

20.07.2022
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Sl. No. 11
Ct. No. 05

WPA 15773 of 2022

Arun Uday Paulchowdhury
-Versus-
The State of West Bengal & Ors.

Mr. Rajdeep Majumdar
Mr. Mayukh Mukherjee
Ms. Aishwarya Bajaj
.....for the petitioner

Mr. Anirban Ray, Ld. GP,
Mr. Raja Saha
Mr. Wasim Ahmed
Ms. Piyali Sengupta
Mr. Toushif Ahmed
.....for the State

The petitioner is a member of the Bharatiya Janata Party (BJP) and is the President of the Howrah District(Rural) of the said party. The petitioner prays for a direction on the respondents to accord necessary permission for conducting a meeting of the said political party on 21st July, 2022. The petitioner claims that the police authorities have not responded to the petitioner's request for holding the meeting.

The Learned Government Pleader appearing for the State takes a technical objection to relief being granted by the Court, the contention being that the petitioner presently does not have a cause of action for seeking redress against the respondents. Counsel refers to the permission from Gloster Jute Mill for holding the meeting in the open land and the fact that the writ petition by itself does not disclose any refusal on the

part of Gloster Jute Mill or any authority for holding the proposed meeting. Counsel opposes filing of the supplementary affidavit by the petitioner on the ground that the supplementary affidavit changes the nature and character of the writ petition as originally filed. It is also submitted that the supplementary affidavit makes reference to the alleged refusal and inaction on the part of Gloster Jute Mill, whereas Gloster Jute Mill has not been made a party to the writ petition.

Learned counsel appearing for the petitioner disputes the position taken on behalf of the State and submits that the petitioner was constrained to file the supplementary affidavit on account of the subsequent refusal on the part of Gloster Jute Mill to give permission. According to counsel, the writ petition was filed on 15th July, 2022 while the refusal was given a day after on 16th July, 2022. Counsel submits that the refusal would reflect the underlying intimidation of Gloster in relation to the permission which was initially granted.

Since Gloster Jute Mill is a private entity, the Writ Court cannot compel Gloster to offer its space for a political meeting or otherwise. There is no evidence of Gloster being a person or authority under Article 226 of the Constitution.

This Court is also of the view that the petitioner was compelled to file the supplementary affidavit since

the withdrawal of permission was communicated after filing of the writ petition. Even if Gloster is discounted, the cause of action, namely, failure of the police to act remained and continued from the writ petition to the supplementary affidavit. The Division Bench of this Court in *Bharat Bhari Udyog Nigam Ltd. vs. Jessop and Co. Ltd. Staff*; (2003) 4 CompLJ 333 Cal, noted that the petitioner made out a completely new case by filing successive supplementary affidavits. The petitioner therefore has a case before the writ court and the Court is inclined to look into the writ petition together with the supplementary affidavit for ascertaining if the writ petitioner has made out a case for grant of the relief prayed for.

The over-arching issue is whether the petitioner, as a member of the BJP, has a right to hold a meeting on a day which is commonly referred to and commemorated as Sahid-Diwas or Martyrs day by the Trinamool Congress Party (TMC). A Writ Court can only intervene where there is a threatened or actual infraction of a right guaranteed under Part III of the Constitution of India or to enforce such rights. The right to freedom of speech and expression and to assemble peaceably without arms are two of the inalienable rights under Part III of the Constitution. These rights may reasonably be restricted only on the conditions under Article 19(2) including a breach of public order.

The prayer of the petitioner is for holding of a meeting to highlight the work of the Prime Minister (paragraph 3 of the writ petition). The Court cannot impute motives for the reluctance of the petitioner to hold the meeting on any other day or for the State to object to the meeting being held on 21st July, 2022.

The only issue which the Court can consider is a possible threat to law and order situation in the concerned area, if the petitioner holds the meeting on the proposed date.

The learned Government Pleader has referred to the massive deployment of police forces for the Martyrs Days Celebration and to ten lakhs being the projected number of attendees for the TMC event. Counsel has also mentioned that about 7000 vehicles would assemble from the Districts. Whatever may be projected numbers, the records available with the Court do not point to any threat of breakdown of the law and order situation or otherwise despite such a large gathering. It may also be noted that no particular political party or group can appropriate a specific day unto itself and prevent another from holding a meeting on a particular day. Every group of whichever denomination has the right to exercise the rights under Part III subject to the constitutional safeguards.

This Court accepts the views taken by the coordinate benches in (2017) 2 CHN 55 and in *Debjit Sarkar vs. State of West Bengal; WP 563(W) of 2018*.

It is not the business of the Writ Court to get into micro-management of what is essentially the duty of the Administration. The Court can however ensure that certain conditions are met for mitigating the potential risk to public order. This Court hence deems it fit to pass the following directions:

- i) The petitioner may be allowed to hold its meeting, at 8 p.m. on 21st July, 2022 at the land adjoining the Bharatiya Janata Party District Office, Manasatala, Howrah (Rural), Khatian no. 2254-2173, Dag No. 205-206 in a lane exiting NH16. The TMC Martyrs Day commemoration is due to be held at Esplanade from 12-3 p.m. in the afternoon.
- ii) The petitioner shall furnish the required particulars of the proposal of the meeting venue to the Uluberia Police Station by 6 to 8 p.m. today, i.e., 20th July, 2022.
- iii) Police personnel from the Uluberia Police Station shall visit the proposed venue to ascertain whether the place is conducive to a meeting attended by 2000 persons.
- iv) If it is found that the proposed venue is not conducive for an assembly of 2000 people, the

petitioner shall specify the maximum number of persons who will be attending the meeting.

- v) The police shall verify whether the proposed meeting at the suggested venue will disrupt the flow of traffic on NH16.
- vi) The movement of attendees for the meeting including of vehicles towards the proposed venue shall start from 6:30 p.m. on 21st July, 2022.
- vii) The meeting shall not extend beyond 10 p.m. as suggested by counsel for the petitioner.
- viii) The SDO, Uluberia shall ascertain whether the venue complies with the environmental safeguards. The SDO shall also consider whether the proposed venue can accommodate 20 loud speakers as contended by the petitioner. The SDO shall be at liberty to curtail the number of loud speakers depending on the size and location of the venue and the duration of the meeting.
- ix) Since the concerned area has witnessed several law and order breakdown-incidents in the past few months, the speakers at the meeting as well as the attendees shall refrain from making any provocative speeches including displaying audio-visual content having the potential of unleashing communal tension or public unrest.

Since it is the stated case of the petitioner that the meeting is proposed to be organized by the BJP Howrah District (Rural), the petitioner shall ensure that the people attending the meeting are restricted to Howrah District and not beyond that.

WPA 15773 of 2022 is disposed of in terms of the above

The allegations made in the writ petition as well as the supplementary affidavit are deemed not to have been admitted since affidavits have not been called for.

(Moushumi Bhattacharya, J.)