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19.07.2024

WPA 18328 of 2024

Tamoghna Ghosh

Vs.

The State of West Bengal & Ors.

Mr. Billwadal Bhattacharyya

Mr. Suryaneel Das

Mr. Chiranjit Pal

... .. for the Petitioner

Mr. Amitesh Banerjee, Id. SSC

Mr. Amal Sen

Mr. Sirsanya Bandhopadhyay

Mr. Debangshu Dinda

... ..for the State

Affidavit of service filed by the petitioner is kept with the record.

Mr. Bhattacharyya, learned counsel appearing for the petitioner submits that the party members of Bharatiya Janata Party, West Bengal plans to organize a rally from 6, Muralidhar Sen Lane, Kolkata- 700 073 to Victoria House (CESC office building) and thereafter stage a dharna in front of Victoria House to demonstrate against the hike of electricity price. An application to that effect was made to all the concerned police stations as well as to the Joint Commissioner of Police (HQ), Kolkata, but till date no permission has been granted by the concerned authority. Learned counsel for the petitioner further prays for a direction upon the respondents to allow permission to hold a rally and to stage a demonstration in front of Victoria House on 22nd July, 2024.

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, Id. Senior Standing counsel appearing for the State submits that as there is no price hike in the electricity charges by CESC, so the question of any demonstration for hike in the electricity prices does not arise at all. He further submits that the rally and demonstration on 22nd July, 2024 from 12:00 noon to 6:00 p.m. will cause unnecessary harassment to the public at large. Victoria House (CESC office building) is situated at the heart of Kolkata and is located in a densely populated area. He alternatively suggests that the rally may be held on a non-working day in a shorter route and instead of dharna to be held in front of Victoria House, it may be held in any other place or at Y channel adjacent to Victoria House which will safeguard the interest of the public at large.

Mr. Banerjee also suggested that from the Dharna which may take place in the Y channel, a limited number of persons may approach Victoria House (CESC office building) with a representation regarding price hike of electricity charges and to be given by the members of the Bhartiya Janata Party to the officials of the CESC.

Mr. Banerjee relies on Supreme Court judgment dated 23rd February, 2012 [Ramlila Maidan Incident, In Re Suo Motu W.P. (CrI.) 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 counsel 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 had also taken place on week days in front of Victoria House (CESC office building) 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 the rally with not more than 1,000 number of supporters on 26th July, 2024 in between 2:30 p.m. to 5:30 p.m.. The route should be from 6, Muralidhar Sen Lane, Kolkata-700073 to Victoria House (CESC office building) and a demonstration in front of Victoria House (CESC office building).
- ii) The petitioner shall abide by all the conditions for holding such rallies. The rally 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 and the rally can move peacefully.
- iv) The police arrangements would be made under the supervision of Joint Commissioner of Police (HQ), Lal Bazar, 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 18328 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.)