

AD. 1.
January 10, 2021.
MNS.

W. P. A. 830 of 2021
(**Via video conference**)

Koikhali Sikshak Oikya O Kolyan Samity
and another
Vs.
The State of West Bengal and others

Mr. Bikash Ranjan Bhattacharyya,
Mr. Firdous Samin,
Ms. Gopa Biswas,
Ms. Sayani Bhattacharya

... for the petitioners.

Mr. Sirsanya Bandopadhyay

...for the respondent-authorities.

The grievance of the petitioners, an organization of para teachers, is that, despite having applied for administrative permission on December 22, 2020, for holding a sit-in-demonstration near Saheed Minar, Calcutta, from January 11, 2021 to January 18, 2021 of not more than 500 teachers, preceded by a procession from Rani Rashmoni Avenue to the aforesaid venue, where the petitioners expressed a turn-out of about 50,000 teachers, the administration has been sitting tight over the matter. Subsequent to filing of the present writ petition, the army authorities have granted

permission on January 8, 2021 for use of the Saheed Minar ground from January 11, 2021 to January 13, 2021 for holding of “teachers gathering”, subject to compliance of the formalities as indicated in such permission. A copy of the said written permission, handed over in Court today, be kept on record.

Learned senior counsel for the petitioners submits that it is the Constitutional right of the para teachers to hold such demonstration and to come to the venue for ventilating their grievances under Article 19 of the Constitution of India. Such right cannot be curtailed by administrative inaction.

Learned senior counsel further submits, by handing up a copy of a communication dated January 9, 2021 by the Joint Commissioner of Police, to the petitioners, that the police authorities have refused permission to the petitioners in terms of their application on the ground that Ganga Sagar Mela Transit Camp is established in the Maidan area and the whole maidan area is totally geared up for the various activities associated with the movement of pilgrims. The authorities have further stated that, since the programme venue is adjacent to the

transit camp, there is every possibility of various impediments arising from the same, for which the petitioners' request for conducting the same was not acceded to. It is submitted that such refusal, particularly in the teeth of the permission given by the defence authorities, is violative of the fundamental rights of the petitioners' freedom of speech and expression as well as to assemble peacefully.

Learned counsel appearing for the respondent-authorities submits that, even as per the application of the petitioners, there would be an expected turn-out of 50,000 teachers. If such number of participants were to be accommodated in the venue-in-question, the procession itself would cover an extremely large area, which would be preposterous, particularly keeping in view the pandemic situation.

It is submitted that the grounds on which the request of the petitioners' was refused was a perfectly valid and cogent one.

Learned counsel for the respondent-authorities further argues that the writ petition itself has spent its force, since the same was filed on the alleged inaction of the authorities-in-question, which has subsequently been mitigated

by consideration of the petitioners' application and refusal of the same.

It is further submitted by the respondent-authorities that Public Interest Litigations are pending in connection with similar matters and, as such, this Court ought not to interfere in the matter.

Placing particular reliance on an order of the Division Bench dated December 19, 2019 in W. P. No. 22640(W) of 2019, annexed to the writ petition, learned counsel submits that the same was passed in a Public Interest Litigation. Prior thereto, it is submitted, that the matter came up before a Bench having regular determination, which released the matter to be moved as a Public Interest Litigation. The petitioners' application ought not to be entertained, it is submitted, by the Bench on such score as well. Moreover, it is argued that it might not be proper for this Bench to pass an order in the matter, keeping in view that similar matters are pending before the Division Bench taking up Public Interest Litigation, for the sake of judicial propriety.

Upon considering the application of the petitioner dated December 22, 2020, it is evident

that the expected turn-out of 50,000 participants for a procession cannot be permitted under any rhyme or reason, in the pandemic situation. It is obvious that such a gathering would not be compliant of any of the Covid-19 protocols and, as such, cannot be allowed.

The petitioners' argument that the said number is only the upper limit of such gathering, cannot be taken as a valid parameter, since the permission has to be tested on the upper limit, particularly in case of an indeterminate number which will be in constant flux during the holding of the procession. As such, the preceding portion of the sit-in-demonstration, regarding procession of an outer limit of 50,000 teachers, was rightly refused.

In any event, in view of the restricted permission given by the defence authorities, the petitioners would not be able to hold the gathering beyond January 11, 2021 to January 13, 2021 at the Saheed Minar ground.

The second portion of the petitioners' request, that is, holding a sit-in-demonstration near the Saheed Minar of not more than 500 teachers, would be within the domain of practicality and as such, ought to be considered.

In the circumstances of the present case, a balance has to be struck between the fundamental rights of the petitioners to agitate their grievance and public order and security/safety in view of the pandemic situation and the ensuing traffic situation which would result from the sit-in-demonstration.

Accordingly, W. P. A. 830 of 2021 is disposed of by directing the respondent-authorities to permit the petitioners to hold a sit-in demonstration in the vicinity of the Shaheed Minar at Calcutta from January 11, 2021 to January 13, 2021. The total number of the participants in such demonstration shall not, at any point of time, exceed 500. The petitioners shall maintain all Covid-19 protocols which are in place as well as the Pollution Control Regulations in vogue.

It is further made clear that the demonstration and gathering shall be peaceful and not in contravention of any extant law.

Such permission shall be granted by the respondent-authorities by 8 p.m. tonight, subject to the aforesaid stipulations.

There will be no order as to costs.

The parties shall act on the server copy of this order, as and when uploaded in the official

website of this Court, and/or Advocate's communications, without insisting upon production of certified copies.

(Sabyasachi Bhattacharyya, J.)