

AD-21
Ct No.09
17.10.2023
TN

WPA No. 29165 of 2022

Nemichand Bamalwa & Sons (J) and another
Vs.
State of West Bengal and others

Mr. Kishore Dutta,
Mr. Rajdeep Majumder,
Mr. Moyukh Mukherjee,
Ms. Radhika Agarwal

.... for the petitioners

Mr. Amal Kr. Sen,
Mr. Somnath Naskar

.... for the State

Mr. S. Banerjee,
Mr. Sourojit Dasgupta,
Mr. A. Rakshit

.... for the respondent no.6

- 1.** Affidavits in opposition and reply filed today be kept on record.
- 2.** The limited challenge in the present writ petition is against the decision of the respondent- Association of shop owners to keep the building where the petitioner no.1 is also running a shop/jewellery business, closed during Sundays. The reason cited by the Association is security threats.
- 3.** Learned counsel for the petitioners, on instruction, contends that the petitioners are agreeable to take care of the security of the

petitioner no.1's shop for Sundays, in the event the petitioners are permitted to do business on the said days. Learned senior counsel for the petitioners contends that there is no bar whatsoever in law otherwise for the petitioners to run the said shop on Sundays as well. It is further contended that during the oncoming Puja season, the petitioners will incur a huge loss on a day-to-day basis in the event the petitioners are not permitted to do the business.

- 4.** Heard learned counsel for the parties.
- 5.** The primary objection of the Association is that the writ petition is not maintainable and that the petitioners, being members of the Association, are bound by the decision taken by the Association.
- 6.** It is contended by the Association that the present dispute is a private dispute between the petitioners and the Association and cannot be resolved without going into evidence by the writ court.
- 7.** The gamut of the dispute revolves only around the right of the petitioners to do business on Sundays. There is no statutory bar as contemplated under Article 19(6) of the Constitution of India to interdict the right of the

petitioners to carry on such business even on Sundays.

- 8.** The only impediment in doing so is the decision of the Association of shop owners.
- 9.** There is no dispute as to the fact that the petitioners are otherwise bound by the decision of the Association of all the shop owners, of which the petitioners are also members. However, the moment the decision of the Association, although otherwise binding on the petitioners, traverses the domain of the fundamental rights conferred by the Constitution on the petitioners, the same is subject to scrutiny by the writ court.
- 10.** Judicial review demands that the right of the petitioners to do business, particularly during the oncoming festive season, cannot be curtailed by a decision of an Association or an individual or a State instrumentality.
- 11.** Since the right of the petitioners under Article 19 to do business is squarely violated by the impugned decision, the same cannot withstand the scrutiny of law.
- 12.** Accordingly, WPA No. 29165 of 2022 is allowed, thereby restraining the respondents from putting up any hindrance or obstructing the petitioners

from running business in the property-in-question even on Sundays.

- 13.** However, the above direction is subject to any other restriction, if applicable to the petitioners under the law.
- 14.** It is made clear that the above direction operates in respect of the petitioners alone and not the other shop owners, who are otherwise bound by the resolution and have not challenged the same.
- 15.** There will be no order as to costs.
- 16.** Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)