
(2018) 05 CAL CK 0048
In the Calcutta High Court
Case No : Writ Petition 568, 1130 of 2015

Rituparna Sarkar Dutta

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 03-05-2018

Acts Referred:

Code of Criminal Procedure, 1898 — Section 144(1)

Citation : (2018) 05 CAL CK 0048

Hon'ble Judges : ARIJIT BANERJEE, J; JYOTIRMAY BHATTACHARYA, CJ

Bench : Division Bench

Advocate : Srikanta Dutta, Amitesh Banerjee, Tapan Kumar Mukherjee, Somenath Naskar, Bikash Ranjan Bhattacharya, Samim Ahamed

Final Decision : Disposed Of

Judgement

Arijit Banerjee, J.

(1) In these two writ petitions, filed as Public Interest Litigations (in short "the PILs"), the subject matter and the prayers are similar. Hence, the

two writ petitions are taken up for hearing and disposal together.

(2) In WP No. 568 of 2015 the main prayer is for issuance of a writ in the nature of mandamus directing the respondent authorities not to issue

permission allowing any political party or any authority to block the roads or streets completely for any assembly or meeting or rally or procession. In

WP No. 1130 of 2015, the main prayer is for issuance of a writ in the nature of mandamus directing the respondent authorities not to allow the political

parties/associations to hold political rallies during working days in the vicinity of the city of Calcutta since the same paralyses the free movement of

public at large.

(3) Learned Counsel for the petitioners submitted that rallies/meetings/processions are organized by political parties by completely blocking several important roads/streets thereby restricting the movement of the public at large. Blockage of arterial roads causes disruption of essential services like fire brigade, ambulance, etc. He submitted that the political parties are able to paralyse life in this manner because of the permission granted by the State authorities and/or inaction on their part to ensure that normal life of the public in general is not impeded by the political meetings/rallies/processions.

(4) It was submitted that the right to free movement and the right to livelihood by doing business and attending work is a constitutional right of the citizens and the State authorities must protect such right. The State authorities are duty bound to ensure free movement of the public in and around the city of Calcutta during such meetings/rallies/processions.

(5) Learned Counsel for the State respondents submitted that all necessary precautions are taken by the administration to ensure that normal lives of the people are not disrupted in any manner by the political meetings/rallies/processions. Learned Counsel placed before us two affidavits affirmed on behalf of the State. The first affidavit was affirmed by one Jayanta Kumar Halder describing himself as the Dy. Secretary. The said affidavit which was affirmed on 11 January, 2017 is not very relevant since the same deals with strikes/bandhs called by political parties. The other affidavit affirmed on 1 August, 2017 by one Anujit Biswas describing himself as the Dy. Superintendent of Police, West Bengal, gives some indication of the measures taken by the administration to ensure normalcy of public life on the days of political meetings/rallies/processions. In the said affidavit it is, inter alia, stated as follows:-

(i) On the days of political rallies/processions/meetings, the main object of the police administration is proper traffic management and crowd control to ensure that inconvenience to public is minimized and to ensure maintenance of peace and law and order.

(ii) Upon receiving advance information of political processions etc., elaborate police arrangement is made after taking into confidence all stake holders and after due consideration of inputs from the intelligence branch, giving priority to public safety and smooth flow of traffic.

(iii) To combat any untoward situation a good number of police personnel (including lady personnel) are deployed on the routes of

rallies/processions/meetings or at and around the venue of the meeting under the supervision of senior officers of the Department.

(iv) In order to ensure minimum disruption to traffic the following steps are taken:-

(a) An elaborate plan is prepared regarding parking of vehicles carrying the supporters of the concerned political party as far as possible from the

busy areas and the main roads so that they do not clog the main thoroughfares and disrupt movement of traffic.

(b) It is a fact that while the rally/procession is in progress some parts of the approaching roads are blocked by the members of the particular political

party. The police authorities try to ensure that by proper communication and interaction with the political party, keeping in mind local requirements like

schools, hospitals, commuters, any change in normal traffic flow, any traffic restriction or diversion of road are publicised well in advance through

television etc.

(c) To deal with the problem of congestion, a comprehensive traffic plan is evolved giving special attention to important road junctions, nearby schools,

hospitals fire service stations etc. Under such plan, traffic is diverted to alternative routes so far as is practicable to avoid road blockade.

(v) Senior officials of the district/traffic branch of the police with their men perform duty on the roads to facilitate the movement of the commuters

and to ensure that there is no clash between the members participating in the meeting/rallies/processions and the general public.

(vi) To ensure smooth flow of traffic wherever available, alternative roads parallel to the main road are used. If such alternatives are not available, a

part of the road is barricaded to ensure smooth movement of emergency vehicles and pedestrians.

(vii) A good number of CCTVs are installed at different places apart from the venue of the meeting and along the route of the rally/procession to

monitor the situation closely. If gravity of the situation so demands, special control room is set up so that if anything untoward happens, the situation

may be brought under control promptly by quick intervention. If there is any anticipation/apprehension of breach of peace or law and order problem,

the presence of an Executive Magistrate is requested to maintain peace and tranquillity.

(6) Learned Counsel for the State respondents finally submitted that since most towns/cities including Calcutta in the State of West Bengal are

densely populated and extremely congested, large political congregation/rallies/meetings/processions pose a herculean challenge to the police

authorities which they try to meet to the best of their ability by advance planning, deployment of maximum available personnel, direct supervision of

senior officers and by involving and appealing to all the stakeholders to help the authorities to maintain peace and cause minimum disruption to public

life.

(7) Learned Counsel appearing for the respondent no. 6 (Communist Party of India (Marxist)) submitted that holding peaceful demonstration to

ventilate their grievances and to ensure that the voice of the people is heard by the relevant quarters, is the fundamental right guaranteed under the

Constitution of India. Exercising such constitutional right the said respondent holds processions and/or demonstrations at different places within the

territory of India. He submitted that the said respondent is a responsible political party and organizes rallies/meetings/processions strictly within the

four corners of the law of the land. Right of the people to hold demonstration cannot be curtailed so long as the same is not violent or destructive. The

right to protest peacefully is recognized as a fundamental right of the Constitution of India.

(8) We have given our anxious consideration to the submissions of the respective parties.

(9) Art. 19(1)(b) of the Constitution of India provides that all citizens shall have the right to assemble peaceably and without arms. This provision

guarantees the freedom of citizens to meet with each other in any number provided the assembly is peaceable and unarmed and is held at a public

place. There is no fundamental right to hold meetings on private property or on Government property even where Government is the employer of the

persons seeking to hold the meeting (See Himat Lal K. Shah-vs.-Commissioner of Police, AIR 1973 SC 87 and Railway Board vs. Niranjan Singh,

AIR 1969 SC 966). However, like other rights, this also is not an absolute right but is liable to be subjected to reasonable restrictions in the interest of

public order. Art. 19(3) of the Constitution provides that nothing in sub-clause (b) of clause (1) 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 sovereignty and integrity of India or public order, reasonable

restrictions on the exercise of the right conferred by the said sub-clause. In *Madhu Limaye-vs.-Sub-Divisional Magistrate, Monghyr*, (1970) 3 SCC

746, a seven Judges Bench of the Apex Court upheld the constitutionality of Sec. 144(1) of the Code of Criminal Procedure, 1898 and held that the

said section which authorises the making of temporary orders of prohibition of meetings or processions to prevent an imminent breach of peace,

constitutes a reasonable restriction upon the freedom of assembly guaranteed by Art. 19(1)(b). The right of public meeting or of procession is not

specifically guaranteed by the Constitution but will follow from the right of assembly.

(10) In *Pathumma-vs.-State of Kerala*, AIR 1978 SC 771, a seven Judges Bench of the Apex Court observed that the Courts should interpret the

Constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing

requirements of the society, the increasing needs of the nation, the burning problems of the day and the complex issues facing the people which the

legislature in its wisdom, through beneficial legislation seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not

pedantic and elastic rather than rigid. The Apex Court further held that although Art. 19 guarantees certain freedoms to the citizens of the country, the

same are subject to reasonable restrictions which may be imposed in public interest. The following guidelines, inter alia, were laid down to determine

the reasonableness of a restriction:

(i) In judging the reasonableness of the restrictions, the Court has to bear in mind the Directive Principles of State Policy.

(ii) The restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.

(iii) In order to judge the equity of the reasonableness, no abstract or general pattern or fixed principle can be laid down so as to be of universal

application and the same will vary from case to case.

(iv) There must be a direct and proximate nexus or a reasonable connection

between the restriction imposed and the object which is sought to be achieved. (v) The Court must see the prevailing social values whose needs are satisfied by restrictions meant to protect social welfare.

(11) Thus, it is clear that although Art. 19(1)(b) of the Constitution guarantees the fundamental right of every citizen to hold peaceful assembly or

processions, the same is not an absolute right. Such right can be curtailed by imposition of reasonable restrictions in the interest of law and order and

the general public. Just as Art. 19(1)(b) guarantees a fundamental right Art. 19(1)(d) also guarantees a fundamental right of every citizen to move

freely throughout the territory of India. Art. 21 has been interpreted by the Courts to guarantee the fundamental right to livelihood. No citizen or group

of citizens can exercise one fundamental right so as to adversely affect or impinge upon some other fundamental right of another citizen. Thus, it

cannot be gainsaid that the right to hold peaceful assembly/rally/procession cannot be exercised in a manner which would curtail other persons's

rights to free movement and right to livelihood.

(12) We take judicial notice of the fact that during certain political rallies/processions/meetings, large areas of Calcutta suffer from traffic snarls and

get paralyzed. This causes huge undue inconvenience to the public at large. The members of the public find it difficult to reach their work places or

other destinations as the normal roads are found to be blocked and inaccessible. More concerning is the fact that essential services like ambulances

and fire brigades find it difficult to operate. A critical patient in need of urgent medical attention may spend hours in an ambulance which is caught up

in a traffic snarl. These things cannot be permitted to happen. The administration must ensure that a balance is struck between the fundamental right

of a political party or for that matter any group of persons to hold peaceful assembly/rally/procession and the right of the public in general to carry on

with normal life and activities.

(13) We have noted the steps that the administration claims are taken on the days of political meetings/rallies/processions to ameliorate the problems

faced by the general people. We are of the view that if such measures are sincerely implemented and seriously adhered to, as they should be, the

inconvenience caused to the public would be minimized and the hardship faced by them should be mitigated to an appreciable extent.

(14) Although, ideally, political meetings/rallies/processions should be held on holidays i.e. weekends or other public holidays as the same is likely to

cause less inconvenience to the members of the public, we do not deem it proper to pass any such absolute direction. We leave it to the wisdom of the

State administration as to whether or not permission should be granted for holding of a political rally/meeting/procession on any particular day. We

trust and hope that the concerned authorities shall take an informed and responsible decision in each individual case keeping in mind the paramount

importance of minimizing the inconvenience to the general public.

(15) However, we make one thing abundantly clear. No major or arterial road/street must be completely blocked and made inaccessible whether to

pedestrians or to motor traffic by reason of holding of a meeting/rally/procession. A reasonable part of every road/street must be kept free of

blockage and open to pedestrians and motor traffic. This is absolutely imperative keeping in mind the importance of essential and emergency services

like ambulances, fire brigades etc. These are lifesaving services and cannot be allowed to be impeded in any manner. All necessary steps must be

taken by the administration to ease the flow of traffic and for that purpose reasonable diversions of traffic may be made and the public at large should

be kept informed of the same through the different types of media including television and radio. Normal life cannot be permitted to be brought to a

standstill by reason of holding of a political meeting/rally/procession or for that matter any kind of assembly.

(16) We find from the records that in terms of an earlier order dated 3 September, 2015 passed by another Division Bench in WP 568 of 2015, two

reports have been filed on behalf of the administration. One report has been filed by the Special Addl. Commissioner & Joint Commissioner of Police,

Head Quarters, Lal Bazar, Calcutta. This report pertains to the loss/damage caused to public and private property due to bandh/procession/law

violation etc. The other report which is dated 15 February, 2016 has been filed by the Director General & Inspection General of Police, West Bengal.

This report is captioned

“INFORMATION RELATING TO BUNDH/RALLY/PROCESSION ETC. AS CALLED BY DIFFERENT POLITICAL PARTIES OF

WEST BENGAL DURING THE PERIOD FROM 2011 TO 2015 AND CONSEQUENT

DAMAGE OF PUBLIC PROPERTY/PRIVATE

PROPERTY & LOSS OF LIVESâ??.

Â This report includes particulars of criminal cases initiated against the persons booked for causing damage to public/private property and other

offences concerning violation of law and order. It may be noted that by the Constitution (42nd Amendment) Act, 1976, Part IV-A was inserted in our

Constitution. Part IV-A is captioned â??Fundamental Dutiesâ??. Art. 51A which is the only article in Part IV-A provides inter alia, that it shall be the

duty of every citizen of India to safeguard public property and to abjure violence. The fundamental right to hold peaceful assembly/rally/procession

cannot be exercised in a manner which would amount to breach of the said fundamental duty to protect public property and renounce violence. Hence,

we direct the State administration to ensure that the criminal cases initiated against the offenders are carried to their logical conclusion. We also trust

and hope that the State authorities shall ensure that if in future members participating in the rallies/processions/meetings indulge in violent activities or

destruction of property, be it public or private, action will be taken against them in accordance with law.

(17) With these directions, WP No. 568 of 2015 and W.P. No. 1130 of 2015 are disposed of, without, however, any order as to costs.

(18) Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.