

3, 10.01.2022
4, PA(RO/SS)
5,
6,
&
7

IA NO. CAN 2 of 2022
In
WPA(P) 1 of 2022
DR. AVINANDAN MONDAL
Vs
STATE OF WEST BENGAL AND ORS.
With
IA NO. CAN 3 of 2022
In
WPA(P) 1 of 2022
DR. AVINANDAN MONDAL
Vs
STATE OF WEST BENGAL AND ORS.
IA NO. CAN 4 of 2022
In
WPA(P) 1 of 2022
DR. AVINANDAN MONDAL
Vs
STATE OF WEST BENGAL AND ORS.
IA NO. CAN 5 of 2022
In
WPA(P) 1 of 2022
DR. AVINANDAN MONDAL
Vs
STATE OF WEST BENGAL AND ORS.
IA NO. CAN 1 of 2022
In
WPA(P) 1 of 2022
DR. AVINANDAN MONDAL
Vs
STATE OF WEST BENGAL AND ORS.
(Through Video Conference)

Mr. Ritzu Ghoshal,
Mr. Anirban Ghosh, Advocates
... for the applicant in CAN 1 of 2022

in WPA(P) 1 of 2022

Mr. Srijib Chakraborty,
Mr. Aditya Mondal,
Mr. Suryaneel Das, Advocates

... for the writ petitioner in CAN 2 of
2022, CAN 3 of 2022, CAN 4 of
2022, CAN 5 of 2022, CAN 1 of 2022
in WPA(P) 1 of 2022

Mr. Anindya Kumar Mitra, Advocate

... for the writ petitioner in CAN 2 of
2022 in WPA(P) 1 of 2022

Mr. Bikash Ranjan Bhattacharya,
Mr. Sabyasachi Chatterjee,
Mr. Akashdeep Mukherjee,
Mr. Sayan Banerjee,
Mr. Sandipan Das,
Mr. Ankur Sharma, Advocates

... for the applicant in CAN 4 of 2022
in WPA(P) 1 of 2022

Mr. Prisanka Ganguly,
Mr. Abhratosh Majumdar, Advocates

... for the applicant in CAN 5 of 2022
in WPA(P) 1 of 2022

Mr. S.N. Mookherjee, Ld. AG
Mr. Anirban Roy, Ld. GP,
Mr. Samrat Sen, Ld. AAG
Mr. Bipin Ghosh,
Mr. T.M. Siddiqui,
Mr. Debashis Ghosh,
Mr. Nilotpal Chatterjee
Mr. Avishek Prasad, Advocates

... for the State in CAN 2 of 2022,
CAN 3 of 2022, CAN 4 of 2022, CAN
5 of 2022, CAN 1 of 2022 in WPA(P)
1 of 2022

Mr. Anindya Kumar Mitra,
Mr. Subhankar Nag,
Mr. Biswajit Kumar, Advocates

... for the applicant in CAN 2 of 2022
in WPA(P) 1 of 2022

Mr. Aniruddha Chatterjee
Mr. Rahul Karmakar
Ms. Gargi Goswami, Advocates

... for the WB Doctors Forum in CAN
2 of 2022, CAN 3 of 2022, CAN 4 of
2022, CAN 5 of 2022, CAN 1 of 2022
in WPA(P) 1 of 2022

By order dated 7th of January 2022, WPA(P) 1 of 2022 was disposed of with the following directions.

“(1) The competent authority of the State will take a decision to issue the Notification in terms of Section 3 of the Gangasagar Mela Act, 1976 declaring the Sagar Island as “Notified area” within a period of 24 hours from pronouncement of this order.

(2) The Home Secretary of the State of West Bengal will ensure that the restrictions, especially the restriction No. 10 contained in the order dated 02nd January, 2022 issued by the State is duly implemented without any lapse in Gangasagar Island during the Mela period.

(3) The concerned authorities of the State will fully implement the directions which are contained in the order dated 8th January, 2021 passed in W.P.A. (P) No. 23 of 2020 in the case of Ajay Kumar De – Vs. – The State of West Bengal & Ors.

(4) The Home Secretary of the State will issue advertisements in the daily newspapers having wide circulation in the State of West Bengal and also through the electronic media making the public aware of the risk of visiting Gangasagar Island between 08th and 16th January, 2022 in large gathering and will make an appeal to them to

WPA(P) 1 of 2022 stay safe and desist from visiting the Gangasagar Island during this period.

(5) A three Member Committee comprising of (i) Leader of Opposition in the State or his representative, (ii) Chairman, West Bengal Human Rights Commission or his representative and (iii) representative of the State is constituted which will keep vigil in respect of compliance of the above directions as also measures suggested by the State in the affidavit dated 06th January, 2022. In case if any shortcoming in compliance is noticed, then the Committee will make a recommendation to the State without any delay to ban entry in the island, on which the competent Authority of the State will take immediate action. Secretary of the West Bengal Human Rights Commission will coordinate between the Members of the Committee.”

CAN 2 of 2022 has been filed by one Kabirul Islam with a prayer to replace the Committee constituted by this Court with a Committee which is already in existence since 18th of December 2001 and additionally induct one member from the medical fraternity.

The submission of Counsel for the applicant in CAN 2 of 2022 is that a Committee was already formed by resolution dated 18th of December, 2022 comprising of 12 members, therefore, there is no need to form a

separate Committee by this Court and that one medical expert should be additionally included in the Committee.

CAN 3 of 2022 has been filed by the State of West Bengal with a prayer to delete paragraph 20 and 21(5) of the order dated 7th of January, 2022 and alternative prayer to substitute the Leader of the Opposition and Chairman of West Bengal Human Rights Commission with independent personal from the non-government and non-political entity.

CAN 4 of 2022 has been filed in by one Ajoy Kumar De with a prayer to modify the order dated 07 January, 2022 by reconstituting the three member Committee with the public health expert of the State and further making the RT-PCR test compulsory for all the pilgrims and clarifying the directions regarding the presence of 50 persons in the Island at a time.

CAN No. 5 of 2022 has been filed by one Puspall Chakraborty for modification of paragraph 21(5) of the order and inclusion of members belonging to medical fraternity in that Committee.

CAN No. 1 of 2022 has been filed by one Pramod Kumar Verma with a prayer to replace the Committee formed in paragraph 21(5) of the order with the Committee already in existence vide resolution dated 18th of December, 2001 and induct reputed member from medical fraternity.

In CAN No. 3 of 2022 submission of the learned Advocate General is that the Chairman of State Human Rights Commission has retired in December, 2021. Therefore, the post is lying vacant and that inclusion of the Leader of the Opposition will give the Committee a political colour, therefore, the composition of Committee should be changed. His submission is that a high power Committee already exists in terms of the resolution dated 18th of December, 2001, therefore, a new Committee is not required.

In CAN No. 4 of 2022 the submission of the Counsel for the applicant is that the Committee should comprise of only doctors and medical experts.

In CAN No. 5 of 2022 the submission of the learned Counsel for the applicant is that in addition to the members of the Committee formed on 18th December, 2001, medical expert should also be included in the Committee.

In CAN No. 1 of 2022 the submission of the Counsel for the applicant is that a Committee of in 2001 is already formed, therefore, there is no need of new Committee.

Learned Counsel appearing for writ petitioner has submitted that the State is not complying with the directions of this Court and that in terms directions of paragraph 21 (1) only Sagar ground has been declared as

notified area whereas Sagar Islands were required to be declared as notified area.

He has further submitted that the directions contained in paragraph 21(2) and (4) have also not been complied with, therefore, contempt proceedings be initiated against the respondents. He has also submitted that the Committee formed on 18th of December, 2001 has become redundant even otherwise the said Committee mostly comprise of government employees and that since post of Chairman, State Human Rights Commission is vacant, therefore, someone else may be nominated at his place. He has reiterated his prayer to ban the Mela.

Learned Counsel for the Doctor's Forum has also submitted that the directions issued by this Court have not been implemented and nothing has been done till now. He has also submitted that the Committee should be an independent Committee.

Responding to the submissions of the learned Counsel for the applicant and Doctor's Forum, submission of learned Advocate General that Mela ground in the radius of two kilometers has been declared as notified area and that direction contained in paragraph 21(2) has been complied with and that in terms of directions contained in para 21(5) advertisement in three daily newspapers has been

issued.

Having heard the learned Counsel for the parties and on the perusal of the record, we have noticed that at the stage of passing the order dated 07.01.2022 it was not made known to this Court that the post of Chairman, Human Rights Commission had fallen vacant and that the post of Secretary of West Bengal Human Rights Commission was also vacant.

A submission has also been made before this Court that Committee formed by this Court should not only be an independent Committee but it should not have political member. To avoid any misapprehension in the mind of the applicants or the State we deemed it proper to reconstitute the Committee with the retired Judge of this High Court as Chairperson to review the situation on the spot at Ganga Sagar Island.

This Court is not persuaded to accept the submission of Counsel for the applicants and the State that the Committee formed by resolution dated 18th of December, 2001 should be entrusted with the responsibility to carry out the review of situation in terms of paragraph 21(5) of the order as in that Committee most of the members are employees of the State and that Committee was formed for entirely different purposes having no connection with the compliance of the COVID protocol and dealing with

current situation.

That apart, we have also noticed that in pursuance to the directions contained in paragraph 21(1) of the order of this court dated 7th of January, 2022, vide notification dated 8th of January, 2022, only Sagar Mela Ground within Sagar Islands has been declared as notified area. Hence, the notification dated 08.01.2022 is not in the full compliance of the direction of this Court.

An issue has also been raised that pilgrims and visitors are gathering in the Sagar Islands, therefore, further adequate measures are required to be taken keeping in view the health and safety of the persons visiting the Sagar Islands.

Since there is allegation of non-compliance of directions of this Court, therefore, responsibility is also required to be fixed on the competent authority of the State.

In view of the above we modify paragraph 21 (5) of the order dated 7th January, 2022 and issue following further directions:

- (1) The paragraph 21 (5) of the order dated 7th of January, 2022 is modified and substituted by constituting two member Committee comprising of Smt. Samapti Chatterjee, Retired Judge of the Calcutta High Court as Chairperson and Member Secretary, West Bengal Legal Services Authority as

member, who will keep vigil in respect of compliance of the directions contained in the order dated 7th of January, 2022 and the measures suggested by the State in the affidavit dated 6th of January, 2022. Secretary, Home will extend all requisite assistance including arrangements for transportation, security etc. to the above Committee. In case of any shortcoming in compliance of the direction of this Court is noticed or it is found that gathering in Mela is leading to spread of COVID virus then the Committee will make a recommendation to the State without any delay to ban entry in the Sagar Islands, on which the competent authority of the State will take immediate action.

- (2) The respondent No. 3, Principal Secretary, Health and Family Welfare Department, Government of West Bengal will ensure that only persons who have received the two dose of COVID vaccination and are having second vaccination certificate are permitted to enter the Sagar Islands during the Mela period.
- (3) Only those who are having COVID negative in RT-PCR report of within 72 hours, will be permitted to enter the Sagar Islands.
- (4) The competent authority of the State is directed to

issue a notification in terms of Section 3 of Gangasagar Mela Act, 1976 declaring the whole of the area within the Sagar Islands as notified area within 24 hours.

(5) The Chief Secretary, Government of West Bengal will be personally liable to ensure the compliance of above directions as also the directions contained in the order of this Court dated 7th of January, 2022 passed in WPA(P) 1 of 2022.

CAN 2 of 2022, CAN 3 of 2022, CAN 4 of 2022, CAN 5 of 2022, CAN 1 of 2022 are accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Kesang Doma Bhutia, J.)