

Item No 267
29.04.2025
ct.no.35
(Suman)

WPA 9157 of 2025

Shankar Bera and Ors.
versus
The State of West Bengal & Ors

Mr. Billwadal Bhattacharyya, Sr. Adv.,
Mr. Kaustav Bagchi,
Mr. Anish Kumar Mukherjee,
Mr. Suryaneel Das,
Ms. Megha Datta,
Mr. Tamoghna Pramanick.
.....For the Petitioners.

Mr. Kishore Datta, Id. AG
Mr. Swapan Banerjee, Id. AGP
Ms. Sumita Shaw
Mr. Dipendu Narayan Banerjee,
Mr. Soumen Chatterjee

... For the State-Respondent(s)

Mr. Kalyan Bandopadhyay, Sr. Adv.,
Mr. Sirsanya Bandopadhyay, Sr. Standing Counsel,
Mr. Arka Kumar Nag,
Mr. Debopriyo Karan.

... For the Respondent Nos. 3 & 4

The petitioners have preferred the present writ petition as earlier they were approached by an organization, namely Sanatani Sanskar Anusilan Seba Trust for using their ground to organize Maha Sanatani Dharma Sammelan with an expected gathering of 50,000 people on 30.04.2025 from 7.00 a.m. to 8.00 p.m. on the day of Akshaya Tritiya. The

petitioners being the land owners readily agreed and issued no objection certificate to the organizer trust for such Dharma Sammelan/religious congregation and as such communication was made to the police authorities vide correspondence dated 19.03.2025.

The petitioners allege that from reliable sources they have come to know that the organisers of the said Dharma Sammelan filed a writ petition being WPA 8819 of 2025 after the police authorities rejected their intimation vide letter dated 17.04.2025. It has also come to the knowledge of the petitioners that the President of the said Sanatani Sanskar Anusilan Seba Trust namely one Rameshwar Bera who was the petitioner No. 1 in the said writ petition under undue influence became hostile and subsequently took a stand of obstructing the Dharma Sammelan/religious congregation to be held on 30.04.2025.

The petitioners, therefore, themselves decided to organize the said Maha Sanatani Dharma Sammelan on the occasion of Akshaya Tritiya between 7.00 a.m. to 8.00 p.m. on 30.04.2025 over the land owned by them and to that effect an intimation has been sent to the police authorities seeking permission to use microphones and

loudspeakers by way of letter dated 22.04.2025 and the same was communicated through e-mail.

The petitioners highlighted the purpose of organizing the Dharma Sammelan on the date of Akshaya Tritiya i.e. 30.04.2025 and to that effect, Mr. Billwadal Bhattacharya, learned senior advocate drew the attention of the Court to the relevant part of paragraphs 8 & 9 which are as follows :-

“8. It is stated that Akshaya Tritiya to Hindus has tremendous religious and spiritual significance. Akshaya Tritiya is considered to be one of the most auspicious days based on solar and lunar position.

Religious beliefs and significance of this day is about worshiping the descent of River Ganga from the heavens to the earth, the day on which the sixth Avatar of Lord Vishnu, Lord Parashuram was born, and also the day on which Sri Krishna handed over the Akshaya Patra to Draupadi during the times of Mahabharat. Akshaya Tritiya is the day of performing Tarpan (religious homage) towards deities and ancestors thereby surrendering towards

deities and discharging debts towards ancestors. The said event is also significant for worshipping mother earth paying for Dhanyalakshmi (fertile crops), Dhanalakshmi (wealth) and Baibhablakshmi (prosperity). It is one of the holiest days for Hindus for spiritual upliftment and cleansing as well as improving karma by Japa (recitations), Tapa (penance), Dana (donation), Snana (ritualistic bathing) and homa (ritual by fire ceremony).

9. The petitioners state that in view of the profound religious and spiritual significance associated with Akshaya Tritiya as detailed hereinabove, the holding of the proposed “Maha Sanatani Dharma Sammelan” is not only justified but becomes an essential expression of their faith. The observance of this auspicious day through communal worship, traditional rituals and acts of devotion is deeply rooted in centuries-old Sanatani practices. It is, therefore, imperative that the Dharma Sammelan be held, both to honour the sacredness of the

occasion and to enable Hindu community to perform their due rights and rituals in accordance with their deeply held beliefs.”

Learned advocate for the petitioners submits that the organisers would take responsibility so far as maintenance of drinking water supply, bio-toilets as well as there would be volunteers who would be manning the crowd and since the programme is a religious congregation, there is hardly any scope of tension or serious pandemonium being created in the ground situated near the Contai Railway Station which belongs to them.

Learned Advocate appearing for the petitioner submits that the petitioners being individuals are entitled to organize such dharma sammelan and the reason on which the police authorities are rejecting is not acceptable in law. Reference was made to ***State of Odisha and Another -versus- Satish Kumar Ishwardas Gajbhiye***, reported in **(2021) 17 SCC 90**. Attention was drawn to Paragraphs 12 & 18 which reads as follows:

“12. *To proceed with a structured preliminary enquiry, it must have statutory sanction. A statutory authority can do only such acts which are permissible under the statute and the authority cannot be permitted to do*

something which is not provided in law. This principle was formulated by the Calcutta High Court nine decades ago in Maniruddin Bepari v. Chairman of the Municipal Commissioners [Maniruddin Bepari v. Chairman of the Municipal Commissioners, 1935 SCC OnLine Cal 296], in which it was inter alia held : (SCC OnLine Cal)

“It is a fundamental principle of law that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in the case of a statutory corporation it is just the other way. The corporation has no power to do anything unless those powers are conferred on it by the statute which creates it.”

18. *We have quoted the judgment [Maniruddin Bepari v. Chairman of the Municipal Commissioners, 1935 SCC OnLine Cal 296] of the Calcutta High Court, with which we concur. The principle of law that emerges from that judgment is that though a private citizen is permitted to do what is not prohibited in law, a statutory authority can do only what is permissible in law. As such in our considered view, the order directing the preliminary inquiry in the present case, in the form it was undertaken, was not justified in law. In situations where Rules do not provide for holding preliminary enquiry before initiating disciplinary action, the principle laid down in Champaklal Chimanlal Shah [Champaklal Chimanlal Shah v. Union of India, 1963 SCC OnLine SC 42 : AIR 1964 SC 1854] would prevail. But the*

nature of enquiry in such a situation would be in the nature of information gathering exercise, on the basis of which the authorities would decide whether to proceed in the matter or not. In this case, as we have already observed, the preliminary enquiry resulted in issue of article of charges, the phrasing of which clearly revealed formation of opinion of the authorities in finding of guilt of Respondent 1.”

Emphasizing on exercise of right of practicing religious belief and practices, Ld. Advocate relied upon **Commissioner of Police and Others. -versus- Acharya Jagadishwarananda Avadhuta and Another** reported in **(2004) 12 SCC 770**, Paragraphs 57,59,60 and 62 has been relied upon, which reads as follows :

“57. *The exercise of the freedom to act and practice in pursuance of religious beliefs is as much important as the freedom of believing in a religion. In fact to persons believing in religious faith, there are some forms of practicing the religion by outward actions which are as much part of religion as the faith itself. The freedom to act and practice can be subject to regulations. In our Constitution, subject to public order, health and morality and to other provisions in Part III of the Constitution. However, in every case the power of regulation must be so exercised with the consciousness that the subject of regulation is the fundamental right of religion, and as not to unduly infringe the protection given by the*

Constitution. Further, in the exercise of the power to regulate, the authorities cannot sit in judgment over the professed views of the adherents of the religion and to determine whether the practice is warranted by the religion or not. That is not their function.

59. *These observations were quoted with approval by this Court in Gulam Abbas v. State of U.P. [(1982) 1 SCC 71 : 1982 SCC (Cri) 82 : (1982) 1 SCR 1077], SCR at pp. 1130-33. It was observed that the authorities should not in the face of such religious rights prohibit religious processions on the “facile ground of public peace and tranquillity” but adopt a positive approach to protect fundamental rights under Articles 25 and 26 of the Constitution.*

60. *Moreover, “public order” has a larger connotation than “law and order”. Contravention of law to affect public order must affect the community or the public at large. A mere disturbance of law and order leading to disorder is not one which affects “public order”. (See Ram Manohar Lohia (Dr.) v. State of Bihar [AIR 1966 SC 740 : (1966) 1 SCR 709] .)*

62. *The Police Commissioner answers the charge of discrimination by stating that “activities of Ananda Margis cannot come within the scope of religious functions or practices as compared to well-established practices in festivals of Muslims and Sikhs”. It is not for the Police Commissioner to give his disapproval to a practice of a particular sect which is in his opinion not well established. To allow any authority to judge the truth or falsity of a*

religious belief or practice is to destroy the guarantee of religious freedom in the Constitution.”

Attention was drawn to **Himat Lal K. Shah -versus- Commissioner of Police, Ahmedabad And Another** reported in **(1973) 1 SCC 227**, and reliance was made on Paragraphs 15 & 35, to stress that the power of the state is to regulate and not to impose unreasonable restrictions :

“15. Coming to the first point raised by the learned counsel, it seems to us that the word “regulating” in Section 33(o) would include the power to prescribe that permission in writing should be taken a few days before the holding of a meeting on a public street. Under Section 33(o) no rule could be prescribed prohibiting all meetings or processions. The section proceeds on the basis that the public has a right to hold assemblies and processions on and along streets though it is necessary to regulate the conduct and behaviour or action of persons constituting such assemblies or processions in order to safeguard the rights of citizens and in order to preserve public order. The word “regulate”, according to Shorter Oxford Dictionary, means, “to control, govern, or direct by rule or regulation; to subject to guidance or restrictions”. The impugned Rules do not prohibit the holding of meetings but only prescribe that permission should be taken although it is not stated on what grounds permission could be refused. We shall deal with this aspect a little later.

35. *If the right to hold public meetings flows from Article 19(1)(b) and Article 19(1)(d) it is obvious that the State cannot impose unreasonable restrictions. It must be kept in mind that Article 19(1)(b), reads with Article 13, protects citizens against State action. It has nothing to do with the right to assemble on private streets or property without the consent of the owners or occupiers of the private property.”*

Reference was made to **Dr. Anindya Gopal Mitra & Anr. –versus- State of West Bengal and Ors.** 1973 SCC OnLine Cal 124 for distinguishing ‘Public Order’ and Law & Order, and to that effect Paragraph 51 was pointed out which states:

“51. *It has also been held at paragraph 18 of page 641 to the following effect which is set out below:*

“(18) The foregoing discussion yields, the following results: (1) “Public Order” is synonymous with public safety and tranquility; it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war affecting the security of the State; (2) there must be proximate and reasonable nexus between the speech and the public order; (3) S. 3, as it now stands, does not establish in most of the cases comprehended by it any such nexus, (4) there is a conflict of decision on the question of severability in the context of an offending provision the language whereof is wide enough to cover restrictions both within and without the

limits of constitutionally permissible legislation; one view is that it cannot be split up if there is possibility of its being applied for purposes not sanctioned by the Constitution and the other view is that such a provision is valid if it is severable in its application to an object which is clearly demarcated from other object or objects falling outside the limits of constitutionally permissible legislation; and (5) the provisions of the section are so inextricably mixed up that it is not possible to apply the doctrine of severability so as to enable us to affirm the validity of a part of and reject the rest.”

In my view, the decision in the aforesaid case lends support to the conclusion that the right to enjoyment of fundamental rights cannot be taken away on conjectural and hypothetical basis. As I have already noted that no instance has been cited resulting in actual law and order problem from the BJP's meeting already held apart from the quotations from the speeches.

2. Trem Chand v. Union of India reported in AIR 1981 S.C. 613. In the above case it was held that any Police apprehension is not enough for passing order of externment. Some ground or other is not adequate. There must be clear and present danger based upon credible material which makes the movements and acts of person in question alarming or dangerous or fraught with violence. Likewise, there must be sufficient reason to believe that the person proceeded against is so desperate and dangerous that his mere presence in the locality or in part thereof is hazardous to the community and its safety. A

stringent test must be applied in order to avoid easy possibility to use of abuse of powers to the detriment of fundamental freedom. Natural justice must be fairly complied with and vague allegations and secret hearings are gross violation of the provisions of Articles 14 and 19 of the Constitution. The Act permits externment provided the action is bona fide. All power including the Police power must be informed by fairness if it is to survive judicial scrutiny.

3. Reference may also be made to Goolam Abbas's case in AIR 1981 S.C. 2198. In this aforesaid decision Supreme Court observed object of section 144 is to preserve public peace and tranquility and as such attempt should be made to regulate the rights instead of prohibiting the right to hold procession totally.”

Learned counsel relied upon **Ratilal Panachand Gandhi -versus- State of Bombay**, reported in **(1954) 1 SCC 487** and referred to paragraphs 15 and 26 for emphasising on interpretation of rights guaranteed under the Constitution of India:

“15. Article 25 of the Constitution guarantees to every person and not merely to the citizens of India, the freedom of conscience and the right freely to profess, practise and propagate religion. This is subject, in every case, to public order, health and morality. Further exceptions are engrafted upon this right by clause (2) of the Article. Sub-clause (a) of clause (2) saves the power of the State to make laws regulating or restricting any economic, financial,

political or other secular activity which may be associated with religious practice; and sub-clause (b) reserves the State's power to make laws providing for social reform and social welfare even though they might interfere with religious practices. Thus, subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people. What sub-clause (a) of clause (2) of Article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices.

26. *The only other section of the Act to which objection has been taken is Section 58 and it deals with the levy of contribution upon each public trust, at certain rates to be fixed by the rules, in proportion to the gross annual income of*

such trust. This together with the other sums specified in clause (2) of Section 57 makes up the Public Trusts Administration Fund, which is to be applied for payment of charges incidental to the regulation of public trusts and for carrying into effect the provisions of this Act. As this contribution is levied purely for purposes of due administration of the trust property and for defraying the expenses incurred in connection with the same, no objection could be taken to the provision of the section on the ground of its infringing any fundamental rights of the appellants. The substantial contention that has been raised in regard to the validity of this provision comes, however, under the second head of the appellants' arguments indicated above. The contention is that the contribution which is made payable under this section is in substance a tax and the Bombay State Legislature was not competent to enact such provision within the limits of the authority exercisable by it under the Constitution. This raises a point of some importance which requires to be examined carefully."

Petitioners referred to **Shri Sitaram Sugar Co. Ltd. and Anr. -versus- Union of India and Others** reported in **(1990) 3 SCC 223** and stressed on paragraphs 50 & 51 for illustrating scope of judicial review:

"50. *As stated by Lord Hailsham of St. Marylebone L.C. (HL) in Chief Constable of the*

North Wales Police v. Evans [(1982) 1 WLR 1155, 1160-61 : (1982) 2 All ER 141] :

“The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law.... The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court”.

In the same case Lord Brightman says:

“Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.”

51. *A repository of power acts ultra vires either when he acts in excess of his power in the narrow sense or when he abuses his power by acting in bad faith or for an inadmissible purpose or on irrelevant grounds or without regard to relevant considerations or with gross unreasonableness. See Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [(1948) 1 KB 223 : (1947) 1 All ER 498] . In the words of Lord Macnaghten in Mayor & C. Westminster Corporation v. London and North Western Railway [1905 AC 426, 430 : 93 LT 143] .*

“....It is well settled that a public body invested with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep

within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first.”

In Barium Chemicals Ltd. v. Company Law Board [1966 Supp SCR 311 : AIR 1967 SC 295 : (1966) 36 Comp Cas 639] , this Court states : (SCR pp. 359-60, per Shelat, J.)

“.... Even if (the statutory order) is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the authority has to act in accordance with and within the limits of that legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.”

In Renusagar [(1908) 1 KB 441 : 77 LJ KB 236] , Mukharji, J., as he then was, states : (SCC p. 104, para 86)

“The exercise of power whether legislative or administrative will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary. Similarly, if the power has been exercised on a non-consideration or non-application of mind to relevant factors the exercise of power will be regarded as

manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated”.”

Mr. Kishore Dutta, learned Advocate General appearing for the respondent nos. 1, 2, 5, 6 and 7 submits that the State has serious objection as the Dharma Sammelan which the petitioners are adamant to organise on the date so fixed cannot be permitted and to that effect, reasons have already been assigned earlier. The State has drawn the attention of the Court to the grounds so assigned in the earlier communication which has been enclosed along with the writ petition and emphasised that there would be a large gathering which was announced in the month of December, 2024 in respect of inauguration of Shree Jagannath Temple at Digha in the district of Purba Medinipur. The Hon’ble Chief Minister, West Bengal would inaugurate the same and there would be several dignitaries and invitees from different States wherein an expected gathering of one lakh devotees would have to be catered by the administration. It has also been contended by the local police administration that on 30th April, 2025 and on the following days more than one lakh devotees are expected to visit

Nachinda Sitala Temple under Marishda Police Station to pay their homage during Sitala Puja on the day of holy Akshya Tritia for which also a huge contingent of police officers are required to be deployed both for traffic and crowd management. The aforesaid two programmes would require sufficient number of officers and force to handle the huge gathering and as such, the present programme which has been proposed by the organizers which are to be held for the first time may lead to serious law and order problem. Additionally, it has been stated that the only major route of conveyance is National Highway (NH-116B) and all the programmes which have been cited including the proposed Dharma Sammelan are in the vicinity of the National Highway which is bound to cause inconvenience not only to the safety and security of the dignitaries but also to the participants and the devotees.

Learned Advocate General further contended that there is no significance for which such Dharma Sammelan is to be held on 30th April, 2025 for the first time. The petitioners are bound to prove their right for such Dharma Sammelan to be held on the date so proposed as the State is of the opinion that the Dharma Sammelan which has been

subsequently proposed to be held is because of strength to show the organizational capacity which is a zeal of showing political strength. The reasons assigned by the police authorities are not absurd and do not call for any interference in view of the balanced approach shown by the administration that the Puja which is held at Nachinda Sitala Temple for years together has been allowed by the administration.

In order to fortify his arguments, learned Advocate General has relied upon number of precedents.

Learned Advocate General relied upon **Dr. M. Ismail Faruqui and Others -versus- Union of India and Others** reported in **(1994) 6 SCC 360** and referred to paragraphs 77 & 78 which holds:

“77. It may be noticed that Article 25 does not contain any reference to property unlike Article 26 of the Constitution. The right to practise, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property. Similarly this right does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom

guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion.

78. *While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.”*

Relying upon **Indian Young Lawyers Association and Others (Sabarimala Temple-5J.) -versus- State of Kerala and Others** reported in **(2019) 11 SCC 1** it was emphasised that organizing the programme and the purposes for which it has been represented are never an essential part of the practice of the religion. Emphasis was laid on paragraphs 285 & 286 which reads as follows:

“285. *In its jurisprudence on religious freedom, this Court has evolved a body of*

principles which define the freedom of religion under Article 25 and Article 26 to practices “essential” to the religion. The Constitution has been held to protect not only freedom of religious belief, but acts done in pursuance of those beliefs. While the views of a religious denomination are to be taken into consideration in determining whether a practice is essential, those views are not determinative of its essentiality. The Court has assumed a central role in determining what is or is not essential to religious belief. Intrinsic to the role which the Court has carved out, it has sought to distinguish between what is religious and what is a secular practice, even if it is associated with a religious activity. Going further, the Court has enquired into whether a practice is essential to religion. Essentiality of the practice would, as the Court has held, depends on whether the fundamental character of a religion would be altered, if it were not observed. Above all, there is an emphasis on constitutional legitimacy, which underscores the need to preserve the basic constitutional values associated with the dignity of the individual. The ephemeral distinction between religion and superstition becomes more coherent in terms of the need to preserve fundamental constitutional values associated with human liberty.

286. *In determining the essentiality of a practice, it is crucial to consider whether the practice is prescribed to be of an*

obligatory nature within that religion. If a practice is optional, it has been held that it cannot be said to be “essential” to a religion. A practice claimed to be essential must be such that the nature of the religion would be altered in the absence of that practice. If there is a fundamental change in the character of the religion, only then can such a practice be claimed to be an “essential” part of that religion.”

State also relied upon **M. Siddiq (Dead) Through Legal Representatives -versus- Mahant Suresh Das and Others** reported in **(2019) 18 SCC 631** and referred to paragraphs 40, 41 & 57 for reiterating its earlier contention, the same reads as follows:

“40. *With the above observation the Constitution Bench held that offer of prayer or worship is a religious practice, its offering at every location would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. Places of worship of any religion having particular significance for that religion, to make it an essential or integral part of the religion, stand on a different footing and have to be treated differently and more reverentially.*

41. *From what we have noticed above following are deducible:*

(i) *Places of religious worship like mosques, churches, temples, etc. can be acquired under the State's sovereign power of acquisition, which does not violate Articles 25 or 26 of the Constitution.*

(ii) *The right to practice, profess and propagate religion guaranteed under Article 25 does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution.*

(iii) *The protection under Articles 25 and 26 of the Constitution is to religious practice which forms an essential or integral part of the religion.*

(iv) *A practice may be a religious practice but not an essential and integral part of practice of that religion.*

(v) *While offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof.*

The Court itself has drawn a distinction with regard to the place of a particular significance for that religion where offer of prayer or worship may be an essential or integral part of the religion.

57. *The above observation by the Constitution Bench has been made to emphasise that there is no immunity of the mosque from the acquisition. We have noticed that Constitution Bench had held that while offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof. The above observation made in para 78 has to be read along with observation made in para 82. What the Court meant was that unless the place of offering of prayer has a particular significance so that any hindrance to worship may violate right under Articles 25 and 26, any hindrance to offering of prayer at any place shall not affect right under Articles 25 and 26. The observation as made in para 82 as quoted above has to be understood with the further observation made in the same paragraph where this Court held : (M. Ismail Faruqui case [Ismail Faruqui v. Union of India, (1994) 6 SCC 360] , SCC p. 418, para 82)*

“82. ... Obviously, the acquisition of any religious place is to be made only in unusual and extraordinary situations for a larger national purpose keeping in view that such acquisition should not result in extinction of the right to practise the religion, if the significance of that place be such.

Subject to this condition, the power of acquisition is available for a mosque like any other place of worship of any religion. The right to worship is not at any and every place, so long as it can be practised effectively, unless the right to worship at a particular place is itself an integral part of that right.”

Mr. Kalyan Bandopadhyay, learned senior advocate appearing for the respondent no. 3, i.e. the Director General and the Inspector General of Police and the respondent no.4, i.e. the Superintendent of Police, Purba Medinipur, submits that the land owners are not organising a private programme with few persons and they claim that around fifty thousand persons would be participating in the Dharma Sammelan. The said Dharma Sammelan is under the garb of a political counterblast to the inauguration of Shree Jagannath Temple to be held at Digha which was announced on or about 11th December, 2024 by the Administration and the invitees in the said programme would be from different States of India which would include dignitaries including invitees of Z+ category security. Further the participants in the said programme will be more than one lakh. As such, the police authorities and the district administration would

have to exercise due care, caution and diligence for peacefully holding such programme. Learned senior advocate drew an analogy that when the inauguration of Ram Janmabhumi Temple was done at Prayagraj/Ayodhya whole of the said districts were closed and only the invitees and the dignitaries were allowed to participate in such programme, no other gathering was allowed on the said date. It is the absolute discretion of the administration in respect of certain programmes to allow or not to allow the other events or gathering in and around the vicinity of a prescheduled programme and the same is for the purpose of peacefully and efficiently organising and concluding the event. It was repeatedly submitted by the learned senior advocate that the said programme has not only overtones of a political event under the garb of a Dharma Sammelan, but the same is at the behest of the Leader of the Opposition to disrupt the inauguration of Shree Jagannath Temple. Additionally, it was submitted that the locus of the land owners are peculiar as they do not have any infrastructure to host a fifty thousand crowd and they are not even a registered organisation who can take the onus of handling such a large crowd or gathering which they propose to do and it would be incumbent on the

State authorities to take the responsibility in case such a gathering is allowed which would disrupt the eventful pre-scheduled gathering at Digha.

In order to emphasise his arguments, Mr. Bandopadhyay, learned senior advocate has relied upon a number of precedents.

Reference was made to ***State of Karnataka and Another -versus- Dr. Praveen Bhai Thogadia*** reported in ***(2004) 4 SCC 684*** and reliance was placed on paragraph 7:

7. Communal harmony should not be made to suffer and be made dependent upon the will of an individual or a group of individuals, whatever be their religion, be it of a minority or that of the majority. Persons belonging to different religions must feel assured that they can live in peace with persons belonging to other religions. While permitting holding of a meeting organised by groups or an individual, which is likely to disturb public peace, tranquillity and orderliness, irrespective of the name, cover and methodology it may assume and adopt, the administration has a duty to find out who the speakers and participants are and also to take into account previous instances and the antecedents involving or concerning those persons. If they feel that the presence or participation of any person in the meeting

or congregation would be objectionable, for some patent or latent reasons as well as the past track record of such happenings in other places involving such participants, necessary prohibitory orders can be passed. Quick decisions and swift as well as effective action necessitated in such cases may not justify or permit the authorities to give prior opportunity or consideration at length of the pros and cons. The imminent need to intervene instantly, having regard to the sensitivity and perniciously perilous consequences it may result in if not prevented forthwith, cannot be lost sight of. The valuable and cherished right of freedom of expression and speech may at times have to be subjected to reasonable subordination to social interests, needs and necessities to preserve the very core of democratic life — preservation of public order and rule of law. At some such grave situation at least the decision as to the need and necessity to take prohibitory actions must be left to the discretion of those entrusted with the duty of maintaining law and order, and interposition of courts — unless a concrete case of abuse or exercise of such sweeping powers for extraneous considerations by the authority concerned or that such authority was shown to act at the behest of those in power, and interference as a matter of course and as though adjudicating an appeal, will defeat the very purpose of legislation and legislative intent. It is useful

to notice at this stage the following observations of this Court in the decision reported in *Madhu Limaye v. Sub-Divisional Magistrate, Monghyr* [(1970) 3 SCC 746] : (SCC p. 757, para 24)

“24. The gist of action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible to act absolutely and even *ex parte* it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application. There is no general proposition that an order under Section 144, Criminal Procedure Code cannot be passed without taking evidence : see *Jagrupa Kumari v. Chotey Narain Singh* [(1936) 37 Cri LJ 95 (Pat)] which in our opinion is correct in laying down this proposition. These fundamental facts emerge from the way the occasions for the exercise of the power are mentioned. Disturbances of public tranquillity, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevented. We are, however, not concerned with this part of the

section and the validity of this part need not be decided here. Insofar as the other parts of the section are concerned the keynote of the power is to free society from menace of serious disturbances of a grave character. The section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If that be so the matter must fall within the restrictions which the Constitution itself visualizes as permissible in the interest of public order, or in the interest of the general public. We may say, however, that annoyance must assume sufficiently grave proportions to bring the matter within interests of public order.”

By referring to **Shri Sitaram Sugar Co. Ltd. and Anr. -versus- Union of India, (1990) 3 SCC 223** learned Senior Advocate stressed on the reasonableness of the findings of the Inspector In-Charge, Contai Police Station. Emphasis was laid on paragraph 49 which reads as follows:

49. *Where a question of law is at issue, the court may determine the rightness of the impugned decision on its own independent judgment. If the decision of the authority does not agree with that which the court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is a finding of fact, the court examines only the reasonableness of the*

finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision, and the decision is one which any reasonably minded person, acting on such evidence, would have come to, then judicial review is exhausted even though the finding may not necessarily be what the court would have come to as a trier of fact. Whether an order is characterised as legislative or administrative or quasi-judicial, or, whether it is a determination of law or fact, the judgment of the expert body, entrusted with power, is generally treated as final and the judicial function is exhausted when it is found to have “warrant in the record” and a rational basis in law: See Rochester Tel. Corp. v. United States [307 US 125 (1939) : 83 L ed 1147] . See also Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation.”

Pursuant to the direction passed on 25.04.2025 the Inspector In-Charge, Contai Police Station Kanthi, Purba Medinipur communicated a reply to the letter dated 22nd April, 2025 relating to holding of Maha Sanatani Dharma Sammelan on 30th April, 2025 from 7:00 A.M to 8:00 P.M. which was received by the petitioners on 26th of April 2025. Petitioners preferred a supplementary affidavit enclosing the

reply/order dated 25.04.2025 passed by the Inspector In-Charge, Contai Police Station, Kanthi, Purba Medinipur. Objection was taken by the Learned Advocate General and it was emphasized that the scope of writ petition has been changed pursuant to the reply letter dated 25.04.2025. By referring to the judgment of **S.S. Sharma and Others -versus- Union of India and Others** reported in **(1981) 1 SCC 397**, reliance was placed on the relevant part of paragraph 6 which is as follows:

“6. We have carefully perused the writ petitions, and it is plain that the entire scope of the petitions is limited to challenging the validity and application of the Central Secretariat Service (Amendment) Rules, 1979 and the consequent Regulations for holding a limited departmental competitive examination. No relief has been sought for quashing the office memorandum dated July 20, 1974. No ground has been taken in the writ petitions assailing the validity of the office memorandum on the basis now pressed before us. We are of opinion that the courts should ordinarily insist on the parties being confined to their specific written pleadings and should not be permitted to deviate from them by way of modification or supplementation except through the well known process of formally applying for

amendment. We do not mean that justice should be available to only those who approach the court confined in a strait-jacket. But there is a procedure known to the law, and long established by codified practice and good reason, for seeking amendment of the pleadings. If undue laxity and a too easy informality is permitted to enter the proceedings of a court it will not be long before a contemptuous familiarity assails its institutional dignity and ushers in chaos and confusion undermining its effectiveness. Like every public institution, the courts function in the security of public confidence, and public confidence resides most where institutional discipline prevails. Besides this, oral submissions raising new points for the first time tend to do grave injury to a contesting party by depriving it of the opportunity, to which the principles of natural justice hold it entitled, of adequately preparing its response.”

Learned Advocate for the petitioners rebutting to such contention referred to **Mohinder Singh Gill -versus- Chief Election Commr.**, reported in **(1978) 1 SCC 405** and relied upon paragraph 8 which is as follows:

“8. *The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by*

fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

Having considered that the reply letter/order dated 25.04.2025 was passed pursuant to the direction of this Court, I am of the view that no straight jacket formula is required for ends of justice. The supplementary affidavit may be taken on record as the documents which are enclosed includes the earlier order of this Court along with

reply letter/order passed by the Inspector In-Charge, Contai Police Station, Kanthi, Purba Medinipur dated 25.04.2025. Otherwise also it was incumbent upon the state to produce the said order or in the alternative to inform this Court pursuant to the direction dated 25.04.2025 that they have not passed any order or have not replied to the present petitioner. Several paragraphs have been relied upon both by the Learned Advocate General and the petitioners on issues relating to essential religious rights, to hold the programme on a particular day, the significance of holding this programme on the date of Akshaya Tritiya, as also the purpose being political or apolitical in respect of holding the Maha Sanatani Dharma Sammelan referred to above.

On the other hand Mr. Kalyan Bandopadhyay Learned Senior Advocate appearing for the Respondent No. 3 and 4 submitted that if such programme is held on different day except 30th April, 2025 State has no objection, but having regard to the fact that a pre-scheduled programme from the month of December, 2024 has already been announced, along with another gathering around one lakh devotees at Nachinda Sitala Mandir under Marishda Police Station is to be monitored by Police. The work load is likely to cause severe

pressure upon the Police Authorities which would be practically impossible to handle, considering the ground reality of a vast crowd accumulating in the district of Purba Medinipur.

Learned Senior Advocate filed an affidavit on behalf of the Respondent No. 4 where he has challenged regarding the genuinity of the writ petition and its purpose, to that effect it has been canvassed that the same is a political programme which is in tune with the reply made by the Inspector In-Charge, Contai Police Station Kanthi, Purba Medinipur.

Learned Senior Counsel in order to fortify his argument relied upon ***Christian Medical College Vellore Assn. v. Union of India***, reported in (2020) **8 SCC 705**, reference was made to paragraph 24 and it was contended that it is not only Article 25 and 26 of the Constitution which is important but the said Article do not bestow any unchartered rights. The right is not absolute and is supposed to be regulated. Paragraph 24 of the aforesaid judgment was referred to, which is as follows:

24. *The Court held that it is permissible for the State to prescribe qualifications for teachers. It observed: (Ahmedabad St. Xavier's College Society case [Ahmedabad St. Xavier's College*

Society v. State of Gujarat, (1974) 1 SCC 717 : 1 SCEC 125] , SCC pp. 812-13, 819-20, 830 & 834-35, paras 176, 197, 221 & 232)

“176. Recognition or affiliation is granted on the basis of the excellence of an educational institution, namely, that it has reached the educational standard set up by the university. Recognition or affiliation is sought for the purpose of enabling the students in an educational institution to sit for an examination to be conducted by the university and to obtain a degree conferred by the university. For that purpose, the students should have to be coached in such a manner so as to attain the standard of education prescribed by the university. Recognition or affiliation creates an interest in the university to ensure that the educational institution is maintained for the purpose intended and any regulation which will subserve or advance that purpose will be reasonable and no educational institution established and administered by a religious or linguistic minority can claim recognition or affiliation without submitting to those regulations. That is the price of recognition or affiliation: but this does not mean that it should submit to a regulation stipulating for surrender of a right or freedom guaranteed by the Constitution, which is unrelated to the purpose of recognition or affiliation. In other words, recognition or affiliation is a facility which the university grants to an

educational institution, for the purpose of enabling the students there to sit for an examination to be conducted by the university in the prescribed subjects and to obtain the degree conferred by the university, and therefore, it stands to reason to hold that no regulation which is unrelated to the purpose can be imposed. If besides recognition or affiliation, an educational institution conducted by a religious minority is granted aid, further regulations for ensuring that the aid is utilised for the purpose for which it is granted will be permissible. The heart of the matter is that no educational institution established by a religious or linguistic minority can claim total immunity from regulations by the legislature or the university if it wants affiliation or recognition, but the character of the permissible regulations must depend upon their purpose. As we said, such regulations will be permissible if they are relevant to the purpose of securing or promoting the object of recognition or affiliation. There will be borderline cases where it is difficult to decide whether a regulation really subserves the purpose of recognition or affiliation. But that does not affect the question of principle. In every case, when the reasonableness of a regulation comes up for consideration before the Court, the question to be asked and answered is whether the regulation is calculated to subserve or will in effect subserve the

purpose of recognition or affiliation, namely, the excellence of the institution as a vehicle for general secular education to the minority community and to other persons who resort to it. The question whether a regulation is in the general interest of the public has no relevance if it does not advance the excellence of the institution as a vehicle for general secular education as, ex-hypothesi, the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards. This is the reason why this Court has time and again said that the question whether a particular regulation is calculated to advance the general public interest is of no consequence if it is not conducive to the interests of the minority community and those persons who resort to it.

197. On the second question, I have nothing significant to add to what has fallen from My Lord the Chief Justice. I am in entire agreement with the view that, although, Articles 29 and 30 may supplement each other so far as certain rights of minorities are concerned, yet, Article 29 of the Constitution does not, in any way, impose a limit on the kind or character of education which a minority may choose to impart through its Institution to the children of its own members or to those of others who may choose to send

their children to its schools. In other words, it has a right to impart a general secular education. I would, however, like to point out that, as rights and duties are correlative, it follows, from the extent of this wider right of a minority under Article 30(1) to impart even general or non-denominational secular education to those who may not follow its culture or subscribe to its beliefs, that, when a minority institution decides to enter this wider educational sphere of national education, it, by reason of this free choice itself, could be deemed to opt to adhere to the needs of the general pattern of such education in the country, at least whenever that choice is made in accordance with statutory provisions. Its choice to impart an education intended to give a secular orientation or character to its education necessarily entails its assent to the imperative needs of the choice made by the State about the kind of "secular" education which promotes national integration or the elevating objectives set out in the Preamble to our Constitution, and the best way of giving it. If it is part of a minority's rights to make such a choice, it should also be part of its obligations, which necessarily follow from the choice to adhere to the general pattern. The logical basis of such a choice is that the particular minority institution, which chooses to impart such general secular education, prefers that higher range of freedom where, according to the poet

Rabindranath Tagore, “the narrow domestic walls” which constitute barriers between various sections of the nation will crumble and fall. It may refuse to accept the choice made by the State of the kind of secular education the State wants or of the way in which it should be given. But, in that event, should it not be prepared to forego the benefits of recognition by the State? The State is bound to permit and protect the choice of the minority institution, whatever that might be. But, can it be compelled to give it a treatment different from that given to other Institutions making such a choice?

221. Evidently, what was meant was that the right to exclusive management of the institution is separable from the right to determine the character of education and its standards. This may explain why “standards” of education were spoken as “not part of management” at all. It meant that the right to manage, having been conferred in absolute terms, could not be interfered with at all although the object of that management could be determined by a general pattern to be laid down by the State, which could prescribe the syllabi and standards of education. Speaking for myself, I find it very difficult to separate the objects and standards of teaching from a right to determine who should teach and what their qualifications should be. Moreover, if the “standards of education” are not part of management, it is

difficult to see how they are exceptions to the principle of freedom of management from control. Again, if what is aimed at directly is to be distinguished from an indirect effect of it, the security of tenure of teachers and provisions intended to ensure fair and equitable treatment for them by the management of an institution would also not be directly aimed at interference with its management. They could more properly be viewed as designed to improve and ensure the excellence of teachers available at the institution, and, therefore, to raise the general standard of education. I think that it is enough for us to distinguish this case on the ground that the provisions to be interpreted by us are different, although, speaking for myself, I feel bound to say, with great respect, that I am unable to accept every proposition found stated there as correct. In that case, the provisions of the Kerala University Act 9 of 1969, considered there were inescapable for the minority institutions which claimed the right to be free from their operation. As I have already observed, in the case before us, Section 38-B of the Act provides the petitioning College before us with a practically certain mode of escape from the compulsiveness of provisions other than Sections 5, 40, and 41 of the Act if claims made on its behalf are correct.

232. *Even if Article 30(1) of the Constitution is held to confer absolute and*

unfettered rights of management upon minority institutions, subject only to absolutely minimal and negative controls in the interests of health and law and order, it could not be meant to exclude a greater degree of regulation and control when a minority institution enters the wider sphere of general secular and non-denominational education, largely employs teachers who are not members of the particular minority concerned, and when it derives large parts of its income from the fees paid by those who are not members of the particular minority in question. Such greater degree of control could be justified by the need to secure the interests of those who are affected by the management of the minority institution and the education it imparts but who are not members of the minority in management. In other words, the degree of reasonably permissible control must vary from situation to situation. For the reasons already given above, I think that, apart from Sections 5, 40 and 41 of the Act, which directly and unreasonably impinge upon the rights of the petitioning minority managed college, protected by Article 30(1) of the Constitution, I do not think that the other provisions have that effect. On the situation under consideration before us, the minority institution affected by the enactment has, upon the claims put forward on its behalf, a means of escape from the impugned provisions other than Sections 5, 40 and 41

of the Act by resorting to Section 38-B of the Act.”

Reiterating on the issue of absolute unchartered rights, Learned Senior Advocate also relied upon ***Dharam Chand v. NDMC***, reported in **(2015) 10 SCC 612**.

It was contended that the petitioners did not plead in the writ petition regarding their past experience of conducting such programme and neither they have by way of any documents substantiated their claim of past experience, as such, only relying upon the averments in the writ petition particularly majority of which are in the form of submission it would be dangerous to leave a huge gathering at the mercy of the present petitioners. Reference was made to ***Bharat Singh - versus- State of Haryana***, reported in **(1988) 4 SCC 534** and reliance was placed upon paragraph 13 which reads as follows:

“13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special

leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.”

Learned Senior Advocate also relied upon the judgment of **State of Karnataka and Another - versus- Dr. Praveen Bhai Thogadia** reported in

(2004) 4 SCC 684 and referred to paragraphs 6 and 7 of the judgment to emphasise that ordinarily in respect of administrative orders, the Court should not interfere, as it is the administration which handles the ground reality. Paragraphs 6 and 7 of the said judgment has been relied upon which reads as follows:

“6. Courts should not normally interfere with matters relating to law and order which is primarily the domain of the administrative authorities concerned. They are by and large the best to assess and to handle the situation depending upon the peculiar needs and necessities within their special knowledge. Their decision may involve to some extent an element of subjectivity on the basis of materials before them. Past conduct and antecedents of a person or group or an organisation may certainly provide sufficient material or basis for the action contemplated on a reasonable expectation of possible turn of events, which may need to be avoided in public interest and maintenance of law and order. No person, however big he may assume or claim to be, should be allowed, irrespective of the position he may assume or claim to hold in public life, to either act in a manner or make speeches which would destroy secularism recognised by the Constitution of India. Secularism is not to be confused with communal or religious concepts of an

individual or a group of persons. It means that the State should have no religion of its own and no one could proclaim to make the State have one such or endeavour to create a theocratic State. Persons belonging to different religions live throughout the length and breadth of the country. Each person, whatever be his religion, must get an assurance from the State that he has the protection of law freely to profess, practise and propagate his religion and freedom of conscience. Otherwise, the rule of law will become replaced by individual perceptions of one's own presumptions of good social order. Therefore, whenever the authorities concerned in charge of law and order find that a person's speeches or actions are likely to trigger communal antagonism and hatred resulting in fissiparous tendencies gaining foothold, undermining and affecting communal harmony, prohibitory orders need necessarily to be passed, to effectively avert such untoward happenings.

7. *Communal harmony should not be made to suffer and be made dependent upon the will of an individual or a group of individuals, whatever be their religion, be it of a minority or that of the majority. Persons belonging to different religions must feel assured that they can live in peace with persons belonging to other religions. While permitting holding of a meeting organised by groups or an individual, which is likely to disturb public peace, tranquillity and orderliness, irrespective of the name, cover*

and methodology it may assume and adopt, the administration has a duty to find out who the speakers and participants are and also to take into account previous instances and the antecedents involving or concerning those persons. If they feel that the presence or participation of any person in the meeting or congregation would be objectionable, for some patent or latent reasons as well as the past track record of such happenings in other places involving such participants, necessary prohibitory orders can be passed. Quick decisions and swift as well as effective action necessitated in such cases may not justify or permit the authorities to give prior opportunity or consideration at length of the pros and cons. The imminent need to intervene instantly, having regard to the sensitivity and perniciously perilous consequences it may result in if not prevented forthwith, cannot be lost sight of. The valuable and cherished right of freedom of expression and speech may at times have to be subjected to reasonable subordination to social interests, needs and necessities to preserve the very core of democratic life — preservation of public order and rule of law. At some such grave situation at least the decision as to the need and necessity to take prohibitory actions must be left to the discretion of those entrusted with the duty of maintaining law and order, and interposition of courts — unless a concrete case of abuse or exercise of such sweeping

powers for extraneous considerations by the authority concerned or that such authority was shown to act at the behest of those in power, and interference as a matter of course and as though adjudicating an appeal, will defeat the very purpose of legislation and legislative intent. It is useful to notice at this stage the following observations of this Court in the decision reported in Madhu Limaye v. Sub-Divisional Magistrate, Monghyr [(1970) 3 SCC 746] : (SCC p. 757, para 24)

“24. The gist of action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible to act absolutely and even ex parte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application. There is no general proposition that an order under Section 144, Criminal Procedure Code cannot be passed without taking evidence : see Jagrupa Kumari v. Chotey Narain Singh [(1936) 37 Cri LJ 95 (Pat)] which in our opinion is correct in laying down this proposition. These fundamental facts emerge from the way the occasions for the exercise of the

power are mentioned. Disturbances of public tranquillity, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevented. We are, however, not concerned with this part of the section and the validity of this part need not be decided here. Insofar as the other parts of the section are concerned the keynote of the power is to free society from menace of serious disturbances of a grave character. The section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If that be so the matter must fall within the restrictions which the Constitution itself visualizes as permissible in the interest of public order, or in the interest of the general public. We may say, however, that annoyance must assume sufficiently grave proportions to bring the matter within interests of public order.”

Elaborating on the aforesaid issue Learned Senior Counsel also referred to the judgment of the Hon’ble Madras High Court **Rama. Muthuramalingam, State Propaganda Committee Member, Thanthai Periyar Dravidar Kazhagam, No. 31, Nagaraja Iyer Colony, South Fourth Street, Mannargudi, Tiruvarur District - versus-The Deputy Superintendent of Police,**

Mannargudi, Tiruvarur District and others

reported in **2004 (5) CTC 554** and it was emphasised that the legislature the executive and the judiciary are three separate organs and it would not be proper for one of them to encroach upon the domain of another.

I have considered the submissions of the respective parties and also taken into account the reason which have been assigned in the reply dated 25.04.2025 by the Inspector In-Charge, Contai Police Station Kanthi, Purba Medinipur which has the over tones of political biasness rather than incapacity of the Police Authorities to handle the crowd. While a part of the communication was restricted to the Inauguration Ceremony of Shree Jaganath Temple at Digha, Purba Medinipur which is far away from the venue proposed by the petitioners but emphasis has been made on public speeches of the Leader of the Opposition and the event being a smoke-screen to congregate a political crowd under the garb of a religious programme for precipitating the situation and causing traffic as well as law and order problems. As was referred to in ***Acharya Jagadishwarananda Avadhuta and another*** (supra), it is very disturbing to see the approach of the Inspector In-Charge, Contai Police

Station who must know that political minorities are also citizens of India who are to be treated equally. Highlighting the political affiliation of a person do not take away his right to celebrate on a date when the whole district is in a festive mood. Whether the Dharma Sammelan would be a religious congregation or under a political garb a religious programme, is not the look out of the Inspector In-Charge, Contai Police Station Kanthi, Purba Medinipur.

However having regard to the fact that there will be an accumulation of huge number of persons in the district, as is represented in a part of the reply, I am of the view that the petitioners be allowed to organise the programme with a crowd of 3000 (three thousand) people in a rotational manner i.e. at a fixed point of time more than 3000 persons will not accumulate or gather together at the venue. As undertaken by the petitioners all arrangements relating to water, bio-toilets, safety, security maintenance of the decibel limit be maintained in and around the venue, a list of volunteers on behalf of the organizers be handed over to the Contai Police Station along with mobile numbers of at least 20 persons who would be made available for communication in case of any crisis.

With the aforesaid observations WPA 9157 of 2025 is disposed of.

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

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

(Tirthankar Ghosh, J.)