

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

W.P.A. No. 1126 OF 2025

***Raat Dokhol (Nari-Trans-Queer) Aikyamancha & Ors.*
versus
The State of West Bengal & Ors.**

For the Petitioners : Mr. Samim Ahammed
Ms. Bharati Mutsuddi
Ms. Nandini Mitra
Ms. Saloni Bhattacharya
Ms. Yubsanwara Pervin
Ms. Ambiya Khatoon
Mr. Arka Ranjan Bhattacharya
Mr. Enamul Islam
Mr. Najirul Haque

For the State : Mr. Sirsanya Bandopadhyay
Mr. Arka Kr. Nag
Mr. Ritesh Ganguly
Ms. Anusmita Bhattacharya

Heard On : 15.01.2025.

Judgement On : 15.01.2025.

Tirthankar Ghosh, J. :

The petitioner no. 1 claims to be an organization namely, Raat Dokhol (Nari-Trans-Queer) Aikyamancha, the responsibility of which is taken by

petitioner nos. 2 to 5 who volunteers for espousing the cause in the writ petition and takes the responsibility of the rally which they have proposed and pleaded in the writ petition.

It has been contended that the organizers intend to protest and create public awareness for exercising the constitutional rights of the citizens for the purpose of the unfortunate incident which occurred at R.G. Kar Medical College and to that extent intends to hold a protest rally on 16.01.2025 on and from 1.30 p.m.

One of the several demands in the said rally relate to proper investigation and speedy trial of the accused persons and for unveiling the actual truth to the public at large.

Petitioners to that extent by way of e-mail communicated to the Joint C.P. Headquarters on or about 30.12.2024 informing the said office that they would organize a rally from Wellington Square to Rani Rashmoni Avenue on 16.01.2025, the said rally would start at 1.30 p.m. from Wellington Square and after reaching Rani Rashmoni Avenue there would be a sit-in demonstration and a representative team will go to Nabanna for submission of their demand charter.

Petitioners have enclosed another e-mail which is a reply from the Joint Commissioner of Police Headquarters on Sunday, 12.01.2025 which refers to “rally and deputation in Nabanna on 16.01.2025” and a reply from the said

office in reference to the e-mail dated 30.12.2024 wherein it was informed that the scheduled programme “cannot be processed” since a petition vide WPA (P) 08 of 2025 (Bharat Mishra vs. State of West Bengal) has been filed before the Hon’ble High Court, Calcutta.

There are subsequent e-mails which have been enclosed but which are of not much relevance for determination of the issues canvassed in the present writ petition.

Mr. Ahammed, learned advocate appearing on behalf of the petitioners submits that only 100 persons would be participating in the rally which will commence from Wellington Square and would culminate at Rani Rashmoni Avenue wherein at the conclusion there may be a gathering by way of concluding speech.

So far as the issue relating to submission of demand charter to the Chief Secretary, State of West Bengal and sit-in demonstration at the destination being Rani Rashmoni Avenue is concerned, learned counsel for the petitioners has waived his right in respect of the same.

Mr. Bandopadhyay learned senior standing counsel appearing on behalf of the State has opposed the foundation of the writ petition, firstly on the ground, that the application which was forwarded was not in a proper format which was to be addressed and is available according to him in the Kolkata

Police Website but an informal communication was made to the Joint Commissioner of Police Headquarters.

Learned Senior Standing Counsel also submitted that the pleadings in the writ petition and the representation which was addressed to the Joint Commissioner of Police Headquarters are completely different. No number of participants were expressed in the communication dated December 30, 2024, neither permission was obtained from the Army Authorities for usage of Rani Rashmoni Avenue.

In respect of the contention for a representative team to visit the State Secretariat at Nabanna, the Howrah Police Commissionerate has also not been impleaded as a party.

Additionally, it has been contended that the organisation has represented itself in such a manner that fixing up of responsibility on a particular person or group of persons is very difficult for the administration.

Lastly, it has been contended that the route which has been proposed is bound to cause public inconveniences which would, in fact, fall within the reasonable restrictions as has been incorporated in Article 19 of the Constitution of India. To that effect, learned counsel relied upon *Beenu Rawat & Ors. vs. Union of India and Ors.* (2013) 16 SCC 430, attention of the court was drawn to relevant part of paragraph 14 which is set out as follows:-

“14. *The submissions on behalf of the respondents that nobody can be permitted to paralyse the functioning of police or other State institutions in a name of public protest cannot be rejected off hand because it is only a corollary of the right to protest peacefully; proverbially the other side of the coin which corroborates the well-accepted principle that rights without duties tend to degenerate into licence for misuse of rights.”*

I have considered the submissions of Mr. Ahammed, learned advocate appearing for the petitioners and Mr. Bandopadhyay learned senior standing counsel appearing on behalf of the State and tried to balance the inconvenience which may be caused in the fundamental rights vested with the citizens under Article 19 of the Constitution, the late hours at which the petitioners have approached this court and the reasons so assigned by the State Authorities in refusing permission.

Having considered the observations of the Hon’ble Apex Court in Ramlila Maidan Incident, In Re, (2012) 5 SCC 1 (2012) 5 SCC 1 wherein the Hon’ble Apex Court while dealing with issues relating to rallies, sit-in demonstration, freedom of speech and expression within the constitutional scheme opined that the framers of the Constitution in unambiguous terms, granted the right to freedom of speech and expression, right to assemble peacefully and without arms. The relevant part as pronounced by the Hon’ble Apex Court is as follows:

“12.*This gave to the citizens of this country a very valuable right, which is the essence of any democratic system. There could be no expression without these rights. Liberty of thought enables liberty*

of expression. Belief occupies a place higher than thought and expression. Belief of people rests on liberty of thought and expression. Placed as the three angles of a triangle, thought and expression would occupy the two corner angles on the baseline while belief would have to be placed at the upper angle. Attainment of the preambled liberties is eternally connected to the liberty of expression. (Preamble : The Spirit and Backbone of the Constitution of India, by Justice R.C. Lahoti.)

25. *In spite of there being a general presumption in favour of the constitutionality of a legislation under challenge alleging violation of the right to freedom guaranteed by clause (1) of Article 19 of the Constitution, on a prima facie case of such violation being made out, the onus shifts upon the State to show that the legislation comes within the permissible restrictions set out in clauses (2) to (6) of Article 19 and that the particular restriction is reasonable. It is for the State to place on record appropriate material justifying the restriction and its reasonability. Reasonability of restriction is a matter which squarely falls within the power of judicial review of the courts. Such limitations, therefore, indicate two purposes; one that the freedom is not absolute and is subject to regulatory measures and the second that there is also a limitation on the power of the legislature to restrict these freedoms. The legislature has to exercise these powers within the ambit of Article 19(2) of the Constitution.*

26. *.....Unlike an individual, the State owns a multi-dimensional responsibility. It has to maintain and ensure security of the State as well as the social and public order. It has to give utmost regard to the right to freedom of speech and expression which a citizen or a group of citizens may assert. The State also has a duty to provide security and protection to the persons who wish to attend such*

assembly at the invitation of the person who is exercising his right to freedom of speech or otherwise.

30. *No person can be divested of his fundamental rights. They are incapable of being taken away or abridged. All that the State can do, by exercise of its legislative power, is to regulate these rights by imposition of reasonable restrictions on them. Upon an analysis of the law, the following tests emerge:*

(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).*

The questions before the Court, thus, are whether the restriction imposed was reasonable and whether the purported purpose of the same squarely fell within the relevant clauses discussed above.

32. *For adjudging the reasonableness of a restriction, factors such as the duration and extent of the restrictions, the circumstances under which and the manner in which that imposition has been authorised, the nature of the right infringed, the underlining purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, amongst others, enter into the judicial verdict. (See Chintamanrao v. State of M.P. [1950 SCC 695 : AIR 1951 SC 118])”*

The issue relating to reasonable restrictions as pleaded on behalf of the State cannot be an alternative to an order which is in the nature of prohibition.

The order/communication/reply of the Joint Commissioner of Police

Headquarters contains a phrase “cannot be processed” is in the nature of a prohibitory order which takes away the fundamental right.

The distinction between restriction and prohibition was referred to in the aforesaid judgment by the Hon’ble Apex Court in paragraph 33 which is as follows:

“33. *The courts must bear a clear distinction in mind with regard to “restriction” and “prohibition”. They are expressions which cannot be used interchangeably as they have different connotations and consequences in law. Wherever a “prohibition” is imposed, besides satisfying all the tests of a reasonable “restriction”, it must also satisfy the requirement that any lesser alternative would be inadequate. Furthermore, whether a restriction, in effect, amounts to a total prohibition or not, is a question of fact which has to be determined with regard to facts and circumstances of each case.”*

Having considered that the fundamental right cannot be abridged taken away or divested as has been spelt out by the Hon’ble Apex Court and the belated reply received by the petitioners compels this Court to interfere for a workable solution.

Under such situation, Mr. Ahammed learned advocate appearing for the petitioners proposed that the petitioners are ready to alter the route and the procession so proposed may start from Wellington Square and culminate at College Square. Learned advocate has also proposed that 100 persons would be in the procession who would enter the park of College Square and there may be

concluding speeches which would take 1 to 1½ hours after the procession reaches its culmination point at College Square.

Mr. Bandyopadhyay has taken instructions and submitted that the route presently proposed by the petitioners, according to the administration may not cause much inconvenience in contrast to the earlier route so pleaded in the writ petition and/or in the representation.

Accordingly, the communication/order dated January 12, 2025 and the reasons assigned therein which are prohibitory in nature and was communicated from the office of the Joint CP Headquarters, is hereby set aside.

The route proposed by Mr. Ahmed and reluctantly accepted by the State would be the path of the procession/rally to be held by the petitioners on 16th of January, 2025 at 1.30 p.m.

Under such changed circumstances, State has forwarded a series of conditions which are set out as follows:

- i.) "Let the petitioners and their associates hold a peaceful "Procession" with not more than 100 individuals on 16th January, 2025.*
- ii.) The petitioners shall abide by all the conditions for holding such peaceful procession and the procession 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.

(iv) The police arrangements would be made under the supervision of the Officer-in-Charge of the concerned police station.

(v) Procession shall be held subject to observance of rules in relation to noise pollution and without causing any inconvenience to the public at large.”

The petitioners undertake that they would abide by the aforesaid conditions so imposed.

It is further directed that the petitioners would put in all efforts to conclude the programme on or about 4.30 p.m. Thereafter, a delegation consisting of petitioners nos.2 to 5 would meet the Law Secretary, Government of West Bengal at his office at Writers' Building, Kolkata or any Officer authorized by him for placing/presenting their demand charter in respect of the incident complained of and the public awareness programme carried out by them.

With the aforesaid observations, WPA 1126 of 2025 is disposed of.

There will be no order as to costs.

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

Urgent photostat certified copy of the judgement, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)