

20.08.2024

WPA 21122 of 2024
Dr. Swapan Dasgupta & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Billwadal Bhattacharyya
Mr. Moyukh Mukherjee
Mr. A.K. Mukherjee
Mr. S. Das
Mr. C. Pal
Mr. T. Pramanick

... .. for the petitioners

Mr. Amal Kr. Sen, APP
Mr. Lal Mohan Basu

... .. for the State

Affidavit of service filed by the petitioner in Court
be kept with the record.

Mr. Bhattacharyya, learned counsel appearing for the petitioners submits that the petitioners are the President and the Treasurer of “Khola Hawa” which is a society registered under the West Bengal Societies Registration Act, 1961 and they are inclined to protest against the horrific incident which happened on 9th August, 2024 at R.G. Kar Medical College, Kolkata by demonstrating a protest march on 21st August, 2024 from 3.00 P.M. to 7.00 P.M. from Maula ali Crossing (ACJ Bose Road) to Dorina Crossing (Chowringhee Road) via S.N. Banerjee Road and end with a demonstration/Dharna Mancha at Dorina Crossing with around 1000 participants.

Learned counsel appearing for the petitioners refers to judgment dated 10th April, 1993 (State of West Bengal & Ors. Vs. Dr. Anindya Gopal Mitra & Ors.) reported in

1993 SCC OnLine Cal 126, order dated 24th November, 2023 in MAT 2283 of 2023 with I.A. CAN 1 of 2023 (The State of West Bengal & Ors. Vs. Jagannath Chattopadhyay) of the Division Bench of this Hon'ble Court and order dated 23rd August, 2023 in WPA 20535 of 2023 (Raj Chowdhury Vs. State of West Bengal & Ors.) of the co-ordinate Bench of this Hon'ble Court to strengthen his submission that there cannot be any prohibition to rally/demonstration which may be held by an organization peacefully.

Mr. Sen, learned counsel appearing for the State submits that as 21st August, 2024 being a working day, the Dharna Mancha should be at "Y Channel" instead of "Dorina Crossing" to safeguard the interest of public at large.

Heard learned counsels for the parties at length.

This Court has taken judicial notice of the fact that there are several instances regarding processions, rallies, meetings etc. which are held in regular intervals in the State of West Bengal and more particularly in Kolkata. Demonstration/Dharna had also taken place on week days by different organizations.

It was held by a co-ordinate Bench of this Court as well as in the State of West Bengal and Ors. Vs. Jagannath Chattopadhyay in MAT No. 2283 of 2023 with I.A. CAN 1 of 2023 that there should be level playing field for all political parties for holding public rallies,

gatherings, meetings and the law and order has to be looked into by the State. It was further held in a judgment of our co-ordinate Bench reported in **2017 SCC OnLine Cal 1914 (Sasanka Sekhar Dey & Ors. Vs. State of West Bengal & Ors.)** that:-

“11.....If the assemblage of invitees to the function is not for an unlawful, purpose (which is not the case of the respondents), then such assemblage at a public place ought not to be restrained until and unless there is an imminent threat to the breach of public order. Even then, the restraint must be just and reasonable balancing the interest of the individual with that of public safety. It must not only be reasonable but also least invasive and minimal. In Ramlila Maidan Incident, In Re: (2012) 5 SCC 1, the Court held:-

“58 the requirements of existence of sufficient ground and need for immediate prevention or speedy remedy is of prime significance. In this context, the perception of the officer recording the desired/contemplated satisfaction has to be reasonable, least invasive and bona fide. The restraint has to be reasonable and further must be minimal. Such restraint should not be allowed to exceed the constraints of the particular situation either in nature or in duration. The most onerous duty that is cast upon the empowered officer by the legislature is that the perception of threat to public peace and tranquillity should be real and not quandary, imaginary or a mere likely possibility.”

In view of the above and in the interest of justice, this Court passes the following directions:

- i) Let the petitioners and their associates hold the protest march/rally with not more than 1,000 number of participants on 21st August, 2024 from 3:00 P.M. to 7:00 P.M. from Maula ali Crossing (ACJ Bose Road) to Dorina Crossing (Chowringhee Road) via S.N. Banerjee Road and hold a demonstration at “Y Channel”.
- ii) The petitioners shall abide by all the conditions for holding such rallies. The rally shall not cause any undue obstruction to public at large.
- iii) The police authorities shall make necessary arrangements for security with good number of personnel so as to ensure that no breach of peace takes place and the rally can move peacefully.
- iv) The police arrangements would be made under the supervision of Joint Commissioner of Police (HQ), Lal Bazar, Kolkata.
- v) Demonstration shall be held subject to observance of rules in relation to noise pollution and without causing any inconvenience to public at large.
- vi) The place of demonstration shall be appropriately cleaned after the demonstration.

With the above directions, the writ petition being WPA 21122 of 2024 is disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajarshi Bharadwaj, J.)