

**(1998) 05 CAL CK 0025**

**In the Calcutta High Court**

**Case No :** Civil Original Jurisdiction A.S.T. No. 620 of 1998 W.P. No. 9879 (W) of 1998

Supradip Roy

APPELLANT

Vs

Miss Mamata Banerjee and Others

RESPONDENT

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**Date of Decision :** 22-05-1998

**Acts Referred:**

Calcutta High Court Writ Rules — Rule 27  
Constitution of India, 1950 — Article 19(1), 2, 21, 226, 3)

**Citation :** (1998) 2 CALLT 486 : (1998) 2 ILR (Cal) 12

**Hon'ble Judges :** Shyamal Kumar Sen, J

**Bench :** Single Bench

**Advocate :** Mr. Supradip Roy, for the Appellant; Mr. Ajit Panja, Mr. Swapan Gorai and Ms. Mitashree Chowdhury, Mr. Tapan Dutta, for the Respondent

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## **Judgement**

1. It is the contention of the petitioner that the Respondent No. 1 has been served with notice of hearing of the instant application upon the personal assistant of Respondent No. 1, namely Mr. Dilip Majumdar, who however refused to put his signature at the copy of the letter but assured that the petition will be handed over to Miss. Mamata Banerjee. Respondent No. 1 and the Respondent No. 1 is expected to return at her residence at about 2.00 p.m. The Respondent No. 1A, Mr. PankaJ Banerjee, has not been served. On behalf of the Respondent No. 1B, Mr. D.C. Roy, learned Advocate appears along with Mr. H. Guha Roy. The Respondent Nos. 2 & 3 have been served and represented by Mr. Tapan Dutta, learned Advocate for the State of West Bengal. In view of the urgency. Rule 27 of the writ rules stands dispensed so far as non-appearing respondents are concerned. The petitioner, in person, appears and refers two Judgments and decisions of the Full Bench of Kerala High Court, Bharat Kumar K. Palicha and Another Vs. State of Kerala and Others, which has been affirmed by the Supreme Court and reported in 1998 at Supreme Court Cases (1) Pg. 201. The Supreme Court in a short judgment affirmed the said Judgment of Kerala High Court and it has stated that the Kerala High Court has made correct observations so far as

paragraphs 12, 13 & 17 of the Judgment delivered by the Kerala High Court, which is reported in Bharat Kumar K. Palicha and Another Vs. State of Kerala and Others, . Relevant portion of the paragraph 12 of the Kerala High Court Judgment as reported in Bharat Kumar K. Palicha and Another Vs. State of Kerala and Others, is set out here- in-below:

"When Article 19(1) of the Constitution guarantees to a citizen the fundamental right referred to therein and when Article 21 confers a right on any person not necessarily a citizen--not to be deprived of his life or personal liberty except according to the procedure established by law, would it be proper for the court throw up its hands in despair on the ground that in the absence of any law curtailing such right, it cannot taste the constitutionality of the action? We think not. When properly understood, the calling of a Bandh entails the restriction of the free movement of the citizen and his right to carry on his avocation and if the legislature does not make any law either prohibiting it or curtailing it or regulating it, we think that it is the duty of the court to step into protect the rights of the citizen so as ensure that the freedom available to him are not curtailed by any person or any political organisation. The way in this respect to the courts has been shown by the Supreme court in Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, ."

2. Relevant portion of the paragraph 13 of the Judgment are also set out below :--

"We have already noticed that a call for Bandh holds out a warning to the citizen that if he were to go out for his work or to open his shop, he would be prevented and his attempt to take his vessel on the road will also be dealt with. It is true that theoretically it is for the State to control any possible violence or to ensure that bandh is not accompanied by violence. But our political subservience of the law enforcing agencies and the absence of political will exhibited by those in power at the relevant time, has really lead to a situation where there is no effective attempt made by the law enforcing agencies either to prevent violence or to ensure that those citizens who do not want to participate in the bandh are given the opportunity to exercise their right to work, their right to trade or their right to study. We cannot also ignore the increasing frequency in the calling, holding and enforcing of the State destruction of public and private property. In the face of this reality, we think that when we consider the impact of a bandh on the freedom of a citizen, we are not merely theorising but are only taking note of what happens around us when a bandh is called and a citizen attempts either to defy it or seeks to ignore. We are not in a position to agree with counsel for the respondents that there are no sufficient allegations either in O.P. 7551 of 1994 or in O.P, 12469 of 1995 which would enable us to come to such a conclusion. In fact, the uncontroverted allegations in O.P. 12469 of 1995 are specific and are also supported by some newspaper clippings which though could not be relied on as primary material, could be taken note of as supporting material for the allegations in the Original Petition."

3. Kerala High Court, however, has also observed that the general strike and Hartal is different from Bandh. In fact in paragraph 14. the Kerala High Court has observed inter alia as follows :--

"It may be true that the political parties and organisers may have a right to call for non-cooperation or to call for a general strike as a form of protest against what they believe to be either an erroneous policy or exploitation. But when exercise of such a right infracts the fundamental right of another citizen who is equally entitled to exercise his rights, the question is whether the right of the political party extend to right of violating the right of another citizen in railway Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh, , the Supreme Court observed :--

"The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to from associations of unions does not mean that they can exercise those freedoms in whatever place they please. The exercise of those freedoms will come to an and as soon as the right of someone else to hold his property intervenes. Such a limitation is inherent in the exercise of those rights. The validity of that limitation is not to be judged in the tests prescribed by sub-Articles (2) and (3) of Article 19. In other words the contents of the freedoms guaranteed under clauses (a), (b) and (c), the only freedoms with which we are concerned in this appeal, do not include the right to exercise them in the properties belonging to others."

"If this be the position and if the call for the bandh and the holding of it entails restriction on the fundamental freedoms of the citizen, it has to be held that no political party has the right to call for a bandh on the plea that it is part of its fundamental right of freedom of speech and expression. Moreover, nothing stands in the way of the political parties calling for a general strike or hartal unaccompanied by express or implied threat of violence to enforce it. It is not possible to accept that the calling of a bandh alone could demonstrate the protest of a political party to a given decision or in a given situation."

4. The Supreme Court in the case of Communist Party of India (M) Vs. Bharat Kumar and Others, , at paragraphs of the said Judgment at page 202 has observed as follows :

"On a perusal of the impugned Judgment of the High Court referring to which learned counsel for the appellant pointed out certain portions, particularly in para 13 and 18 including the operative part in support of their submissions we find that the Judgment does not call for any interference. We are satisfied that the distinction drawn by the High Court between a "Bandh" and a call for General Strike or "Hartal" is well made out with reference to the effect of "Bandh" on the fundamental rights of other citizens. There cannot be any doubt that the fundamental right of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there

cannot be any right to call or endorse a Bandh which interferes with the exercise of the fundamental freedoms of the other citizens in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court, particularly those in paragraph 12.13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement. We may also observe that the High Court drawn a very appropriate distinction between a "Bandh" on the one hand and a call for General Strike or "Hartal" on the other. We are in agreement with the view taken by the High Court.

5. It appears from the decision of the Supreme Court that the Kerala High Court made a very appropriate distinction between "Bandh" on the one way and call for a general strike or "Hartal" on the other way and the Supreme Court agreed with the view taken by the Kerala High Court.

6. The learned Advocate, Mr. Dinesh Chandra Roy, appears on behalf of the Respondent No. IB and has submitted that Bharatiya Janata Party is supporting the call given by the Trinamool Congress. He has further submitted that the said party, i.e. Bharatiya Janata Party will not take recourse to any coercive measures and will not prevent any citizens from performing their lawful activities. Including going to office or opening shops or business place. They will also not prevent private and public vehicles to run in normal manner. The learned Advocate has further clarified that any citizen willing to go to his office or place of business premises will not be prevented by members of the BJP. He has also submitted that since right to General Strike has been recognised there should not be any coercion upon any one, if any person intends not to Join office or to open his shop, trade or place of business.

7. Mr. Tapan Dutta, learned Advocate for the State respondent has produced a circular issued by the Chief Secretary, Govt. of West Bengal on 20th May, 1998 which has been sent to all Government Officials in West Bengal mentioning the action or step the State Government has proposed to take for the purpose of maintaining normal life and for prevention of violence in the State.

8. He has also relied upon both the Supreme Court and Kerala High Court decisions and has submitted that "Bandh" cannot be permitted since it has been already declared illegal. He has further fairly submitted although "Bandh" has already been declared illegal, both by the Kerala High Court and subsequently affirmed by the Supreme Court, right to call general strike or "Hartal" has been recognised in both the aforesaid decisions.

9. It is settled law that Bandh which implies as recorded in the aforesaid two decisions--one of the Full Bench of Kerala High Court, as affirmed in the decision of the Supreme Court, as already noted that taking recourse to coercion cannot be resorted to since the same is illegal.

10. In view of the aforesaid decision as already noted, at this stage the following order is passed :

There will be an interim order directing the Law Enforcing Agency of the State not to allow anyone to take recourse to coercive measure and not to indulge in violation of the law and order for the purpose of forcible closure and not to paralyse the commerce and industry and the Law Enforcing Agency is further directed to see that a citizen is not prevented from exercising his fundamental rights or performing his normal duties and activities. No. willing citizen should be prevented from Joining his office or opening his shop or place of business or to perform his normal activities. At the same time it is made clear that since the right to call general strike or "Hartal" has been recognised, the respondents will be at liberty to call General Strike" or "Hartal" and the respondents should not be prevented from holding peaceful public meetings and/or demonstrations which comes within the right to hold meetings and normal trade union activities should also be allowed to be performed including holding demonstration or meetings beyond a radius of 50 meters from their respective office or place of business. But, such holding of meetings or demonstration should not obstruct free ingress or egress of the employees to their respective offices and to the shops or to the place of business.

11. Let the matter appear for further orders on 25th May, 1998 at 12.00 noon.

12. Liberty is granted to the non-appearing respondents in the meantime to pray for vacating and/or modification of this order notice to the petitioners and the State Respondents and the other parties present at the . residence or in court.

13. Liberty is also given to the learned Advocates for the parties to take gist of this order for the purpose of communication and compliance thereof by all concerned.

14. This interim order will continue till Monday 25.5.98, till 12.00 noon.

15. The petitioner will have the liberty to pay for extension of the interim order and the respondents will be at liberty to apply for vacating of the same.

Decided on May 23, 1998

16. The petitioner is not appearing although it is stated by Mr. Panja that he has personally informed the learned Advocate for the petitioner that he will apply for clarification and/or modification of the order dated 22nd May, 1998, today at 9.00 A.M., at my residence.

17. Mr. Panja assisted by Mr. Swapan Gorai and Miss Mitashree Chowdhury, Advocates appearing for Miss. Mamata Banerjee, respondent No. 1 and Sri Pankaj Banerjee. respondent No. 1(a). has urged that the petitioner did not represent correct facts to the court yesterday with regard to the service upon the respondent No. 1, since there is no one by the name of Mr. Dilip Majumdar, as Personal Assistant of Miss Mamata Banerjee. In fact, Mr. Manik Majumdar is the Personal Assistant of Miss. Mamata Banerjee, who is present today. Accordingly, he submits that the writ petition should be dismissed on that ground alone. In my order yesterday, it is clearly recorded that in view of urgency Rule 27 of the

Write Rules stands dispensed with so far as the non-appearing respondents are concerned. The contention of the petitioner with regard to service upon Miss. Mamata Banerjee was only recorded. There was no finding as to its correctness and, as such, considering the urgency Rule 27 of the Writ Rules was dispensed with. Moreover, the non-appearing respondents were granted liberty to move this court for vacating and/or modifying the interim order and Mr. Panja has availed the said opportunity within twelve hours from passing of the said order. In my view, the said contention of Mr. Panja does not affect the merit of the case at all and on that ground, I am unable to accept that the writ petition should be dismissed, in limini.

18. It has been secondly argued by Mr. Panja that the "Bandh", as interpreted in the Full Bench judgment of the Kerala High Court and the Supreme Court Judgment, has not been called by Trinamool Congress in the instant case. In fact, in the instant case, it has been submitted by him that they will peacefully hold demonstrations and Satyagraha and also request the people not to Join work and cease work so that there will be total closure in the State meaning thereby and in fact he urges me to record the Bengali word that there will be "STABDHATA" in the State. He further submits that there will be no compulsion on the part of their party upon any individual and the individual will on his own should be asked not to Join work. It will be left to the volition of each individual to do whatever he decides. In that context, Mr. Panja argues that actually they are not calling "Bandh" in the sense it has been observed in the Full Bench decision of the Kerala High Court and the decision of the Supreme Court. It was been argued by the learned Advocate for BJP on the last occasion, yesterday that if any individual on his own volition wishes to keep his shop closed and/or decides not to go to office and/or decides not to open his commercial establishment, no force should be used against his to open the shop or the commercial establishment and/or compel him to Join the work/office. It has also been argued that it has appeared in the newspapers that if anybody does not join Government office, he will have to apply within 27th May, 1998 for leave. Such compulsion should not be there upon the concerned employee, but it should only be governed by the Service Rules, which holds the field.

19. Mr. Dutta, learned Advocate for the State of West Bengal submits that the Circular issued by the Chief Secretary on 20th May. 1998, which has already been kept on record yesterday, has been issued in accordance with the Government Service Rules, which is disputed by Mr. Panja.

20. I have considered the aforesaid contentions of the learned Advocates. It appears to me that contention of Mr. Panja that "Bandh" has not been called in the context of the Ruling of the Pull Bench of Kerala High Court or of the decision of the Supreme Court, is not decided at this stage and is to be decided at the time of final hearing of the writ petition. It is made clear that I have not considered the merits and contentions of the respective parties on the said issue at this stage.

21. With regard to the other contention of Mr. Panja since it has been recorded that on behalf of respondents No. 1 and & 1 (a) and his party, West Bengal Trinamool Congress, and as suggested by the learned Advocate for BJP, they will not take recourse to violence or coercion in any form, 1 have already indicated in my order yesterday that they will be at liberty to hold public meetings and demonstrations and normal trade union activities and make such appeals to the public as are permitted according to law. I am not reiterating the same since that has already been recorded in my previous order yesterday.

22. With regard to the other direction it has been prayed for by Mr. Panja, as well as the learned Advocate for BJP that the concerned individual who at his own volition will keep the shop closed on the basis of the appeal to be issued by the Trinamool Congress or the BJP should not be coerced to open the shop, commercial establishment as the case may be, nor any individual should be coerced to Join the office against his volition, it appears from the circular dated 20.5.98 produced yesterday and which is made record of this proceeding that the Government has also made it clear that "Attempts at forcible closure of Government offices, shops, markets, Educational institutions, industrial establishments etc. should be firmly dealt with." This presupposes that the Government by the said Circular intends to proceed against forcible closure only. It is also made clear that no force should be used or coercive action should be taken by anyone to force open any shop or commercial establishment or to Join office and in view of the said circular of the State Government the Law Enforcing Agencies of the State Government is also directed to see that the individual who at his own volition decides not to open the shop or commercial establishment, market, educational institution etc. or not to Join the office, no coercive action should be taken against them compelling them to open such shop, commercial establishment, market, educational institutions, etc. and to join office.

23. With regard to the submission of Mr. Panja that by the said Government circular dated 20th May, 1998, a Government employee who will not join office on that day, shall have to submit leave application by 27th May, 1998 is a compulsive step by the State Government which is disputed by Mr. Dutta, learned Advocate for the State of West Bengal. According to Mr. Dutta the said circular has been issued according to the service rules of the State Government it is clarified that in the event, a Government servant is absent on that day i.e. on 25th May 1998 from Government office, the West Bengal Service Rules will apply.

24. The learned Advocates for the respondents pray for directions for filing affidavits. They submit that they will file the affidavit-in-opposition by 15th June, 1998 and reply, if any, be filed by 25th June, 1998 and the matter is adjourned till 26th June, 1998.

25. The order passed yesterday, i.e. on 22nd May, 1998 is clarified modified to the extent indicated above. In all other respect the previous order dated 22nd May, 1998 will remain operative, until further orders.

26. It has been suggested by the learned Advocates for the parties appearing to day. Including the State Government that the order passed yesterday was not correctly telecast and the same was not correctly reported in the different newspapers. They have also suggested that there should be a direction that the State Government should take step for correct publication of the order passed by me yesterday as also today in different newspapers and in electronic media, so that no confusion is created in the minds of the public.

27. Considering the said suggestion of the learned Advocates for the parties, I direct the Doordarshan. Akashbani and the Newspapers which published report of yesterday's order, to telecast, announce and publish, as the case may be, the full text of the orders dated 22nd May, 1998 and 23rd May, 1998- For this purpose, the State Government will make copies of the said order available to them.

As a special case, let plain copies of the orders dated 22nd May, 1998 and 23rd May, 1998 duly countersigned by the Assistant Registrar (court) be given to the learned Advocates for the appearing parties.