps so that the situation as being faced by the State of Sikkim during bandhs is mitigated.

4. The respondent No. 6, the Union of India contended that the National Highway 31A has already been improved to intermediate lane specifications and is being maintained in traffic worthy condition by the Border Roads Organisation as a General Staff Road and that the law and order is State subject and as such any disruption of traffic caused by factors other than natural calamities, such as strike, agitation, bandh etc. are matters related to the law and order which are maintained by the State Government and the Government of India had written to the Government of West Bengal to take necessary steps to avoid such blockades in future vide, Office letter dated 2nd March, 2001 as in Annexure R6-1 to the counter-affidavit. It is also the case of the Union of India that the security and protection of travellers on the National Highway and keeping the same free for traffic during periods of agitation, is the responsibility of the State Government, the Central Para Military Forces are made available to assist the State Governments to maintain public order and it is for the State Governments to deploy these forces according to the requirements of law and order as per the guidelines contained in the Standard Operating Procedure of these forces, it is for the State Government to fulfill this Constitutional obligations, this responsibility has also been vested in the State Government u/s 8B of the National Highways Act as brought out by the Petitioner in paragraph 7 of the petition and, therefore, issuing directions for deployment of Central Reserve Police Force or Paramilitary Forces is against the provisions of the Constitution and the National Highways Act.

5. Mr. N.B. Khatiwada, learned Additional Advocate General contended that State respondents had made its best effort in maintaining free traffic on 31-A National Highway and the Government of Sikkim has been able to ensure so far as the roads is not disrupted from any kind of disturbances and as such there is no lapses on the part of the State of Sikkim.

6. Supporting the case of the respondent Nos. 1, 2, 3 and 4, Mr. J. Choudhury, learned counsel contended that the writ petitioner had unnecessarily impleaded the State respondents in the case as no relief is sought for as against the respondent Nos. 1, 2, 3 and 4 by the writ petitioner in the prayer column of the writ petition and as such respondent Nos. 1, 2, 3 and 4 are not necessary party in the present case and accordingly, these respondents should be struck out from the cause title of the writ petition. While arguing the case, Mr. J. Choudhury, learned counsel supported the statements and allegations made by the State respondents in their counter affidavits. Similarly, Mr. J.B. Pradhan, learned Government Advocate appearing on behalf of the learned Senior Central Government Standing Counsel for the respondent Nos. 6 and 7 contended that any disruption of traffic, such as strikes etc. are matters related to law and order which are to be maintained by the State Government concerned for which the Government of India had written to the Government of West Bengal to take necessary steps to avoid such blockades in future as highlighted in the related counter-affidavit.

7. Now, this Court is to see and examine as to whether the reliefs sought for by the writ petitioner in this writ petition can be granted or not and whether an appropriate writ in the nature of mandamus can be issued in the instant case or not ?

8. On perusal of the available materials on record, we are of the view that the respondents, State of Sikkim and State of West Bengal and its authorities concerned have been making their best effort to ensure the free flow of traffic on the 31A National Highway, the lifetime of Sikkim rather the Government of Sikkim has been able to ensure so far the road is not disrupted from any kind of disturbances. At this stage, we hereby recall official letters dated 17th Feb. 2001 and 3rd March, 2001 issued by the Chief Minister of Sikkim and also another office letter dated 21st Feb. 2001 issued by the Chief Minister of West Bengal. According to us, these letters are very important and essential to the just decision of the case in hand and accordingly, these are quoted below :--

"SEAL 22575 (Off.) 22346 (Public Off.) Phone : 22304 | (Res.) 22536
Tashiling Gangtok Sikkim

Pawan Chamling

CHIEF MINISTER OF SIKKIM

D. O. No. SH/4(29)/SCM 17-2-2001

Respected Buddhadeb Saheb.

As you are aware, the ongoing indefinite bandh called by GNLF to protest the attempt on the life of Shri Subhas Ghising, Chairman, DGHC is badly affecting the smooth flow of traffic on the National Highway 31A, the life line connecting our State with rest of the country. This is causing extreme hardship to people of my State as supply of essential commodities has been severely affected. A large

number of tourists, both domestic and international have been stranded at Gangtok and other places for several days. Only a handful of them have been moved out with great difficulty.

You would also kindly appreciate that tourism is a major source of revenue for my State and such hardships to tourists would dissuade potential tourists from undertaking visits to Sikkim. In addition, officers and people from the State have not been able to leave for Delhi and other places to fulfil their important commitments. Since we are a border State, the importance of the Highway cannot be ignored from the security angle also.

I would, therefore, strongly urge upon you to kindly use your good offices to ensure that National Highway 31A is kept free from any further blockade so that people and tourists are spared from more undue hardships. I am sure that you will take immediate necessary steps in view of present unwanted experience of your neighbouring State.

With regards.

Yours sincerely, Sd/- (PAWAN CHAMLING)

Shri Buddhadeb Bhattacharjee Chief Minister, Government of West Bengal,
Writers Building, Kolkata."

"SEAL 22575 (Off.) 22346 (Public Off.) Phone : 22304 (Res.) 22536

Tashiling Gangtok Sikkim

Pawan Chamling

CHIEF MINISTER OF SIKKIM

D. O. No. 268/SCMS/2001 03-03-2001

Respected Buddhadeb Saheb,

Thank you for your D.O. No. 40-CM dated Feb. 20, 2001 regarding dislocation of traffic on the National Highway 31A during the bandh called by GNLf recently.

As the National Highway 31A is the life line for Sikkim, we seek your cooperation in ensuring that the traffic is not dislocated by future strikes and bandhs called by any political organisations. Our experience during the recent identified strike indicated that the following Police Out Posts along the National Highway 31A within Darjeeling District needed to be suitably strengthened/ upgraded to ensure that the traffic is not brought to a stand still. The Out Posts that need to be strengthened are as follows :--

1. Rangpo, 2. Melli, 3. Teesta, Bazar, 4. Rambhi Bazar and Kali Jhora.

I have directed my Chief Secretary and Director General of Police to visit Calcutta and discuss the matter further with their counterparts. I look forward to a more permanent structure to be established in order to address the serious problem

confronting the State of Sikkim.

With regards,

Yours sincerely, Sd/- (PAWAN CHAMLING)

Shri Buddhadeb Bhattacharjee, Chief Minister of West Bengal, Writers Building, Kolkata.

"CHIEF MINISTER SEAL West Bengal D.O. No. 40-CM February 21, 2001

Dear Shri Chamling

Kindly refer to your DO letter No. SH/ 4(29)/SCM dated Feb. 17, 2001 regarding the dislocation of traffic along the National Highway 31A caused by the bandh called by GNLf following the attempt on the life of Shri Subhash Ghising, Chairman, Darjeeling Gorkha Autonomous Hill Council.

I agree that such disruptions in the flow of traffic to and fro Sikkim cause immense hardship to the people of your State and also negatively affect your tourism industry. We, from our end, have tried our best to minimize the adverse impact of the bandh. In future, we shall be watchful so that the people of Sikkim and the tourists visiting your State are not inconvenienced.

With regards.

Yours sincerely, Sd/- (Buddhadeb Bhattacharjee)

Shri Pawan Chamling

Chief Minister of Sikkim

Gangtok"

9. It may be mentioned that in pursuance of the related order dated 15th Feb. 2001 passed by this Court, the respondent No. 5 had filed a report as highlighted in the comprehensive counter-affidavit. In view of the above position, we are of the view that the State respondents' authorities have made and gave their utmost importance to ensure that National Highway 31A remained open throughout the year and free from all disturbances like bandhs and strikes etc. for which the writ petitioner should be very grateful to the State respondents concerned. According to us, the writ petitioner ought to have not pressed the present writ petition. But the writ petitioner, Shri O.P. Bhandari is still urging to provide the alternative arrangement to the people of Sikkim so that the blockade and other strikes and bandh can be by-passed by the Sikkimese and such alternative arrangement must be free, in other words, the writ petitioner is seeking a direction to the respondents concerned to provide free movement over the National Highway 31A and/or to make alternative way for the people of Sikkim at the cost of the State of West Bengal. A bare perusal of the reliefs sought for by the writ petitioner in his writ petition and also the statements made in paragraph 14 of the amended writ petition shows that the present writ

petition virtually amounts to extensive writ petition involving tremendous and vast relief (s), which cannot be granted by the respondents States as well as by this Court. At this stage, we hereby recall some of earlier reliefs sought for by the writ petitioner, which is quoted below :--

"Writ in the nature of Mandamus directing the Respondents to take immediate steps to remove the blockade, bandh, strikes and any other hurdles over the National Highway 31A in any manner whatsoever forthwith alternatively to provide free air transport and air passage to the people of Sikkim until and unless the said blockade, strikes and bandh are removed from the National Highway 31A and further directing the respondent to take steps against the organizers of such blockade, bandh and strikes u/s 8A of the National Highway."

It may be mentioned that the claim of the writ petitioner is a vague claim which cannot be entertained by a writ Court in exercise of its jurisdiction under Article 226 of the Constitution of India. Certain allegations have been made against the State machineries of the Government of West Bengal in the matter as discussed above which requires proper investigation as it involves serious allegations as well as the complex and disputed questions of facts which the Court cannot travel for such investigation. As the writ petitioner raises complex and disputed questions of facts for which the Court should decline to try it. Apart from it no relief is sought for against the West Bengal Government/respondent Nos. 1, 2, 3 and 4 in the prayer/relief portion of the writ petition.

10. It is an admitted position that there is specific provision laid down u/s 8B of the National Highways Act, 1956 pertaining to the punishment for mischief by injury to national highway. Section 8B of the said Act reads as follows :--

"8B. Punishment for mischief by injury to national highway. -- Whoever commits mischief by doing any act which renders or which he knows to be likely to render any national highway referred to in Sub-section (1) of Section 8A impassable or safe travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with a fine or with both."

Likewise, there is also specific provisions relating to the power of the Central Government to enter into agreements for development and maintenance of national highways which finds its place in Section 8A of the Act which reads thus :--

"8A. Power of Central Government to enter into agreements for development and maintenance of national highways. -- (1) Notwithstanding anything contained in this Act, the Central Government may enter into an agreement with any person in relation to the development and maintenance of the whole or any part of a national highway.

(2) Notwithstanding anything contained in Section 7 the person referred to in Sub-section (1) is entitled to collect and retain fees at such rate, for services or

benefits rendered by him as the Central Government may, by notification in the Official Gazette, specify having regard to the expenditure involved in building, maintenance, management and operation of the whole or part of such national highway, interest on the capital invested, reasonable return, the volume of traffic and the period of such agreement.

(3) A person referred to in Sub-section (1) shall have powers to regulate and control the traffic in accordance with the provisions contained in Chapter VIII of the Motor Vehicles Act, 1988 on the national highway forming subject matter of such agreement for proper management thereof."

In view of the above position, it is for the authorities concerned to perform their lawful duties conferred upon them by laws. We are of the view that the respondents authorities concerned have been discharging their lawful duties in terms of the related provisions of law laid down under National Highways Act, 1956. We are also of the view that certainly, the authorities concerned shall take necessary legal action against those person or persons who commit (s) mischief by injury to the National Highway 31A at any or all relevant times.

As long as the authorities did not misplay the law or otherwise misconstrue the limits of their own power, it is not for the Judges to correct. It is well settled that the wide power conferred on the High Court naturally carries with it the responsibilities to use it with circumspection. How this Court by exercising its jurisdiction under Article 226 of the Constitution of India would be able to issue a writ of mandamus for such hard reliefs as sought for by the writ petitioner in his writ petition. It is highly astounded to seize the reliefs sought for by | the present writ petitioner in his present writ petition as highlighted above. According to us, the present writ petition prima facie is unjust and vague in nature for which it is not proper on the part of this Court to invoke its extra ordinary jurisdiction under Article 226 of the Constitution of India and accordingly, we decline to entertain this petition.

11. For the reasons, observations and discussions made above, we are of the view that the present writ petition is devoid of merit and accordingly, it is dismissed, but no order as to costs.

R.K. Patra, C.J.

12. I agree.