

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Reserved on: 08.09.2022
Pronounced on: 13.09.2022

WPA(P) 445 of 2022

Dr. Santanu De

...Petitioner

-Vs-

The State of West Bengal and Others

...Respondents

With

WPA 7912 of 2020

With

CAN 2 of 2022

Sourav Dutta

...Petitioner

-Vs-

The State of West Bengal and Others

...Respondents

With

WPA(P) 419 of 2022

Jatiyatabadi Ayinjibi Council and Another

...Petitioner

-Vs-

The State of West Bengal and Another

...Respondents

With

WPA(P) 420 of 2022

Subir Kumar Ghosh

...Petitioner

-Vs-

State of West Bengal and Others

...Respondents

With

WPA(P) 426 of 2022

Amit Kundu

...Petitioner

-Vs-

The State of West Bengal and Others

...Respondents

Present:-

Mr. Shamik Bagchi,
 Mr. Tanmay Basu,
 Mr. Suvodip Pramanik,
 Mr. Diganta Bose, Advocates

... for the petitioner
 in WPA (P) 445 of 2022

Mr. Bikash Ranjan Bhattacharyya, Sr. Advocate
 Mr. Samim Ahammed,
 Mr. Siddhartha Sankar Mondal,
 Mr. Arka Maiti,
 Mr. Arnab Sinha,
 Ms. Gulsanara Pervin, Advocates

... for the petitioner
 in WPA 7912 of 2020

Mr. Debasish Saha,
 Mr. Subhajit Bal,
 Mr. Hiranmoy Debnath,
 Mr. Purnendu Choudhury,
 Mr. Subrato Mukherjee,
 Mr. Jamuna Prasad Sonak,
 Mr. Firdous Jaman,
 Mr. Barun Ghosh, Advocates

... for the petitioners
 in WPA (P) 419 of 2022

Mr. Jayanta Samanta,
 Ms. Karunamoyee Samanta, Advocates

... for the petitioner
 in WPA (P) 420 of 2022

Mr. Tulsi Das Maiti,
 Mr. Amlan Mukherjee,
 Mr. Pradip Kumar Ghosh,
 Mr. T. P. Acharyya,
 Mr. Rajit Lal Maitra, Advocates

... for the petitioner
 in WPA (P) 426 of 2022

Mr. Sujit Sankar Koley, Advocate

... for the WBSEDCL/Respondent No.5

in WPA (P) 445 of 2022

Mr. Deepak Kumar Sarkar,
Mr. Ayush Jain,
Ms. Deepti Priya, Advocates
... for the respondent No. 8
in WPA (P) 445 of 2022

Mr. Alok Ghosh,
Mr. Subhrangsu Panda, Advocates
... for the K.M.C.
in WPA 7912 of 2020

Mr. Sujit Sankar Koley, Advocate
... for the WBSEDCL/Respondent No.5
in WPA (P) 419 of 2022

Mr. S.N. Mookherjee, Id. AG
Mr. Samrat Sen, Id. AAAG
Mr. Anirban Ray, Id. GP
Mr. T.M. Siddiqui, Id. AGP
Mr. Nilotpal Chatterjee,
Mr. Raja Saha,
Ms. A. Pandey
Mr. Yash Singhi,
Ms. Adreeka Pandey, Advocates
... for the State

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Prakash Shrivastava, CJ:

1. The grievance in these petitions as also in CAN 2 of 2022 filed in pending WPA 7912 of 2020 is in respect of the declaration made by the Government of West Bengal for providing a grant of about Rs. 60,000/- each to about 40,092 Puja Committees/Clubs in the State of West Bengal during the Durga Puja, 2022 as also against providing concession, rebate or waiver to the extent of 60% on electricity consumption bill during the said period of Durga Puja to such Puja Committees/Clubs in the State.

2. The grievance arose when on 22nd of August, 2022, the State of West Bengal through its Hon'ble Chief Minister had made a declaration in respect of granting the sum of Rs. 60,000/- to such Puja Committees and extending waiver of 60% of the electricity bills to the Puja Committees. During the pendency of the present petitions, Deputy Secretary to the Government of West Bengal has issued the order dated 6th of September, 2022 for awarding the grant of Rs. 60,000/- to 40,028 Clubs/Puja Committees or other similar organizations (37,028 under West Bengal Police and 3,000 under Kolkata Police). The order discloses administrative approval and financial sanction of a sum of Rs. 240,16,80,000/- in this regard.

3. The grievance of the petitioner is that the public money is sought to be distributed in this manner ignoring the larger public interest when the State is going through financial crunch.

4. Submission of the learned Counsel for the petitioners/applicant is that the distribution of amount has nothing to do with public purpose and that Durga Puja is a private affair. A further plea has been raised that instead of making payment to Amphan victim or implementing Swasthya Sathi Scheme which have higher priority, the money is being wrongly distributed for religious purpose. Learned Senior Counsel for the petitioner has also submitted that by the order dated 6th of September, 2022, the funds are distributed only for Durga Puja which cannot be approved. He further submits that in previous two years the same was permitted by providing guidelines keeping in view the Covid situation but now the situation has improved and no such expenditure is required. It has also been submitted that the Puja Committees are not submitting the utilization certificate.

5. Opposing the prayer, learned Advocate General has submitted that there is already an order of the Division Bench of this Court on this issue which has not been stayed by the Hon'ble Supreme Court and that the expression "public purpose" is of wide amplitude and the budgetary provision has already been made for allocating the amount. He has further submitted that Durga Puja is a part of cultural heritage of the State and that the object of providing the grant is already mentioned in the order dated 6th of September, 2022. He has further submitted that the State is not extending any concession in the electricity charges but the same is to be extended by the electricity company for which no decision has been taken till now.

6. We have heard learned Counsel for the parties and perused the records.

7. A similar issue had come up before this Court in W.P. No. 19091 (W) of 2018 when the State Government had decided to extend grant to 28000 Puja Organizers for organizing Durga Puja in the year 2018. The Division Bench of this Court by order dated 10th of October, 2018 (**Sourav Dutta & Anr. v. The State of West Bengal & Ors.** reported in **2018 SCC OnLine 7613**) had considered the same grievance raised by the petitioners and had refused to interfere in the matter leaving it to the legislature to decide upon the propriety of expenditure or otherwise. The Division Bench in the matter of **Sourav Dutta & Anr. (supra)** had noted that:

“18. It is the age old settled principles of law that expenditure by the Government is deemed to be authorized if in the budget and in the Appropriation Acts there is a necessary provision for spending money on the particular acts. Once there is a prima facie case that there is no provision in

the Budget as also in the Appropriation Account, the Court can interfere at the first instance with regard to such action of the executive. In other words, if the action on the part of the State Government is unreasonable or arbitrary in spending money for private purpose under the garb of public purpose, the Court can interfere. Once it is shown to the Court that there is a provision in the Budget and in the Appropriation Account, it is the settled principle of law that it is permissible for the Government to spend such money, which had not been specifically provided at the time of allotment in the Budget. After the expenditure is incurred, in the subsequent year, it will be included in the account and then it is for the legislature to decide upon the propriety of the expenditure or otherwise. The Comptroller and Auditor General has a major role to play in auditing the Government account in this regard. According to the aforesaid settled principles of law, it is not permissible for the Court to interfere in that event at the first instance.”

8. In the above judgment, Division Bench had also considered a similar order of the Government granting the administrative approval and financial sanction of a sum of Rs. 28 crore for the said purpose and had noted the major head and sub-head under which the money will be distributed and reached the following conclusion:

“**24.** Now, in order to find out the provisions in the Budget, we find that Demand No. 68 relates to Home and Hill Affairs Department, A - General Services - (d) Administrative Services under the major head of account: 2055 - Police. Under the said Major Head the detailed account No. 2055-00-109 relates to District Police. Under the aforesaid Major Head and Sub-Head the money is distributed under different detailed heads in the Budget upto No. 2055-00-109-022.

25. From the aforesaid order of the Finance Department, Group-N, Budget Branch dated September 12, 2018, it is not in

dispute that a new detailed head, i.e. No. 024-Grants to Community Puja organizers-31-02 (other grants)-V has been incorporated under the aforesaid Major Head and Sub-head.

26. It further appears from the Government Order dated September 24, 2018 that while the Governor has been pleased to accord administrative approval and financial sanction of a sum of Rs. 28 crores only for payment of ad-hoc grant at the rate of Rs. 10,000/- only to each of 28,000 Clubs/Puja organizations for the purposes indicated therein, it has been mentioned therein that the disbursement could be made through Account Payee Cheques in favour of Clubs/Puja Organizers for the aforesaid purposes and submission of utilization certificate is a must.

27. Therefore, from the materials-on-record it appears that the aforesaid decision of the Government is a part of community Policing activity having provisions in the Budget under Demand No. 68 as has been provided with a Major Head, Sub-head and Detailed Head bearing No. 2055-00-109-024-Grants to Community Puja organizers-31-02 (other grants)-V. The new Detailed Head being incorporated bearing No. 024-Grants to Community Puja organizers-31-02 (other grants)-V under the aforesaid Major Head and Sub-head.

28. In the aforesaid facts and circumstances of this case, the settled principles of law does not permit us to interfere with the aforesaid action at this stage and after the expenditure has been incurred in the subsequent year, it is for the legislature to decide upon the propriety of the expenditure or otherwise. The Appropriation Account which would be placed in the subsequent year would cover the expenditure actually incurred by the Government at the first instance.”

9. The above order was subject matter of challenge before the Hon’ble Supreme Court in SLP(C) No. 27927/2018 wherein the Hon’ble Supreme Court on 12.10.2018 had passed the following order:

“Exemption from filing C/C of the impugned judgment granted.

Issue notice.

Mr. Suhaan Mukerji, learned counsel accepts notice and seeks some time to file a counter affidavit.

He may do so within six weeks.

In the meanwhile, there will be no stay, but we make it clear that in terms of the order dated 24th September, 2018, the grant is to be distributed through the West Bengal Police and Kolkata Police.”

10. Thus, Hon’ble Supreme Court had refused to stay the order of the Division Bench of this Court but in terms of the order of the Hon’ble Supreme Court the grant is to be distributed through West Bengal Police and Kolkata Police.

11. Similar issue again came up before this Court in the year 2020 when the decision to the same effect was taken by the State Government and the said decision became subject matter of challenge in W.P.A. 7912 of 2020 in the matter of Sourav Dutta vs. The State of West Bengal and Ors. The Division Bench of this Court had disposed of the petition by observing as under:

“At this stage we think it appropriate to quote a portion of the judgment and order dated 16th October, 2020 of a division bench of this court in the public interest litigation application W.P.A. 7912 of 2020 (Sourav Dutta –vs- The State of West Bengal and Ors.):

“However, since some confusion may have arisen, particularly in the light of the initial announcement that was made on September 24, 2020 vis-a-vis the contents of the notification of October 1, 2020, templates should be prepared indicating the two purposes in the following manner:-

1. The money disbursed should be used approximately to the tune of 25 per cent for the purpose of programmes that strengthen the bond between police authorities and the citizens and for facilitating the involvement of women in assistant community policing activities.

2. The rest of the money made available should be utilised strictly for the purpose of procurement of masks, hand sanitizers, face shields etc. for use in and around the puja pandals.

3. All expenses should be backed by appropriate bills and vouchers to substantiate the utilization certificates that must be submitted in terms of the notification of October 1, 2020. The utilization certificates, along with all documents in support thereof, must be submitted to the Sub-Divisional Officers in the districts and to the designated officers within the jurisdiction of the Kolkata Police by November 10, 2020.”

We take note of some subsequent developments since the last puja festival.

The Covid-19 pandemic has abated to a significant extent. A large section of the population has been vaccinated.

Taking into account these factors, we dispose of this application by observing and directing that the above grant may be made in accordance with the guidelines dated 1st October, 2021 and the sanction order dated 2nd October, 2021 and be also implemented in terms of the order of this bench dated 16th October, 2020 read with the said notifications, with the modification that the heads and appropriation of expenses for a grant in question may be stipulated by the government by an administrative order taking into account the said order dated 16th October, 2020 and the changed situation. If no such order is published then such allocation and appropriation shall be made in accordance with the guidelines and the said order dated 16th October, 2020.

The Director General of Police shall file affidavit in the manner as directed in the said order dated 16th October, 2020 for this year also by 22nd November, 2021.

The connected application (CAN 1 of 2021) is disposed of.”

12. The above order clearly indicates that the decision of the State Government to extend grant to the Clubs/Puja Committees in the State during Durga Puja has not been set aside in the earlier years but only the utilization of the grant has been regulated by this Court.

13. The order dated 6th of September, 2022 issued by the Government of West Bengal extended grant of Rs. 60,000/- to 40,028 Clubs or Puja Committees or other similar organization for the current year 2022 contains the object for releasing such grant. The orders referred to the decision of the Intergovernmental Committee established by the United Nations Educational Scientific and Cultural Organisation (UNESCO) to include the Durga Puja in Kolkata in the Representative List of Intangible Cultural Heritage of Humanity as also recognized by the Central Government of Durga Puja in West Bengal in its National List for Intangible Cultural Heritage. The object for providing the grant is mentioned in the order dated 6th September, 2022 as under:

“Whereas the Central Government has also recognized Durga Puja in West Bengal in its National List for Intangible Cultural Heritage; and whereas in view of such international and national recognition of the Durga Puja festival celebrated throughout the State of West Bengal, it is incumbent upon the State Government to promote the festival, encourage national and international tourism and administer it smoothly in order to showcase the festival and its rich cultural heritage.

Whereas the festival attracts high footfalls of people from neighboring states and districts, due to which community policing is an integral part of Police activity and the West Bengal Police and Kolkata Police involve the active participation of various local clubs and organizations in the city of Kolkata and its neighboring districts for community policing; and whereas various activities are to be undertaken such as volunteers assisting the Police in ‘Safe Drive Save Life’ campaigns, management of crowds during festivities, along with maintenance of sanitation, public health, awareness and safety, and whereas it is also necessary to promote, facilitate and increase participation of women in assisting in community policing activities; and whereas it is imperative to implement the abovementioned community development work through local institutions like Clubs, Puja Committees and other similar organisations being led by women.

Now therefore, the undersigned is directed to state that administrative approval and financial sanction of a sum of Rs.240,16,80,000/- (Rupees two hundred forty crore sixteen lakh and eighty thousand) only, is hereby accorded for awarding the grants of Rs. 60,000/- (Rupees Sixty Thousand) each to 40,028 Clubs/Puja Committees or other similar organizations (37,028 under West Bengal Police and 3,000 under Kolkata Police) for assisting in showcasing the cultural heritage of Durga Puja, to promote tourism in the State of West Bengal and community policing activities of the State Government, subject to directions of the Hon’ble Court.”

14. Learned Advocate General has also referred to the decision of the Intergovernmental committee of UNESCO to point out that element is a public festival and is not governed by any restrictive customary practices. He has also referred to the National List of Intangible Cultural Heritage (ICH) issued by the Ministry of Culture, Government of India to point out that Durga Puja is the most important socio-cultural and

religious event in the Bengali festival calendar and that Bengalis of all religious denominations residing in the State of West Bengal are involved in this.

15. Affidavit in opposition filed by the State in CAN 2 of 2022 in WPA 7912 of 2020 discloses that a new head in the budget was created in the year 2018 “2055-00-109-024-Grants to Puja organizers” pertaining to allotment of funds for Puja organizers in Demand No. 68 and the allotment has been made in sub-head ‘Police-2055’. The stand of the State is that the disbursement of the fund is for public purpose and not to propagate or encourage a particular religion.

16. Having regard to the material which has been pointed out above, we are not inclined to interfere in the decision of the State to extend the grant to Puja Committees. However, we are of the opinion that the grant should be strictly utilized for the purpose which has been mentioned in the order dated 6th of September, 2022 so that the public purpose contained therein is achieved.

17. Counsel for the petitioners/applicant has relied upon the judgment of this Court in the matter of **Bharatiya Janata Party vs. State of West Bengal** reported in **2013(4) CHN (Cal) 419**, but that was a case relating to grant of honorarium to the Imams and Muazzins of different mosques in the State of West Bengal, therefore, the Division Bench of this Court had found that in the garb of so called public purpose, public money was being spent in a manner which offends constitutional provision but that is not so in the present case. Counsel for the petitioners/applicant has also placed reliance upon the judgment of the Hon’ble Supreme Court in the matter of **Sant Longowal Institute of Engineering and Technology and Another vs. Suresh Chandra**

Verma reported in **(2013) 10 SCC 411**, but that is a judgment relating to service law wherein the issue of grant of study leave was involved. He has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Srinivasa Cooperative House Building Society Ltd. vs. Madam Gurumurthy Sastry and Others** reported in **(1994) 4 SCC 675**, as also in the matter of **Sooraram Pratap Reddy and Others vs. District Collector, Ranga Reddy District and Others** reported in **(2008) 9 SCC 552**, but in these judgments the issue of public purpose has been considered in the light of the provisions contained under the Land Acquisition Act. Even otherwise no benefit of these judgments can be extended to the writ petitioners in view of the public purpose disclosed in the order dated 6th of September, 2022 as also earlier orders of this Court. Learned Counsel for the petitioners/applicant has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Sri Divi Kodandarama Saram and Others vs. State of A.P. and Others** reported in **(1997) 6 SCC 189**, but that was a case relating to status and benefits to Archakas or Pujaris, hence the observations in that case are in a different context. Reliance has also been placed upon the judgment of the Division Bench of the High Court of Gujarat at Ahmedabad dated 23.09.2019 in the matter of **Adinath Sthankvasi Jain Religious Trust vs. Nalanda Co-operative Hosg. Society Ltd. & 2 Other(s)** wherein it has been observed that the State largess cannot be distributed as a bounty or charity to any private individual or a particular religious sect. The material placed on record in the present case does not indicate that the observations made in this judgment are in any manner contravened.

18. Hence, we are unable to accept the plea of the writ petitioners/applicant to set aside the decision of the State Government to extend grant to the Puja Committees during Durga Puja. However, in order to ensure that the grant is utilized for public purpose and for the purpose of achieving the object mentioned in the order dated 6th of September, 2022, we direct as under:

- i. The guidelines already issued in the above noted previous orders of this Court will be duly complied with.
- ii. The grant will be released only to those Clubs/Puja Committees who in the previous year had utilized the same for the purpose it was granted and had duly submitted the utilization certificate within time.
- iii. In terms of the order of the Hon'ble Supreme Court dated 12th of October, 2018 in SLP(C) No. 27927/2018, the grant is to be distributed through the West Bengal Police and Kolkata Police, therefore, it will be responsibility of the police to ensure that the grant is utilized for the public purpose mentioned in the order dated 6th of September, 2022.
- iv. The DGP through his officers will ensure that the grant is not utilized for the purpose other than the one mentioned in the order dated 6th of September, 2022.
- v. The Puja Committees will submit the utilization certificate along with the supporting vouchers to the Sub-Divisional Officers in the district and to the Designated Officers within the jurisdiction of the Kolkata Police not later than 15th of November, 2022.

vi. The competent Officers of the State Government will duly scrutinize these utilization certificates and ascertain if the amount distributed to the Clubs/Puja Committes has been utilized for the purpose mentioned in the order dated 6th of September, 2022 and will submit the report before this Court in the pending WPA 7912 of 2020 by 15th of December, 2022.

19. WPA(P) 445 of 2022, WPA(P) 419 of 2022, WPA(P) 420 of 2022, WPA(P) 426 of 2022 and CAN 2 of 2022 in WPA 7912 of 2020 are accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
13.09.2022

PA(SS)

(A.F.R. / N.A.F.R.)