

**HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 20520 of 2023

Rajib Samanta

Versus

The State of West Bengal & Ors.

For the petitioner Mr. Rajdeep Majumder
Mr. Moyukh Mukherjee
Ms. Sagnika Mukherjee

For the State Mr. Wasim Ahmed
Sk. Md. Masud

For the Respondent No.9. Mr. Indrajeet Dasgupta
Mr. Shounak Ghosh

Heard on 24.08.2023

Judgment on 24.08.2023

JAY SENGUPTA, J:

This is an application under Article 226 of the Constitution of India challenging an ex parte order dated 18.08.2023 passed by the Sub-Divisional Magistrate, Contai,

Purba Medinipur in Misc. Case No.673/2023 under Section 144(2) of Cr.P.C.

Further report filed on behalf of the State is taken on record.

Learned counsel representing the petitioner submits that the petitioner is the Mandal President of an opposition political party. His party wanted to hold a rally at Khejuri, Purba Medinipur on 19.08.2023. Accordingly, intimation was given to the local police station on 14.08.2023. On 18.08.2023 the concerned Sub-Divisional Magistrate promulgated an order under Section 144(2) of the Code in the same area making reference to the proposed rally by the petitioner. Thereafter the petitioner was constrained to change the date for such rally. It was now fixed on 26th of this month. This was intimidated to the Officer-in-Charge of Talpati Ghat Coastal Police Station who refused to give permission for holding rally on 18.08.2023 showing the promulgation of the order under Section 144 of the Code. This was only to curb the exercise of democratic rights by the petitioner and his partymen. The order under Section 144 of the Code does not even make any reference to the criminal cases that might have been instituted. In fact, in the alternative, it is submitted that the order does not survive the date i.e. 19.08.2023 because the language used went like this “Promulgation of 144 Cr.P.C. ...” “On 19.08.2023 from 15.00

hrs. ...” Reliance is placed on a decision of the Constitution Bench of the Hon’ble the Supreme Court in *Babulal Parate v. State of Maharashtra and others*, AIR 1961 SC 884. It is submitted that a mere likelihood or tendency would not do. The power conferred by the section is exercisable only if the Magistrate is satisfied that immediate prevention of particular acts is necessary. There is no indication of the same in the impugned order. During panchayat election there had been violence in so many places. In fact, there had been more violence than in Khejuri. In several places, board formation had to be postponed to another date. At least in Khejuri, despite some incidents, board formation could be done on the date fixed i.e. on 10.08.2023. In those more affected places the Administration has not promulgated orders under Section 144 of the Code. The present promulgation of such order is malicious and is only meant to prevent the petitioner from holding a political rally.

Learned advocate for the State relies on the reports and submits that in the first report, reference has been made to registration of 4 criminal cases on 10.08.2023, 13.08.2023, 14.08.2023 and 18.08.2023. Because of the prevailing situation, the Administration thought it fit to promulgate an order under Section 144 of the Code. It is because the promulgation of such order that some normalcy is prevailing

there. It appears from the second report filed by the State that 04.09.2023 and 05.09.2023 are fixed for formation of Sthayi Samity of the Panchayat Samity in and around Khejuri-II. The area mentioned by the petitioner for holding such rally is not sufficient to accommodate a huge crowd of about 10,000 supporters.

I have heard submissions of the parties and have perused the writ petition and the reports filed by the State.

The terms on which an order can be passed under Sections 144 or 144(2) of the Cr.P.C. are “... if such Magistrate considers that such direction is likely to prevent or tend to prevent obstruction, annoyance or injury to any person lawfully employed, or tender to harm life, health or safety ...”

From the impugned order passed under Section 144(2) of the Code it does not appear that the above referred conditions have been taken into account. The only two considerations which are there in the prefatory part are that a political rally is to be held there and that there are chances of serious breach of peace and tranquility normal functioning of this locality. Not even a particular incident or a criminal case has been referred to.

In *Babulal Parate* (supra) the Constitution Bench of the Hon'ble Supreme Court held as under:

“25. The language of Section 144 is somewhat different. The test laid down in the section is not merely “likelihood” or “tendency”. The section says that the Magistrate must be satisfied that immediate prevention of particular acts is necessary to counteract danger to public safety etc. The power conferred by the section is exercisable not only where present danger exists but is exercisable also when there is an apprehension of danger.”

No satisfaction of the Magistrate to such effect has been recorded. This test could not be satisfied in the facts and circumstances of the present case so as to promulgate an order under Section 144 of the Code.

Promulgation of an order under Section 144 of the Code cannot be done at the drop of a hat. It has to be done by exercising more care and circumspection and with a better reasoning. Afterall, we are dealing with rights of the citizens of India.

In view of the above, the impugned order passed under Section 144(2) of the Code cannot be sustained. Accordingly, the same is set aside.

The duty of the Administration is to provide a level playing field to all political dispensations to hold rallies and processions.

The law and order is a thing that the Administration would have to take care of.

As it appears from the further report filed by the State, there is admittedly some normalcy in the situation.

It also does not appear that from the date on which earlier meeting was cancelled till this day there had been any untoward incident in the locality. The circumstances do not appear to be such where a political rally or a meeting cannot be held.

In the interest of justice, I pass the following directions:

- (i) The petitioner and his associates shall be permitted to hold a political meeting/rally at the said venue on 26th August, 2023 from 2 pm to 6 pm.
- (ii) The petitioner shall nominate 3 persons and intimate their names and contact details to the Officer-in-Charge of the local police station who would be the responsible persons for conducting such meeting.
- (iii) The participants of the meeting shall see to it that undue harassment is not caused to the local residents.
- (iv) Sound regulations shall be meticulously followed.

- (v) The meeting shall be conducted peacefully and the speakers shall not use abusive language or incite violence.
- (vi) After the meeting is over, the venue shall be cleared by the organisers of the meeting.
- (vii) The police authorities under the direct supervision of the SP of Purba Medinipur shall deploy adequate number of personnel to provide security to the meeting as well as to ensure that no breach of peace takes place in the locality.

With the aforesaid observations, WPA 20520 of 2023 is disposed of.

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

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

(Jay Sengupta, J)

SG

