

15.10.2024

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W.P.A. 26117 of 2024

Joint Platform of Doctors & Ors.

Vs.

State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.,
Mr. Samim Ahammed,
Mr. Tapas Maity,
Mr. Siddhartha Sankar Mondal,
Mr. Satwick Majumdar,
Mr. Saptarshi Banerjee,
Mr. Rajit Lal Maitra,
Mr. Arka Maiti,
Ms. Ambiya Khatoon,
Mr. Saloni Bhattacharjee,
Mr. Nazimuddin Siddique

... For the petitioners.

Mr. Kishore Dutta, Ld. A. G.,
Mr. Amitesh Banerjee, Sr. Adv.,
Mr. Debangshu Dinda, Adv.,

... For the State.

The grievance of the petitioners is directed against an order dated 14 October, 2024 issued by the Commissioner of Police, Kolkata under section 163 (1) and (3) of the Bharitiya Nagarik Suraksha Sanhita (BNSS), 2023.

By the impugned order, any unlawful assembly of five or more persons doing any act which is likely to cause any breach of peace and disturbance of public tranquility within the area in the town of Kolkata has been prohibited. The impugned order has been purportedly passed for preventing danger, obstruction

or inconvenience to the public in connection with the “Immersion Carnival” being conducted by the State of West Bengal.

Briefly, the petitioners represent an umbrella association comprising of health service doctors and health service associates of West Bengal. The petitioner no.2 is a member of petitioner no.1 association and a practising doctor. The petitioner no.3 is a citizen of India.

Significantly, petitioners have been espousing a gruesome and spine-chilling incident pertaining to the alleged rape and murder of an on-duty post graduate trainee doctor at the R. G. Kar Medical College and Hospital on 9 August, 2024.

The crux of the grievance of the petitioners is directed against the refusal of the State respondents to permit the petitioners to conduct a “Droher Carnival” – Doctors and Citizens Assembly on 15 October, 2024.

By a communication dated 11 October, 2024, the petitioners had duly written to the respondent authorities seeking permission to conduct the above event on 15 October, 2024 at 4 P.M. at Rani Rashmoni Road, Dharmatolla, Kolkata. By a reply dated 13 October, 2024, the respondent no.3 being the Commissioner of Police had rejected the above request primarily on the ground that it coincided with a Pujo Carnival being organized by the State Government at

Red Road, Kolkata. It was also alleged that being in close vicinity any demonstration would hamper safety and security of the concerned participants and visitors at the said Pujo Carnival. Subsequently, on 14 October 2024, the respondent no.3 issued the impugned order prohibiting any kind of assembly for a period of one day, i.e. on 15 October, 2024.

On behalf of the petitioners, it is contended that refusal to grant a No Objection for the purposes of conducting the above Droher Festival as well as the issuance of the impugned order is in violation of the fundamental rights of the petitioners guaranteed under Article 19(1)(a) and 19(1)(b) of the Constitution of India. The sweeping restrictions imposed on peaceful assembly and the freedom of expression as contained in the impugned order is unjustified, unwarranted and without any authority of law. In any event, a blanket ban on such a nature is disproportionate and cannot be necessary for maintaining law and order.

On behalf of the State respondents, it is submitted that there is no reason at all as to why the petitioners should want to hold the “Droher Carnival” on 15 October, 2024, i.e. the very same day as to when the State is to conduct an “Immersion Carnival”. The choice of venue by the petitioners which is in close proximity to the venue of the “Immersion Carnival” is with ulterior motive and there is every likelihood of

breach of peace and tranquility. The impugned order is reasoned. In support of such contentions, the State respondents rely on the decisions of *Mazdoor Kisan Shakti Sangathan vs. Union of India & Anr.* (2018) 17 SCC 324 and *Amit Sahni (Shaheen) Bagh, vs. Commissioner of Police and Ors.* (2020) 10 SCC 439. It is also submitted by the State respondents that in view of the orders passed by the Hon'ble Supreme Court of India in *Suo Motu Writ (Crl) No.2 of 2024*, this Court should not pass any order in view of the fact that the larger issue is pending before the Hon'ble Supreme Court.

In *Mazdoor Kisan Shakti Sangathan* (Supra), it has been held as follows:

“54. The right to protest is, thus, recognized as a fundamental right under the Constitution. This right is crucial in a democracy which rests on participation of an informed citizenry in governance. This right is also crucial since it strengthens representative democracy by enabling direct participation in public affairs where individuals and groups are able to express dissent and grievances, expose the flaws in governance and demand accountability from the State authorities as well as powerful entities. This right is crucial in a vibrant democracy like India but more so in the Indian context to aid in the assertion of the rights of marginalised and poorly represented minorities.”

In *Amit Sahni (Shaheen) Bagh*, (Supra), it has been held as follows:

“16. India, as we know it today, traces its foundation back to when the seeds of protest during our freedom struggle were sown deep, to eventually flower into a democracy. What must be kept in mind, however, is that the erstwhile mode and manner of dissent against colonial rule cannot be equated with dissent in a self-ruled democracy. Our constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties. Article 19, one of the cornerstones of the Constitution of India, confers upon its citizens two treasured rights i.e. the right to freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully without arms under Article 19(1)(b). These rights, in cohesion, enable every citizen to assemble peacefully and protest against the actions or inactions of the State. The same must be respected and encouraged by the State, for the strength of a democracy such as ours lies in the same.”

The impugned order severely restricts and reflects an unfettered exercise of discretion which opens the doors to arbitrariness and is an antithesis to the Rule of Law. The width of prohibition contained in the impugned order is disproportionate, excessive and unreasonable. Such restrictions on fundamental rights cannot possibly achieve any bonafide purpose.

It is true that there are wide powers granted to the State but the same does not justify either the impugned order or the refusal to grant a No Objection to conduct the “Droher Rally”.

There is also no merit in the contention raised on behalf of the State that the petitioners should postpone the “Droher Carnival” to any other day. Similarly, the choice for change of venue is also unacceptable and rejected.

It is now well-settled that the power to exercise orders under Section 144 of the Cr.P.C. is to be exercised with care and caution and only as a measure to preserve law and order. It is also imperative that the orders passed under Section 144 Cr.P.C. indicate all material facts and disclose reasons. (*Anuradha Bhasin Vs. Union of India & Ors.* (2020) 3 SCC 637).

At the end of the arguments, it was fairly conceded on behalf of the State that the petitioners should conduct the “Droher Carnival” at the Ram Leela Ground which was rightfully rejected by the petitioners. There is a sufficient distance between the two venues and the fact that the State cannot maintain the law and order if two separate Carnivals are being conducted is bereft of any cogent or satisfactory reason. The width and draconian nature of the impugned order goes to the root of arbitrariness and makes it unsustainable.

In view of the above, the writ petition stands allowed. There shall be an order in terms of prayers (a), (b) and (c) of the writ petition. The petitioners are permitted to hold the “Droher Carnival”. The State respondents are directed to put barricades and/or guard rails between Rani Rashmoni Avenue and Red Road ensure that no breach of peace occurs. The police shall also make necessary arrangements for security with a required number of police personnel so as to ensure that there is no breach of peace at the proposed “Droher Carnival”. The organizers of the rally are also requested to have sufficient number of volunteers to ensure that no breach of peace occurs.

After pronouncement of this order, the Advocate General prays for stay of operation of this order. The prayer for stay is considered and rejected.

The Advocates on behalf of the State are requested to communicate this order forthwith to the respondent nos.1 to 3, who are directed to ensure compliance thereof and to make necessary arrangements to ensure that there is no breach of peace at the Droher Rally to be organized by the petitioners.

All parties are to act on the basis of website copy of this order.

(Ravi Krishan Kapur, J.)