

(2019) 12 CAL CK 0115

In the Calcutta High Court

Case No : Writ Petition (W.P) No. 23510, 23557, 23463, 23573, 23781 (W) Of
2019 Temporary Number (AST) No. 61, 62 Of 2019

Surajit Saha

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 20-12-2019

Acts Referred:

Citation : (2019) 12 CAL CK 0115

Hon'ble Judges : Thottathil B. Radhakrishnan, C.J;Arijit Banerjee, J

Bench : Division Bench

Advocate : Smarajit Roy Chowdhury, Ajit Mishra, Uttam Basak, Nilanjan Bhattacharjee, Ravi Ranjan Kumar, Dipanjan Sinha Roy, Dhiraj Kumar Tribedi, Kumar Jyoti Tewari, Brajesh Jha, Tarun Jyoti Tewari, Priyanka S. Tibrewal, Ashok Kumar Chakraborty, Vipul Kundalia, Madhab Prushty, Sudarshan Lamba, Kishore Datta, Abhratosh Mazumdar, T. M. Siddiqui, Sirsanya Bandyopadhyaya, Avra Mazumdar, Arka Kumar Nag, Partha Ghosh, Subhajit Seal, Ajay Chaubey, Moumita Das, Arijit Majumdar

Judgement

1. Supplementary affidavit filed in Court today on behalf of the petitioner in W.P.23510 (W) of 2019 be kept with the record.
2. W.P.23510(W) of 2019 is a matter fundamentally raising issues as to law and order in various parts of the State of West Bengal.
3. AST 61 of 2019 would run along with that writ petition to a large extent except on the issue that the petitioner in AST 61 of 2019 has apparently raised one more point, to wit, as to why the immediate requisite action by the jurisdictional police and the law enforcement authorities were not resorted to under the command of the State Government. AST 62 of 2019 also raises issues relating to deficit in protecting the trains and railway establishments etc. This, according to the petitioner therein, has resulted in breach of security and adverse situation to life, limb and property of commuters and also railway goods as well as railway property. The petitioner seeks a direction to the appropriate

authority of the Central Government to do the needful in liaison with the State Government authorities.

4. W.P. 23557 (W) of 2019 raises an issue relating to certain exercise of the Chief Minister of the State of West Bengal which are attributed by the petitioner as having adverse impact on the maintenance of law and order.

5. W.P. 23573(W) of 2019 is fundamentally on the issue as to whether State funds could have been spent to put across the view relating to the applicability or otherwise of a particular legislation in the State of West Bengal through different media and other sources utilizing public funds and public office. The issue is as to whether those public notices in the name of the Government was permissible.

6. W.P. 23781(W) of 2019 is instituted by the petitioner in W.P. 23510 (W) of 2019 pleading that the Chief Minister, contemporaneous with the holding such office, is disentitled from making any comment or public statement dehors or in defiance of a legislation which has passed through the Lok Sabha and Rajya Sabha and had obtained the assent of the President. It is pointed out that the State Legislation, though is subjected to challenge as to its constitutional validity before the Apex Court stands without any order by the judiciary as to stay of its operation. It is, therefore, pointed out that the Chief Minister of the State of West Bengal was not eligible to comment on the enforcement of that Act, since it is among the constitutional duties of the Chief Minister of the State and the administrative head of the State to ensure enforcement of the Constitution and the laws within the State of West Bengal.

7. We have heard learned counsel for the petitioners in different matters and also learned Advocate General.

8. For the present, we do not deem it appropriate or necessary in the larger interest of the society that we address issues relating to fairness of certain statements allegedly made by certain persons. We are also of the view that issues relating to the fundamental right to freedom of expression under the Constitution and the entitlement to dissent could be expressed even while participating in governance are issues of larger ramification, which we would not touch upon for the time being.

9. Be that as it may, for the time being what is required to be addressed is the law and order situation and the protection of the public property as well as providing requisite support for transport and movement of goods and commuters through public transport system as well as movement through private vehicles.

10. There were some debates during the course of submission as between the learned advocates and the counsel appearing in WP 23510 (W) of 2019 as regards the reliability of the contents of the report dated 18-12-2019 placed on record on behalf of the State respondents. Reliance was placed in contradistinction to that report, on an order issued by the District Magistrate, Howrah dated 19th December, 2019 invoking power under Section 144 Cr.P.C.

which profusely contains the District Magistrate's views on the basis of the report as were available in the morning of 19th December, 2019 that there was real apprehension of grave risk and danger to human life and property. This was the fundamental foundation on which the District Magistrate proceeded to impose restriction on transmission of data related message or class of messages to or from any person or class of persons relating to any particular subject on a temporary basis. This is a prohibitory order that was issued by the District Magistrate, Howrah on 19th December, 2019. We see that while drawing the requisite satisfaction for making that order on 19th December 2019, the District Magistrate has put that order to be operational till 05-00 P.M. on 20th December, 2019, that is, this evening. We are sure that internet as a mode of communication has come to stay. Reasonable restrictions in larger interest of the State including using the police powers ought to stand with sustainable reasons. Such restrictions cannot be continued for long periods unless every such extension of such prohibitory order finds support with requisite reasons of facts and materials generated from time to time. That being so, the requirement to continue with any such imposition of restrictions on the use of internet is a matter which the competent authorities have to decide based on given facts and circumstances at any point of time during which it may be required.

11. In so far as the railway lines, trains, commuters and goods movement are concerned, the Railway Protection Force are to speak ultimately on their assessment of the situation.

12. As rightly pointed out by learned counsel appearing for the petitioner, in AST 61 of 2019, the assessment are also to be as to the deficit in the protective action taken by the person or authority at the requisite time thereby containing the possibility of damage which had happened. We may also draw a clue from the fact that the Parliament has brought in the Disaster Management Act in force which includes all types of disasters and preventive and protective measures are enshrined therein requiring the disaster management authorities to take stock of the possibility of disasters in the waiting and taking requisite protective steps.

13. We, therefore, direct the State Government authorities and the Railways as well as the Union of India to place comprehensive reports touching all aspects of the matter noted above, in due course. However, as regards the continued carrying of messages in the name of the Government of West Bengal, which is the subject matter of W.P.23573 (W) of 2019, we direct that the response of the Government be placed before us when the matter would be taken up on 23rd December, 2019.

14. A report delineating the situation in the different districts of the State of West Bengal in so far as law and order is concerned, shall also be made available to the Bench by that time.

15. As regards the detailed reports, the date by which the same have to be filed will be indicated on 23.12.2019 when these matters will be listed at 12:30 p.m.

16. Let photostat plain copy of this order, duly countersigned by the Assistant Registrar (Court), be given to the learned Advocates for the parties on usual undertaking.