

03.10.2024
Court No.09
Item no.09
CP

WPA No. 25084 of 2024

Barun Biswas
Vs.
The State of West Bengal & Ors.

Mr. Partha Ghosh
Mr. Amal Kumar Datta
Ms. Simran Sureka
Mr. Debashis Das
Ms. Poulami Datta

....for the petitioner.

Mr. Sirsanya Bandopadhyay
Mr. Ritesh Ganguly

.....for the State.

Mr. Anirban Ray, Ld. GP
Mr. Piyush Agarwal
Mr. S. Kajaria

.....for the NKDA.

1. The order passed by the New Town Kolkata Development Authority (in short 'NKDA'), dated September 27, 2024, refusing permission to the petitioner to use the New Town Mela Ground to perform Durga Puja in 2024, is under challenge before this court.
2. The order was passed pursuant to a direction of the Hon'ble Division Bench. Liberty was granted to the petitioner to approach the NKDA for necessary permission and NKDA was asked to pass appropriate order. The grounds for rejection are as follows:-

- a) Mass petitions were received from the persons in the locality complaining of noise pollution, indiscriminate use of microphones etc. which caused tremendous hardship to those persons, during the entire Durga Puja season. Another puja within 20 metres from the said ground was also organized since long by the original members of BF Block.
- b) The organizers do not maintain a systematic arrangement for proper ingress and egress of the 'pandal' hoppers, which create vehicular congestion and disturbance.
- c) The police reports have gone against the organizers. Several notorious activities within the premises in question, on account of intoxication etc. had been reported.

3. Mr. Partha Ghosh, learned advocate for the petitioner, submits that a Coordinate Bench, on two earlier occasions, had permitted the puja. The Hon'ble Division Bench also permitted the puja. Thereafter, the Hon'ble Division Bench reviewed the order by allowing the petitioner to approach the authorities. The order in review did not arise out of the order passed in the writ petition being WPA No.17704 of 2023. He submits that when on the earlier occasions, HIDCO was willing to allow the petitioner to organize the puja in the Mela Ground,

the refusal for the third time was arbitrary, NKDA performs the function of HIDCO with regard to grant of permission to organize puja etc. The policy of the authority cannot change overnight. Since November, 2023, the petitioner had been pursuing the authority for permission to organize Durga Puja for the year 2024. The petitioner was called upon to submit relevant documents to clarify certain dates, schedule, time etc. Such communication from NKDA would clearly indicate that NKDA was interested to process the application. Suddenly, they took a different stance altogether, contrary to their past actions.

4. It is not in doubt that the Durga Puja of 2022 and 2023, were held upon a concession made before the Hon'ble Court. The court was mindful of the fact that a writ of mandamus could not be issued, directing the NKDA to allow a puja on its land.
5. His Lordship was of the view that an organization had a right to practice its religion. Article 25 of the Constitution of India protected such right. Thus, without an acceptable reason for denial of the permission, the authority could not refuse such permission arbitrarily. However, no direction was required to be passed as the authority had conceded before His Lordship that permission would be granted. This time the authority has decided not to

allow the puja in the Mela Ground. This decision was pursuant to the liberty granted to the authority to consider the prayer of the petitioner, by the Division Bench. The Hon'ble Division Bench recorded that as the petitioner wanted to hold the Durga Puja within the property of NKDA, NKDA should decide the matter independently. On such liberty, the decision impugned before this court has been issued.

6. The grounds for refusal are factual. One being the unbearable situation on account of continuous use of microphones by two pujas committees in the same locality. The block members of BF block, as per the policy of NKDA, were allowed an area from the very inception, by HIDCO/NKDA, to use a particular strip of land for community activities. Such block members perform their own puja since inception, upon compliance of all formalities.
7. Admittedly, the petitioner has filed this application as a chairman of an organization which does not have any separate existence in New Town. They claim to operate from the residence of the petitioner. Thus, this organization had never approached either HIDCO or NKDA for allotment of a separate land where they could carry on their alleged social and other community related activities.

8. Under such circumstances, it is not possible for this court to rule out the grounds on which the permission had been refused. Intoxication, misbehaviour, crowding, vehicular congestion and complaints of the persons of the locality, have been taken into consideration while refusing such permission.
9. It is an admitted fact that the Mela Ground has never ever been given to any other organization to hold the Durga Puja apart from the petitioner, and that too on the intervention of the court. Thus, there cannot be allegations of discrimination, arbitrariness or malafide.
10. However, as the petitioner's organization has performed the puja in the last two years, as a last chance and without creating any equity, HIDCO/NKDA, whoever is the competent authority, is directed to select a land convenient for the public and for the authority on which the petitioner can organize the puja. Such permission shall be given on and from October 5, 2024 to October 14, 2024.
11. The police authorities shall also act on such direction and given necessary permission. The conditions put forward by the authority shall be followed by the petitioner.
12. This order shall not be used as an instance in the subsequent years, for similar orders. If any

application is filed by the petitioner's organization for identification of a land or area for their cultural and social welfare activities within Newtown area, the same shall be processed by the authority in accordance with law, without being influenced by any observation made hereinabove. An enquiry shall be made in this regard, before a decision is taken.

13. This order is being passed in the presence of the parties. Mr. Anirban Ray, learned Government Pleader appearing for the NKDA and Mr. Sirsanya Bandopadhyay, learned Junior Standing Counsel, Government of West Bengal are present before this court. Learned Advocates shall advise their client to act on the basis of this order which has been dictated in the open court. The learned Law Officer of NKDA is also present and it is expected that the matter shall be resolved as directed by this court within 5 pm of October 4, 2024.
14. Accordingly, the writ petition is disposed of. There shall be no order as to costs.
15. Parties are directed to act on the basis of the server copy of this order. Parties are also directed to act on the basis of the learned advocate's communication.

(Shampa Sarkar, J.)