

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.6170/2022

1. Bharat Mukti Morcha
a Social Organization having office
at Baidyanath Chowk Nagpur 440 009,
through its authorized representative,
Anil s/o Somaji Nagare.
2. Anil S/o Somaji Nagare,
age 51 Yrs., Occ. Business,
R/o Manav Nagar, Nari Road,
Near Baudh Vihar, Nagpur. ... Petitioners

- Versus -

1. The State of Maharashtra,
through Principal Secretary, Home
Department, Mantralaya, Mumbai - 32.
2. The Commissioner of Police, Nagpur.
3. The Deputy Police Commissioner,
Zone-5, having office at Pancham
Estate Dixit Nagar, Nari Road,
Nagpur - 440 026.
4. The Assistant Commissioner of Police,
(Special Branch), Nagpur.
5. The Police Station Officer Jaripatka
Police Station Jaripatka Nagpur.
6. The Police Station Officer Kotwali
Police Station Kotwali, Nagpur. ... Respondents

Mr. F.T. Mirza, Advocate for the Petitioners.

Mr. Sunil Manohar, Senior Advocate with Mr. A.M. Deshpande,
Additional Government Pleader for respondent Nos.1 to 6.

**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.
DATE : 4.10.2022**

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

1. Heard. **Rule.** Rule made returnable forthwith.

Heard finally by consent of learned counsel for the parties.

2. The petitioner No.1 is a social organization espousing the cause of socially and economically backward classes of citizens of India. The petitioner No.2 is a member of petitioner No.1.

3. The petitioner No.1 decided to hold a giant rally described in Hindi as 'Vishal Maharally' of persons belonging to such categories as Scheduled Castes, Scheduled Tribes and Other Backward Classes and religion converts. Accordingly, an

application was made by the petitioners on 13.9.2022 to respondent No.3. Thereafter some queries were raised by respondent No.3 which were answered by the petitioners. Ultimately, by the order passed on 28.9.2022 the permission was refused by respondent No.3. It is this order dated 28.9.2022 which has been impugned in the present petition.

4. This matter was heard yesterday and finding that apart from the rally, the petitioners also want to hold a meeting at Bezanbag ground and considering the fact that permission to take out a rally only was refused, this Court suggested that respondent No.3 could still consider granting of permission to hold only a public meeting without taking out any rally by the petitioners, whereupon Shri Manohar, learned Senior Advocate for the respondents informed this Court that no specific application was made by the petitioners seeking permission to only hold a meeting and he further informed, on instructions, that if a fresh application in a specific manner was made in that regard, it would

be considered by respondent No.2 on its own merits. The petitioners accepted the suggestion and, therefore, hearing was adjourned and the matter was posted for final hearing today. Today's development is that after a fresh application was made in a specific manner by the petitioners seeking permission to hold meeting at Bezanbag ground, the application was rejected by respondent No.4 by the order passed on 4.10.2022. This order has been placed on record along with pursis bearing Stamp No.7/2022 by the respondents. This order, of course, has not been specifically challenged by making any amendment to the petition but, the submissions made on behalf of the petitioners are enough for us to hold that the latest order dated 4.10.2022 is now under challenge in this petition. Accordingly, we have extensively heard the rival submissions of the parties.

5. Mr. Mirza, learned counsel for the petitioners submits that to hold a public meeting in a peaceful manner and without arms is a fundamental right guaranteed to every citizen of India under

Article 19(1)(b) of the Constitution of India and the right cannot be restricted or curtailed except on the grounds stated in Article 19(3) of the Constitution. He points out that these grounds are the "sovereignty and integrity of India" and "public order". He submits that the impugned order refusing to hold a public meeting at a private ground is arbitrary as it does not satisfy the test of reasonableness and also the parameters laid down by the Apex Court in the case of Ramlila Maidan Incident, In Re, (2012) 5 SCC 1.

6. Mr. Mirza, learned counsel submits that in Ramlila Maidan Incident (supra) which has been followed extensively by this court in Bhim Army (Bharat Ekta Mission, Nagpur) & Anr. V/s. The State of Maharashtra & Ors., 2020 ALL MR (Cri) 2265, it is held that the authority imposing the restrictions must satisfy the triad of tests laid down in Ramlila Maidan Incident (supra). According to Mr. Mirza learned counsel for the petitioners none

of these tests is satisfied by the impugned order passed in this case.

7. Mr. Mirza, learned counsel further submits that there is no legislation or rule having force of law which enables the Commissioner of Police to refuse permission to hold a public meeting on any ground much less the ground of maintenance of law and order at the place where the public meeting is proposed to be held. He further submits that if Commissioner of Police is held to be having such authority in law, it can at the most be traced to the provisions made in Section 33(1) of the Maharashtra Police Act, 1951 (for short "Police Act") and if any rules are made in exercise of this power, the rules would not have any force of law unless they are published in the official gazette and in the concerned locality by following the procedure of sub-section (3) of Section 33. He submits that in the present case there is no such rule made for preservation of order in public place, therefore, the

impugned order is illegal and fails first test of having any backing of law.

8. Mr. Mirza, learned counsel further submits that in this case, there being no legislation and rule made for controlling the exercise of fundamental freedom under Article 19(1)(b), it is not known at least, in Nagpur, as to who is the authority, whether Constable or Police Sub-Inspector or Police Inspector or Assistant Commissioner of Police, or Deputy Commissioner of Police or Commissioner of Police who could be said to be having any authority in law to impose any restrictions on the exercise of the fundamental right to assemble peaceably at Bezanbag ground. He also submits that in fact, the petitioners did not require any permission from Commissioner of Police or any police authority to hold a public meeting at Bezanbag ground and to take out rally from there right up to the point mentioned in the petitioners letter dated 19.9.2022 but as law abiding citizens, the application dated 13.9.2022 seeking permission of the police authorities for

the same was made by the petitioners and this application after exchange of correspondence in between was belatedly rejected by the police authorities on 28.9.2022, and that too after sending reminders, leaving petitioners hardly any time to agitate their grievance before the competent courts.

9. Mr. Mirza, learned counsel further submits that the impugned order is based upon unfounded apprehension with no material to support it in any manner and that in any case, fundamental right under Article 19(1)(b) cannot be curtailed on the ground of maintenance of law and order, as it does by the impugned order dated 4.10.2022, for the reason that it is not a ground covered by Article 19(3). He submits that there is a great difference between "public order" and "law and order" as held in the case of Ramlila Maidan Incident (supra). Mr. Mirza, learned counsel further submits that hardly 4000 to 5000 persons are going to take part in the public meeting at Bezanbag ground which is having capacity of 8000 to 10000 and, therefore it is

unreasonable to say that such a gathering would create disturbance of law and order.

10. Thus, Mr. Mirza, learned counsel submits that this Court as a custodian of fundamental right of citizens of India must interfere with the impugned order and direct police authorities to grant permission to the petitioners to hold their scheduled public meeting at Bezanbag ground.

11. Mr. Manohar, learned Senior Advocate for the respondents submits that even though right to hold a public meeting at a place like the Bezanbag ground is a fundamental right, the right cannot be exercised in an unbridled manner especially when the police authorities in-charge of maintenance of public peace and law and order are satisfied that the public meeting cannot be held on the proposed day except at the cost of disturbance of public peace and law and order. He submits that whenever there is a right conferred upon a person or citizen, it comes with corresponding duty

imposed on that person or citizen and, therefore, while making an effort to assert such a right, a citizen is also required to take care that by his exercise of the right, he does not interfere with public peace and this is the reason why the right is subject to restrictions as enumerated in Article 19(3) of the Constitution. In other words, he submits, the fundamental right to hold a public meeting is not absolute and is subject to reasonable restrictions. He places reliance upon the observations of the Supreme Court in paragraphs 16 and 17 of its judgment in the case of Amit Sahni (Shaheen Bagh, In Re) V/s. Commissioner of Police and others, (2020) 10 SCC 439.

12. Mr. Manohar, learned Senior Advocate further submits that reliance placed by learned counsel for the petitioners on the provisions made in Section 33 of the Police Act is misplaced and in his opinion the power exercised by the police authorities is traceable to the provisions made in Section 37(3) of the Police Act, which confers power upon the Commissioner of Police to

prohibit any assembly or procession by passing an order in writing, for the purpose of preservation of the public order.

13. Mr. Manohar, learned Senior Advocate further submits that the order refusing permission to hold a public meeting passed by the police authorities not only satisfies all the tests laid down in Ramlila Maidan Incident (supra) but is also justifiable under Section 37(3) of the Police Act. He submits that while it is true that no specific order under Section 37(3) of Police Act has been passed in this case by the Commissioner of Police, the order dated 4.10.2022 refusing permission to hold a public meeting at Bezanbag ground itself could be treated as an order passed under Section 37(3) of the Police Act.

14. Mr. Manohar, learned Senior Advocate further submits that even though there is no dispute about the proposition that there is a distinction between public order and law and order, a careful perusal of the order dated 4.10.2022 would show that it has a

reasonable relation with maintenance of public peace and, therefore, the order cannot be said to be violative of Article 19(1) (b) read with Article 19(3) of the Constitution. He further submits that it is wrong to say that there is no legislation or law to refuse permission to hold a public meeting at a place like Bezanbag ground as the authority of law is traceable to Section 37 of Police Act. He also submits that in any case, permission to hold a public meeting by the petitioners at the place desired by them has not been altogether refused which is evident from the impugned order dated 4.10.2022. He points out from the impugned order that permission to hold such meeting on 6.10.2022 only has been refused and that too not just on the ground of disturbance of law and order but also inability of police to provide requisite police *bandobast* for maintenance of public peace, because of pressure on the police force on account of various functions being held at public places between 3.10.2022 and 6.10.2022 thereby leading to reasonable apprehension of disturbance of public peace. He submits that this was the reason

why petitioners were suggested that if they opted for 7.10.2022, 8.10.2022 or 10.10.2022 and any date thereafter, conditional permission to hold a public meeting could be granted by the police authorities. On these grounds, he urges that the petition be dismissed.

15. The submissions made by Mr. Mirza, learned counsel for the petitioners and Mr. Manohar, learned Senior Advocate for the respondents about the nature of the fundamental right guaranteed under Article 19(1)(b) of the Constitution and the manner in which the restrictions may be imposed on the exercise of the fundamental right being based upon well settled principles of law go without any second opinion. Still, we shall be profited if a brief reference to those principles of law is made here. It would also help us adjudicate upon the question involved here, the question as to whether or not refusal by the police authorities to grant permission to the petitioners to hold a meeting at Bezanbag ground, for the reasons stated in the impugned order, amounts to

unreasonably and arbitrarily curtailing the fundamental right of the petitioners to assemble peaceably and without arms.

16. In the case of Amit Sahni (supra) the Supreme held that our constitutional scheme comes with right to protest and express dissent but with an obligation towards certain duties. The Supreme Court further held that Article 19, is one of the cornerstones of the Constitution of India, as it confers upon its citizens treasured rights i.e. the right to freedom of speech and expression under Article 19(1)(b). It further held that these rights in cohesion enable other citizens to assemble peaceably and protest against actions and inactions of the State and same must be respected by the State, for the strength of democracy such as ours lies in the same. It further held that these rights are of course subject to reasonable restrictions as enumerated in Article 19(2) and Article 19(3) of the Constitution. The Supreme Court further observed by making a reference to the case of Mazdoor Kisan Shakti Sanghatan V/s. Union of India (2018) 17 SCC 324,

that be it an individual or a class, the fundamental right does not exist in isolation and has to be balanced with every other contrasting right.

17. It may thus be seen that when it is stated that right to assemble peaceably without arms is a fundamental right and can be exercised as such by all citizens of India, it must be asserted in a manner that it does not interfere with the fundamental right of others. It must also be exercised with an obligation to maintain public peace at all cost, a duty which is inherent in the nature of fundamental right under Article 19 of the Constitution. It must also be exercised in a way that it does not lead to breach of harmony and the spirit of common brotherhood among all the citizens of India. Exercise of this right must not endanger societal peace and must be done while abjuring violence. Promotion of harmony and shying away from violence are the fundamental duties under Article 51A(e) and (i). Exercise of fundamental right under Article 19 with consciousness about the fundamental

duty to shun violence and to endear public peace has been considered necessary for maintenance of social order which only can promote welfare of the people, an object the State has to achieve in its governance of the nation in terms of the Directive Principles of State Policy prescribed in Part IV of the Constitution. If the fundamental right under Article 19 is exercised in an unbridled manner, State would not be able to discharge its obligation to maintain social order so necessary to achieve the object of welfare of the people underlying Part IV of the Constitution. Therefore, Courts have insisted upon maintaining a balance and proportionality between the right and restriction on the one hand and the duty on the other. When it comes to resolving a conflict between the fundamental right to hold a public meeting and apprehension of breach of public tranquillity, the Courts have always leaned in favour of upholding the restrictions placed upon exercise of the fundamental right in the interest of maintaining of public order. The Supreme Court in the case of Ramlila Maidan Incident succinctly explained the

importance of public tranquillity in words, "the concept of orderly conduct leads to a balance for assertion of a right to freedom". In the same case, the Supreme Court emphasized upon the need for maintaining a balance and proportionality between the right and restriction on one hand and the right and duty on the other. The observations made by it in this regard, as they appear in paragraphs 39 and 40 being relevant are reproduced thus:-

39. There has to be a balance and proportionality between the right and restriction on the one hand, and the right and duty, on the other. It will create an imbalance, if undue or disproportionate emphasis is placed upon the right of a citizen without considering the significance of the duty. The true source of right is duty. When the courts are called upon to examine the reasonableness of a legislative restriction on exercise of a freedom, the fundamental duties enunciated under [Article 51-A](#) are of relevant consideration. Article 51-A requires an individual to abide by the law, to safeguard public property and to abjure violence. It also requires the individual to uphold and protect the sovereignty, unity and integrity of the country. All these duties are not insignificant. Part IV of the Constitution relates to the Directive Principles of the State Policy. [Article 38](#) was introduced in the Constitution as an obligation upon the State to maintain social order for promotion of welfare of the people. By the Constitution (Forty-Second Amendment) Act, 1976, [Article 51-A](#) was added to

comprehensively state the fundamental duties of the citizens to compliment the obligations of the State. Thus, all these duties are of constitutional significance.

40. *It is obvious that the Parliament realized the need for inserting the fundamental duties as a part of the Indian Constitution and required every citizen of India to adhere to those duties. Thus, it will be difficult for any Court to exclude from its consideration any of the abovementioned Articles of the Constitution while examining the validity or otherwise of any restriction relating to the right to freedom of speech and expression available to a citizen under [Article 19\(1\)\(a\)](#) of the Constitution. The restriction placed on a fundamental right would have to be examined with reference to the concept of fundamental duties and non-interference with liberty of others. Therefore, a restriction on the right to assemble and raise protest has also to be examined on similar parameters and values. In other words, when you assert your right, you must respect the freedom of others. Besides imposition of a restriction by the State, the non-interference with liberties of others is an essential condition for assertion of the right to freedom of speech and expression."*

18. To put the whole concept in different words, we would say that a citizen, while exercising his fundamental right to hold a public meeting, must be mindful of what consequences it would have vis-a-vis the fundamental right of other citizens to live in

peace and tranquillity and when there is a reasonable apprehension that the effect of exercise of the right is likely to be of disturbing the social order, any curtailment of the fundamental right to preserve the public order would not be arbitrary and unreasonable on the touchstone of the aforestated well entrenched principles of law.

19. In the case of Anita Thakur & ors. V/s. Government of Jammu and Kashmir & ors., (2016) 15 SCC 525, the Supreme Court held that right to peaceably protest though a fundamental right under Article 19 is subject to reasonable restrictions. At the same time, it also struck a cautioning note that while imposing restrictions, the authorities must act within limits of law. In Ramlila Maidan Incident (supra), the Supreme court propounded three tier test to judge reasonableness of restrictions and it is as follows:-

(a) The restriction can be imposed only by or under the authority of law. It cannot be imposed by exercise of executive power without any law to back it up.

(b) Each restriction must be reasonable.

(c) *A restriction must be related to the purpose mentioned in [Article 19\(2\)](#).*"

20. In the case of *Railway Board, New Delhi and anr. V/s. Niranjan Singh*, AIR 1969 SC 966, the Apex Court held that there is no fundamental right for anyone to hold a meeting in whatever place a citizen pleases. It further held that the rights guaranteed under our Constitution are about valuable freedoms and the Courts would resist abridging those freedoms except to the extent permitted by the Constitution. It further held that the exercise of these freedoms being subject to a limitation which is inherent in exercise of these rights themselves, these rights will come to an end as soon as the right of someone to hold his property is intervened.

21. A recapitulation of these principles of law has been made by this Court in the case of *Bhim Army and others* (supra) in paragraph 18 which reads thus:-

"18. From the above discussion, the propositions of law that emerge are that though

fundamental freedoms guaranteed under Article 19 cannot be denied to any citizen, no citizen can be permitted to exercise the freedoms in absolute and unbridled manner and that these freedoms are subject to reasonable restrictions. The reasonableness of restrictions has to be judged in the context of the restrictions mentioned under Articles 19 (2) and 19 (3) of the Constitution of India and that there is no fundamental right to hold a protest meet or hold assembly at a particular place, unless right to hold such a meet or assembly at a particular place is conferred under any particular law or by long usage....."

22. So, it is clear that whenever a restriction is imposed in whatever form it is, it must be reasonable and it must stand the scrutiny of judicial review. It must not be arbitrary and excessive and must have a direct and proximate relation with object sought to be achieved by it inasmuch as it must be within the framework of law as prescribed under Article 19(3) of the Constitution, insofar as it seeks to curtail fundamental right to hold a public meeting. Article 19(3) speaks of the grounds on which the restriction on the fundamental right to assemble peaceably and without arms can be imposed. One of the two grounds stated

therein is of maintenance of public order. It is argued that the impugned order restricts the fundamental right of the petitioners under Article 19(1)(b) on the ground of maintenance of law and order and not on the ground of preservation of public order and, therefore, it is unreasonable. It is also argued that there is a difference between the expression "law and order" and the words "public order". While it is true that "law and order" is not the ground available under Article 19(3) to restrict the right under Article 19(1)(b), there are instances where a situation starting off as an issue of "law and order" has burgeoned itself into one of "public order" in no time. Let us, therefore, see as to how the difference between these two concepts has been dealt with by the Supreme Court.

23. In the case of Ramlila Maidan Incident (Supra), by referring to the cases of Romesh Thappar V/s. State of Madras, AIR 1950 SC 124 and Ram Manohar Lohia v/s. State of Bihar, AIR 1966 SC 704, it is held the distinction between two expressions is fine one,

but nevertheless clear. It is held that a restriction imposed with "law and order" in mind would be least intruding into guaranteed freedom while public order may qualify for a greater degree of restriction since public order is a matter of even grater social concern. In *Ram Manohar Lohia* (supra), the Supreme Court stated that an activity which affects the "law and order" may not necessarily affect the public order and an activity which might be prejudicial to "public order" may not necessarily affect the "security of the State." It further observed that absence of "public order" is an aggravated form of disturbance of public peace which affects the general current of public life. It also held that any act which merely affects the security of others may not constitute a breach of "public order". In other words, when an act is regarded as disturbing "law and order" it is an act which is capable of being dealt with by ordinary law while it is not so in case of a situation leading to 'public disorder'. This distinction has been explained by giving an example in *Ram Manohar Lohia* to which a reference has been made by the Apex Court in paragraph 50 of its

judgment in Ramlila Maidan Incident (supra) which, for the sake of convenience, is reproduced as below:-

"50. this concept came to be illustratively explained in the judgment of this Court in the case of Dr. Ram Manohar Lohia (supra) wherein it was held that:

51. ..When two drunkards quarrel and fight, there is 'disorder' but not 'public disorder'. They can be dealt with under the powers to maintain 'law and order' but cannot be detained on the ground that they were disturbing 'public order'.

However, where the two persons fighting were of rival communities and one of them tried to raise communal passions, the problem is still one of 'law and order' but it raises the apprehension of public disorder. The main distinction is that where it affects the community or public at large, it will be an issue relatable to 'public order'. [Section 144](#) Cr.P.C. empowers passing of such order in the interest of public order equitable to public safety and tranquillity. The provisions of [Section 144](#) Cr.P.C. empowering the authorities to pass orders to tend to or to prevent the disturbances of public tranquillity is not ultra vires the Constitution."

24. In the case of Ram Lila Maidan Incident (supra), while examining the nature of power exercised in terms of Section 144 of the Code of Criminal Procedure in relation to the fundamental

right to hold a public meeting in a public place, the Supreme Court found that such an order can be passed to prohibit a meeting or to prevent an imminent breach of peace. The Supreme Court found that such an order constitutes reasonable restriction upon the right to speech, freedom and expression. It further held that it is not only the content of the speech which is the concern of the controlling authority but also the time and place of the meeting where the content is sought to be disseminated which is well within the jurisdiction of the authority exercising power under Section 144 of the Cr.P.C. It further held that if the authority anticipates an imminent threat to public order or public tranquillity, it would be free to pass desirable directions within the parameters of reasonable restrictions on the freedom of an individual, if the power is exercised only to meet an emergent situation and is temporary in nature. The observations of the Apex Court made in this regard, as they appear in paragraph 54, are reproduced as below:-

"54. Another important precept of exercise of power in terms of [Section 144](#) Cr.P.C. is that the right to hold meetings in public places is subject

to control of the appropriate authority regarding the time and place of the meeting. Orders, temporary in nature, can be passed to prohibit the meeting or to prevent an imminent breach of peace. Such orders constitute reasonable restriction upon the freedom of speech and expression. This view has been followed consistently by this Court. To put it with greater clarity, it can be stated that the content is not the only concern of the controlling authority but the time and place of the meeting is also well within its jurisdiction. If the authority anticipates an imminent threat to public order or public tranquillity, it would be free to pass desirable directions within the parameters of reasonable restrictions on the freedom of an individual. However, it must be borne in mind that the provisions of [Section 144 Cr.P.C.](#) are attracted only in emergent situations. The emergent power is to be exercised for the purposes of maintaining public order."

25. In the case of Mazdoor Kisan Shakti Sanghatan (supra) the Supreme Court found that whenever there is a conflict between two individuals quay their right under Article 21 of the Constitution, it is appropriate to judge the reasonableness of the restrictions by applying the test of "balancing of interest". It further held that in such a case "the greater interest" or "interest of

the collective or social order" would be the principle to recognize and accept the right of one which has to be protected.

26. From above discussion, it would be clear that right to hold a public meeting under Article 19(1)(b) can be restricted or curtailed not on the ground of maintenance of law and order but on the ground of preservation of public peace, that there is a distinction between "law and order" and "public order", that it is not necessary that every disturbance of law and order would lead to public disorder though, in a given case there is a possibility that large-scale disturbance of law and order may give rise to an apprehension of breach of public peace and tranquillity and if the apprehension of emergence of public disorder is founded on reasonable material, the fundamental right to hold a public meeting under Article 19(1)(b) can be temporarily curtailed, only to meet an emergency. We may add here that to live in peace and tranquillity is a community right inherent in Article 19(1)(b), which is clear from the words "to assemble *peaceably* and without

arms" used in Article 19(1)(b). It would then follow that whenever there is an apprehension of danger to "greater community interest" or "interest of the collective or social order" it is a situation which threatens public order warranting abridgement of right to hold a public meeting only to meet the emergent situation and temporarily.

27. Let us now examine the legality or otherwise of the impugned order on the anvil of the well settled principles of law discussed thus far.

28. The first objection to the impugned order is that it has been passed without any backing of legislation or rule. It is argued that no law or rule, as of now, requires obtaining of prior permission to hold the public meeting, but the petitioners as good citizens made the application for getting such permission. An argument has also been made about no rule having been framed in this regard in terms of provisions made under Section 33 of the Police Act.

We, however, do not take the objection as correct for the reasons given in the ensuing paragraphs.

29. Firstly, we find, as rightly submitted by Mr. Manohar, learned Senior Advocate that Section 33 of the Police Act has no application to the facts of this case. It is a provision which enables the Commissioner or the District Magistrate, or the Superintendent of Police, as the case may be, to make rules or alter or rescind rules made for various purposes such as licencing and controlling quays, wharves, regulating traffic, prohibiting traffic during specified hours and other purposes as enumerated under Section 33(1). Under sub-section (6) of Section 33 a procedure is prescribed for clothing the rules so made with sanction of law. Secondly, in the present case, no rule as framed under Section 33 of the Police Act has been invoked. All this would mean that question of application of Section 33 to the facts of the case has not arisen here. However, under Section 37 of the Police Act, the Commissioner or the District Magistrate in areas

in their respective charges, as rightly submitted by Mr. Manohar, learned Senior Advocate, has been conferred with a power to issue notification in the prescribed manner for the purpose of prohibiting such activities as carrying of arms, corrosive substances etc. in the interest of preservation of public peace or public safety. Similarly, under Section 37(3), the Commissioner or the District Magistrate, as the case may be, can also issue an order in writing prohibiting any assembly or procession for a temporary period so long as he considers such prohibition to be necessary for preservation of the public order.

30. No doubt, in the present case, there is no separate order passed by the Commissioner of Police under Section 37(1) of the Police Act temporarily prohibiting any assembly for the purpose of maintaining public order. But, a closer scrutiny of the impugned order, in our considered opinion, goes to show that in refusing his permission to hold a meeting at Bezanbag ground, the Commissioner of Police has exercised his power which is

ultimately traceable to his authority under Section 37(3). The Commissioner of Police could have certainly passed a separate order prohibiting public meeting at Bezanbag ground by exercising his power under Section 37(3), provided he had known before hand that there was going to be held some assembly of persons at Bezanbag ground and had before him the material which was sufficient for him to record his satisfaction for issuing an order of prohibition. Availability of such prior information and necessary material, in the present case, was not there with the police authorities. Police authorities learnt about the proposed meeting on 6.10.2022 only when an application was received by them and some material was gathered after necessary enquiry was made into what may happen if the public meeting is allowed to be held on 6.10.2022 at Bezanbag ground. Therefore, instead of passing a separate order under Section 37(3), he rejected the petitioners application. This would show that the impugned order cannot be said to be without any authority of law.

31. The petitioners have also contended that there being no provision of law which requires them to seek any permission of the police authorities to hold a public meeting at Bezanbag ground, it was not necessary for them to make an application to the police authorities for grant of such permission, still, it was made by them as good citizens. We must say that the argument is strange for the reason that the petitioners after being convinced about no requirement in law of seeking prior permission, have nonetheless sought the permission and then after being confronted with its rejection, have chosen to challenge the same before this Court. In other words, after having submitted to the jurisdiction of Commissioner of Police in the matter, now petitioners are putting forward a proposition that Commissioner of Police has no jurisdiction in the matter. While it is true that jurisdiction cannot be conferred by consent, it is inappropriate for a person to cry about lack of jurisdiction after having submitted to the jurisdiction of the authority. It is like throwing a dice to win a game of chance or to gamble upon the situation and then

complain about the game or the gamble as being unfair, after having lost it.

32. All said and done, when we examine the objection about lack of jurisdiction of the police authority regarding power to grant permission to hold a public meeting from the perspective of the power conferred upon the Commissioner and the District Magistrate under Section 37(3) of the Police Act, we find that there is indeed an authority vested in the Commissioner and the District Magistrate to prohibit any assembly or procession for the purpose of preservation of the public order and we further find that whenever there is a power of prohibition, there is also a need to seek prior permission to hold an assembly, lest there be a danger of the assembly being prohibited at the eleventh hour or in its midst. This also answers the question posed by the learned counsel for the petitioners as to who could have been the authority to seek permission from.

33. Thus, we find no merit in the argument about lack of jurisdiction to grant or refuse permission to hold an assembly in the Commissioner or District Magistrate, as the case may be, in the context of provisions made in Section 37 of the Police Act.

34. The impugned order dated 4.10.2022 has been criticised on the ground that it imposes unreasonable and impermissible restriction on the fundamental right to hold a public meeting at Bezanbag ground on 6.10.2022. It is also argued that the impugned order rests only on the ground of disturbance of law and order. We are not inclined to accept the argument and we reject it. Upon overall consideration of the impugned order, we find that the reasons stated therein are not only about disturbance of law and order but also about an apprehension nurtured by police authorities in respect of a large-scale violation of law and order thereby putting great pressure on the manpower available with police force of the city. It is specifically stated in the order that during the period from 3.10.2022 till 6.10.2022, there are

several festivals and processions scheduled to be organised at different places in city. It is mentioned that on 6.10.2022 devotees would gather in city in lakhs at Dikshabhoomi and Dragaon Palace Temple on the occasion of Dhammachakra Pravartan Din. It is further stated that Navratra Festival, Koradi pilgrimage, public processions being held for Durgadevi immersion, burning of Rawana effigies at more than 40 places and several other functions being organized during the period all would require putting in place police *bandobast* at so many places scattered all over and around the city and this would lead to putting huge pressure upon the police manpower. This means, if any further strain is put on the police manpower, police would not be able to deploy adequate police manpower for bandobast. Absence of police bandobast is absence of assurance of law to preserve social and public order. In a large assembly, one need not say, there are always present a few persons who have the tendency to exploit the situation and whose actions, wittingly or unwittingly, have the potential of disturbing public peace and

tranquillity and hence there is a need for deployment of adequate police bandobast. Without such bandobast, reasonableness of apprehension of disruption of public order in a case like the present is writ large. Of course, in the impugned order, the words "public disorder" are not specifically stated. But, the reasons given therein sufficiently indicate that this is a case of apprehension of public disorder based on adequate material. And, we have already seen that any reasonable apprehension of disturbance of social or public order answers the test of reasonableness of restrictions laid down in Ramlila Maidan Incident (*supra*).

35. The above conclusions are fortified from the fact that at the place in question, the gathering could of any size from 2000 to 50000 persons in own words of the petitioners and if the gathering is really to swell to its maximum projected number, one can imagine the amount of strain and stress that would be exerted on the police force pushing it to a breakup point. Then, there is also material available on record, a reference to which has been

generally made in the impugned order, showing that if the public meeting is allowed to be held on the particular day of 6.10.2022, the day on which devotees would throng Dikshabhoomi in lakhs, there would be imminent danger to social order and public tranquillity of large area around the ground in question. This danger, as seen from the material on record, is clear and present, has a proximate relation with object sought to be achieved by the refusal order and, therefore, we find nothing amiss in the impugned order when it rejects the permission to hold a public meeting on the particular day of 6.10.2022 at Bezanbag ground.

36. We must state it here that the refusal to hold a public meeting that has come from the impugned order is restricted only to 6.10.2022 and as we see from the reasons stated in the impugned order and also material available on record, which has been shown to us, the restriction is not unreasonable apart from it having been imposed under the authority of law emanating from Section 37(3) of the Police Act. The restriction is also of temporary nature and has been imposed to meet an emergent

situation, discussed earlier. The impugned order further goes onto suggest that the petitioners can hold their meeting at Bezanbag ground on 7.10.2022 or 8.10.2022 or 10.10.2022 or any date thereafter on the conditions stated therein. This readiness on the part of the police further supports our view that refusal of the police to hold a public meeting on the particular day of 6.10.2022 cannot be said to be arbitrary and against the well settled principles of law. In the result, we find no substance in the petition and it deserves to be dismissed.

37. The petition stands **dismissed**. However, liberty is granted to the petitioners to make a fresh application for holding their programme on 7.10.2022 or 8.10.2022 or 10.10.2022 or any date thereafter.

38. Steno copy of the order be furnished to the learned counsel for the parties.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)