

(1993) 04 CAL CK 0029

In the Calcutta High Court

Case No : Appeal No. 283 of 1993 and Matter No. 414 of 1993

State of West Bengal and Others

APPELLANT

Vs

Dr. Anindya Gopal Mitra and Others

RESPONDENT

Date of Decision : 10-04-1993

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(2), 226
Criminal Procedure Code, 1973 (CrPC) — Section 144, 144(7)

Citation : (1993) 1 CALLT 464 : 97 CWN 587

Hon'ble Judges : Anandamoy Bhattacharjee, C.J.; Nisith Kumar Batabyal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The Court: There will be an order in terms of prayer (a) of the petition. Leave is given to the petitioner to stamp and punch the petition within one week after the reopening of the Court.

2. An application has been made for the stay of the operation of the order passed by the learned trial Judge in the writ proceeding which has wended its way before us in appeal. No copy of the judgment delivered by the learned trial Judge has been produced before us save the operative portion of the judgment. Ordinarily, and except for compelling reasons, we should not grant stay of operation of any judicial order without having an opportunity to go through the order, in view of the holidays for which the High Court is closed, it has not been possible for us to arrange for production of the records from the trial Court.

3. In view of an order promulgated u/s 144 of Criminal Procedure Code, the Bharatiya Janata Party applied to the Commissioner of Police for permission to hold the public meeting at the Brigade Parade Ground on 11th April, 1993. The Commissioner, however, has refused permission. No one, including the Commissioner has ever noticed that the prohibitory order, which was then in operation was to expire before the 11th April, 1993, and, therefore, on the date the Commissioner has refused to grant permission he would have no scope to

grant permission in view of the expiry of the prohibitory order before the 11th April, 1993. The refusal of the Commissioner to grant permission to the Bharatiya Janata Party to hold meeting on 11th April, 1993, though at that time there would be no prohibitory order in operation to operate till 11th April, 1993, clearly demonstrates non-application of mind on the part of the Commissioner of Police. From the arguments of the learned Counsel appearing for the parties, it appears that the learned Judge has set aside and quashed the order of the Commissioner of Police on this ground also. We think that the learned Judge was right. We also find an additional reason to support the order of the learned Judge quashing the order of the Commissioner of Police. Assuming that the prohibitory order was to operate on 11th April, 1993, also, what the Bharatiya Janata Party prayed for was alteration by way of relaxation of the said order. Such an alteration could be refused, but we are afraid that such refusal ought not to have been made without giving the applicant, the Bharatiya Janata Party, an opportunity of being heard in accordance with the provisions of Section 144(7) of the Criminal Procedure Code. No such opportunity was admittedly granted. As at present advised, we are of the view that the order of the Commissioner was absolutely inappropriate and was liable to be quashed.

4. The learned Judge has also directed the Commissioner of Police to grant permission sought for by the Bharatiya Janata Party; but he has, however, clearly pointed out that the Commissioner may impose such "regulatory measures" as he would think fit for the proper maintenance of law and order and public peace. It was urged that such a mandate could not be given by a Writ Court. We are, however, of the view that such a direction can be given in appropriate cases "by a Writ Court and the decision of the Supreme Court in *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, is a clear authority for this view. We are inclined to hold that the learned Judge has only reiterated what Article 19 of the Constitution of India provides in express terms, viz., reasonable restrictions on the exercise of fundamental rights in the interest of public order and for the maintenance of public peace. We do not think, from all that we see at present, that the order suffers from any such infirmity or illegality which requires intervention at this stage before we can hear the appeal.

5. It has, however, been urged by the learned Advocate General appearing for the State and the Police authorities that some of the members of the Bharatiya Janata Party in the recent past have indulged in inflammatory communal speeches. These statements, if so made, were really unfortunate; but nothing, however, prevented or prevents the State authorities to take appropriate measures against the speakers. The fact remains that the Bharatiya Janata Party is the largest opposition party in India. If they want to hold public meeting, as they say, either to celebrate the meeting of their National Executive or to launch an election campaign for the ensuing Panchayat election in West Bengal, they should not ordinarily be prevented from doing so solely on the ground that some of the members of that party have on many occasions indulged in communal

speeches. If those members have already made the Bharatiya Janata Party a fanatically communal party and there were apprehensions threatening the communal peace of the country or any part thereof from the activities of that party, suitable measures ought to have taken for even declaring that party as unlawful. But so long the party is a recognised political party and, as stated, the largest opposition party in the country, their request to hold the public meeting for political purpose cannot ordinarily be withheld. We have nothing on record before us to show that those speeches alleged to have been made by some of the members of the Bharatiya Janata Party quite sometime back have in fact led to any communal disharmony or breach of the public peace.

6. It has been argued that some of the members of the Bharatiya Janata Party took active part in the Ayodhya incident which took place in December, 1992. We cannot but take notice of the unfortunate repercussions throughout the country as a sequel to the Ayodhya incident in December, 1992. But for that the Commissioner, as pointed out by the learned Judge, may, if he thinks fit, impose all reasonable or regulatory restrictions and those may include the restriction that in the proposed meeting, no one shall refer to the Ayodhya incident even remotely or shall say or do anything in the meeting which may, in any way, affect communal harmony or public peace and the Commissioner may obviously direct that if this condition is broken, all steps available in law may be taken to stop the meeting. The Commissioner has mainly refused the permission prayed for in view of, what he says, "fragile communal balance" and "tense law and order situation now prevailing in Calcutta". All that we know as residents of Calcutta, and this goes to the credit of the State Government, the situation in Calcutta does not appear to be that fragile or otherwise bad as to warrant prohibition of a public meeting for political purpose. True, there were some unfortunate incidents a few months back in Calcutta. But, and this again goes to the credit of the State Government, that was a temporary affair and the State authorities could admirably tackle and handle the situation very quickly. Holding a rally or a public meeting is a natural demonstration of the political activities of a political party. They ought to be allowed to do so and should not be prevented on the ground that communal harmony or law and order suffered a temporary set back sometime back. But at any rate, as we have already made it clear, the Commissioner of Police may, as the condition for the permission sought for, impose all such reasonable restrictions and regulatory measures as he thinks fit so that no breach of the peace takes place.

7. For the reasons aforesaid, we do not think we have any justification to interfere with the order under appeal at this stage. The application for stay is accordingly rejected.

8. All parties including the Commissioner of Police to act on a signed xerox copy of the dictated order on the usual undertaking.