

20.08.2024

WPA 21127 of 2024

**Sujit Chatterjee
Vs.
The State of West Bengal & Ors.**

Mr. Subir Sanyal
Mr. Srijib Chakraborty
Mr. A. Mondal
Mr. R.K. Saha

... ... for the petitioner

Mr. Amitesh Banerjee, SSC
Mr. Rudrajit Sarkar
Mr. Debangshu Dinda

... ... for the State

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

Mr. Sanyal, learned counsel appearing for the petitioner submits that the petitioner wants to organize a peaceful “Abasthan” on and from 16.08.2024 and onwards at Bhupen Bose Avenue, beside Shyambazar Metro Station Gate No.1, Kolkata – 700 004 as a protest against the barbaric incident which happened on 9th August, 2024 at R.G. Kar Medical College, Kolkata. An application to that effect was made to all the concerned police stations as well as Joint Commissioner of Police (HQ), Lal Bazar, Kolkata but till date no permission has been granted by the concerned police authority. Learned counsel for the petitioner prays for a direction upon the State respondents to grant permission to hold a peaceful “Abasthan” on and from 21st August, 2024 and onwards.

Learned counsel appearing for the petitioner refers to judgment dated 10th April, 1993 (State of West Bengal

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

Mr. Banerjee, learned Senior Standing Counsel appearing for the State submits that venue point of "Abasthan" at Bhupen Bose Avenue, beside Shyambazar Metro Station Gate No.1, Kolkata – 700 004 is an extremely crowded area and very close to the place where Section 163 of the BNSS, 2023 dated 17.08.2024 has been enacted to maintain peace in the locality. However, learned senior standing counsel further submits that "Abasthan" can be held for a single day.

Mr. Banerjee relies on Supreme Court judgment dated 23rd February, 2012 [Ramlila Maidan Incident, In Re Suo Motu W.P. (Crl.) No. 122 of 2011] reported in (2012) 5 SCC 1, judgment dated 23rd July, 2018 (Mazdoor Kisan Shakti Sangathan Vs. Union of India and Anr.) reported in (2018) 17 SCC 324, judgment dated 15th September, 1972 (Himat Lal K. Shah Vs. Commissioner

of Police, Ahmedabad and Anr.) reported in (1973) 1 SCC 227 and a judgment dated 7th October, 2020 (Amit Sahni Vs. Commissioner of Police and Ors.) reported in (2020) 10 SCC 439 and submits that the State has adequate power to restrict and regulate rallies, dharnas, demonstrations etc.

Heard learned counsels for the parties at length.

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

It was held by a co-ordinate Bench of this Court as well as in the State of West Bengal and Ors. Vs. Jagannath Chattopadhyay in MAT No. 2283 of 2023 with I.A. CAN 1 of 2023 that there should be level playing field for all political parties for holding public rallies, gatherings, meetings and the law and order has to be looked into by the State. It was further held in a judgment of our co-ordinate Bench reported in **2017 SCC OnLine Cal 1914 (Sasanka Sekhar Dey & Ors. Vs. State of West Bengal & Ors.)** that:-

“11.....If the assemblage of invitees to the function is not for an unlawful, purpose (which is not the case of the respondents), then such assemblage at a public place ought not to be restrained until and unless there is an imminent

threat to the breach of public order. Even then, the restraint must be just and reasonable balancing the interest of the individual with that of public safety. It must not only be reasonable but also least invasive and minimal. In Ramlila Maidan Incident, In Re: (2012) 5 SCC 1, the Court held:-

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

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

- i) Let the petitioner and his associates hold a peaceful “Abasthan” with not more than 300 number of supporters on and from 21st August, 2024 to 25th August, 2024 in between 11.00 a.m. to 9.00 p.m. at Bhupen Bose Avenue, beside Shyambazar Metro Station Gate No.1, Kolkata – 700 004. The stage to be erected by the petitioner for peaceful “Abasthan” should not be more than 16 feet by 20 feet.

- ii) The petitioner shall abide by all the conditions for holding such peaceful “Abasthan” and the “Abasthan” 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 Officer-in-Charge, Shyampukur Police Station, Shyambazar Street, Kolkata.
- v) Demonstration shall be held subject to observance of rules in relation to noise pollution and without causing any inconvenience to public at large.
- vi) The place of demonstration shall be appropriately cleaned after the demonstration.

With the above directions, the writ petition being WPA 21127 of 2024 is disposed of.

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

(Rajarshi Bharadwaj, J.)