
(2011) 09 SC CK 0134

In the Supreme Court Of India

Case No : Civil Appeal No. 7785 of 2011 (Arising out of S.L.P. (C) No. 9154 of 2008)

State of West Bengal

APPELLANT

Vs

Howrah Ganatantrik Nagarik Samity and Others

RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Constitution of India, 1950 — Article 136

Citation : (2012) 1 AWC 136 Supp : (2011) 5 CHN 120 Supp : (2011) 10 JT 249 : (2011) 10 SCALE 310 : (2011) 10 SCR 871

Hon'ble Judges : R.V. Raveendran, J;A.K. Patnaik, J

Bench : Division Bench

Advocate : Avijit Bhattacharjee, Sarbani Kar, Debnjani Das Purkayastha, Bidyabrata Acharya and Pranab Kumar Mullick, for the Appellant; Party-in-Person and Dharam Bir Raj Vohra, for the Respondent

Final Decision : Disposed Of

Judgement

A.K. Patnaik, J.—Delay condoned. Leave granted.

2. This is an appeal against the order dated 28.09.2007 of the Division Bench of the Calcutta High Court in Writ Petition No. 7987 (W) of 2002.

3. The facts very briefly are that during the British rule, Victoria Memorial Hall was built in the memory of Queen Victoria in Central Kolkata. After independence, this monument continues to be known for its beautiful architecture and green surroundings. To the north of the Victoria Memorial Hall is a huge stretch of land known as 'the Maidan' which is covered by green grass and interspersed with a large number of trees, bushes and shrubs. At the end of about 2 kms. of this greenery is the Esplanade where another monument known as the 'Sahid Minar' stands, and by the side of the Sahid Minar is a bus terminus. To protect and preserve the Victoria Memorial Hall and its green surroundings, a public interest litigation (Writ Petition No. 7987 (W) of 2002) was filed in the Calcutta High Court by the Respondent Nos. 1 to 5.

4. After hearing all concerned parties and considering the concerned affidavits and counter-affidavits as well as recommendations of expert bodies including the National Environmental Engineering Research Institute (for short 'NEERI'), the High Court inter alia directed in the impugned order that the bus terminus at Esplanade be shifted to a distant place within six months. Aggrieved by this direction in the impugned order, the State of West Bengal is in appeal before us.

5. Learned Counsel for the Appellant submitted that the High Court could not have issued directions to the State Government to shift the bus terminus located at Esplanade, which had been in existence for more than six decades only on the recommendation of NEERI. He submitted that lakhs of people every day arrive at and depart from the bus terminus at Esplanade and this is because the bus terminus is located in a central area of Kolkata. He submitted that shifting of the bus terminus from Esplanade will thus cause immense inconvenience to the traveling public. He further submitted that the bus terminus is situated 2 kms. to the north of Victoria Memorial Hall and does not at all damage this historic monument. The High Court, therefore, was not right in thinking that for preservation of the Victoria Memorial Hall, shifting of the bus terminus was necessary.

6. The Respondent No. 2, who appeared in-person on behalf of Respondent No. 1, on the other hand, relied on the recommendation of NEERI that the bus terminus at Esplanade area should be shifted from the existing location. He submitted that the High Court was, therefore, right in directing the shifting of the bus terminus from Esplanade within six months. He submitted that this is not a fit case in which this Court should interfere with the impugned order of the High Court.

7. We have considered the submissions made on behalf of the Appellant and the Respondents and we find that NEERI has suggested some long term measures for preservation of the Victoria Memorial Hall in Para 5.2 of its report. The relevant portion of Para 5.2 of the report of NEERI is quoted hereinbelow:

5.2 LONG-TERM MEASURES

Diversion of Heavy Road Traffic on the Road Encircling the VM Monument.

The pollution from auto exhaust is the most important causative factor when the Victoria Memorial protection from atmospheric environment is considered. Therefore, the traffic on roads around the VM should be minimum particularly complete banning of heavy traffic. Bus terminus at Esplanade Area (Commercial) should also be shifted from the existing location.

8. It will be clear from the recommendation of NEERI, quoted above, that shifting of the bus terminus at Esplanade area has been suggested by NEERI as a long-term measure and not as an immediate measure. A bus terminus, where lakhs of people arrive and depart through different buses, if shifted immediately, will cause a lot of inconvenience to the traveling public. Moreover, before the bus

terminus is shifted from Esplanade, another suitable place has to be found out to which the bus terminus can be shifted and various conveniences have to be provided for the traveling public at the new bus terminus. All this cannot be done within a period of six months. The High Court, therefore, was not justified in directing in the impugned order that the bus terminus at Esplanade be shifted within six months.

9. The recommendation of the NEERI, quoted above, however, is emphatic that auto exhaust is the most important causative factor polluting the atmospheric environment around Victoria Memorial Hall. For this reason, NEERI has recommended that the traffic on roads around the Victoria Memorial Hall should be minimum and the bus terminus at Esplanade area should be shifted from the existing location. Hence, even though the bus terminus is located 2 kms. away from Victoria Memorial Hall the auto-exhaust from a large number of buses at the bus terminus would pollute the atmospheric environment around the Victoria Memorial Hall. In *M.C. Mehta (Taj Trapezium Matter) Vs. Union of India and Ors.*, (1997) 2 SCC 353 this Court has directed relocation industries from Taj Trapezium Zone (TTZ) for protection and preservation of the Taj Mahal in Agra. The recommendation by NEERI that the bus terminus should be shifted from Esplanade area as a long-term measure to protect and preserve the Victoria Memorial Hall, deserves serious consideration, not only to preserve the monument but to de-congest the city.

10. We accordingly modify the impugned order of the High Court and direct the State Government to consider and take appropriate action on the NEERI report recommending relocation of the bus terminus away from the Esplanade. The appeal is allowed to the extent indicated above. No order as to costs.

11. Delay condoned.

12. These Special Leave Petitions under Article 136 of the Constitution are directed against the orders dated 28.09.2007 and 15.02.2008 of the Division Bench of the Calcutta High Court in Writ Petition No. 7987 (W) of 2002.

13. The facts very briefly are that during the British rule, Victoria Memorial Hall was built in the memory of Queen Victoria in Central Kolkata. After independence, this monument continues to be known for its beautiful architecture and green surroundings. To the north of the Victoria Memorial Hall is a huge stretch of land known as 'the Maidan' which is covered by green grass and interspersed with a large number of trees, bushes and shrubs. To protect and preserve the Victoria Memorial Hall and its green surroundings, a public interest litigation (Writ Petition No. 7987(W) of 2002) was filed in the Calcutta High Court by the Respondent Nos. 1 to 5.

14. After hearing all concerned parties and considering the petitions, affidavits and counter affidavits and the recommendations of expert bodies, the High Court, inter alia, directed in the impugned order dated 28.09.2007 that parking of all cars around the compound of the Victoria Memorial Hall shown as red-

marked portions in the annexed map and nearby areas would be immediately prohibited and such prohibition would continue for 24 hours every day including the holidays. A group of persons describing itself as 'the Friends of Victoria Memorial' then filed an application before the High Court for modification of the aforesaid direction so as to permit morning walkers to park their cars in the north and south zones of Victoria Memorial Hall for two hours in the early morning. The High Court, however, dismissed the application by the impugned order dated 15.02.2008 saying that car parking has only been prohibited around Victoria Memorial Hall and persons desirous of morning walk may go to the Maidan which was lying vacant and may also walk by the side of Ganges or the Eden Garden area and the area around the grounds of Mohun Bagan, East Bengal and Mohammedan Sporting Clubs where there was no restriction of parking the vehicles. Aggrieved, the Petitioner has filed these Special Leave Petitions.

15. We have heard learned Counsel for the parties and we find from the recommendations of the Expert Committee (annexed to the Special Leave Petitions as Annexure P1) that a Committee of Experts has observed that parking activities add to pollution load around the Victoria Memorial Hall and have accordingly recommended that the parking of vehicles on all sides of the Victoria Memorial Hall compound should be totally banned. The High Court appears to have considered these recommendations of the Expert Committee and directed in the impugned order dated 28.09.2007 that parking around the Victoria Memorial Hall on the red-marked portions of the map would be prohibited. The High Court has also indicated in the impugned order dated 15.02.2008 that there were many other places in Kolkata, such as Maidan, the Eden Garden area and the area around the grounds of Mohun Bagan, East Bengal and Mohammedan Sporting Clubs as well as the area by the side of the river Ganges where there was no restriction of parking the vehicles. Those who want to walk and take their cars to the place of their walk thus have sufficient number of alternative places in Kolkata where they can go for their morning walks.

16. We are, therefore, not inclined to interfere with the impugned orders of the High Court and accordingly dismiss the Special Leave Petitions with no order as to costs.