

19.09.2023
Item No.16 & 21
RP/PG
Ct. No.1

WPA(P) 503 of 2023

Purulia Chamber of Trade & Industry

Vs.

The State of West Bengal & Ors.

With

WPA(P) 510 of 2023

Dr. Goutam Mahato

Vs.

The State of West Bengal & Ors.

Mr. Abhratosh Majumdar, Sr. Adv.

Mr. Kausheyol Roy

for the petitioner in WPA(P) 503 of 2023

Mr. Kishore Dutta, Sr. adv.

Mr. Niloy Sengupta

Mr. S. Ganguly

Mr. Soumen Chatterjee

... for the petitioner in WPA(P) 510 of 2023

Mr. S.N. Mookherjee, Sr. Adv, Ld. AG

Mr. Supratim Dhar

... for the State

1. By these two public interest litigation the petitioners seek for more or less identical relief. The reason for filing these two writ petitions is on account of agitation which is to be commenced from 20th September, 2023 onwards and the said agitation is to be for an indefinite period by an organisation called Adibasi Kudmi Samaj, a registered society, which is impleaded as 13th respondent in W.P.A. (P) 503 of 2023 and the office bearers of the said samaj are being impleaded as

the respondent nos.6 to 10 in W.P.A(P) 510 of 2023.

2. The proposed agitation which has been planned by the said organisation on 20th September, 2023 onwards would have a severe impact on the movement of the public as well as other activities particularly in four districts of West Bengal, namely, Bankura, Jhargram, Purulia and West Midnapore. Since the proposal is to block the movement of trains, several of which are plying inter-States, the agitation will have an impact in the states of Jharkhand, parts of State of Orissa and parts of State of Chattishgarh. The demand of the said organisation and its office bearers is for including the Kudmi community in the Scheduled Tribe list. Earlier a public interest litigation was filed before this Court seeking for such direction and the Court pointed out that in a public interest litigation a Constitutional Court exercising jurisdiction under Article 226 of the Constitution of India cannot issue any direction for including any community in the list of Scheduled Tribe and if at all the organisation or members of the community are aggrieved, their grievance has to be redressed before the appropriate forum. In these writ petitions the focus is on the effect of proposed agitation on the entire society.

3. It is pointed out that similar protest was conducted by the said organisation and its members in September 2022 and April 2023 and it is stated that Indian Railways had suffered a monetary loss of Rs.60 crore apart from huge loss to the public exchequer and untold hardship to the citizens of those districts, who were directly affected and many of whom were indirectly affected on account of the said agitation. In anticipation of the agitation, 39 trains had been cancelled by the South Eastern Railways. A list of 39 trains has been published by the South-Eastern Railway. What was happening in the past agitation which had been conducted in September 2022 and April 2023 has undoubtedly not redressed the grievance of the Kudmi Samaj or its members. Therefore, in such a situation would it be justifiable on the part of the Kudmi Samaj and its members to resort to one more such agitation that too for an indefinite period. At this juncture, it would be beneficial to take note of the decisions of the Hon'ble Supreme Court in the case of ***Communist Party of India (M) – Versus – Bharat Kumar [(1998) 1 SCC 201]***. The challenge before the Hon'ble Supreme Court was to a decision of the High Court of Kerala in the case of ***Bharat Kumar K. Palich & Anr. – Versus – State of Kerala & Ors. O.Ps. Nos.7551` of 1994***

dated 28th July, 1997. The Hon'ble Supreme Court held that the judgment of High Court of Kerala does not call for any interference. It was pointed out by the Hon'ble Supreme Court that it was satisfied with the distinction drawn by the High Court between a "Bandh" and a call for general strike or "Hartal" is well made out with reference to the effect of "Bandh" on the fundamental rights of other citizens.

4. In ***All India Anna Dravida Munietra Kazhagam - Versus - Chief Secretary, Government of Tamil Nadu and Ors.*** reported in ***[(2009) 5 SCC 452]***, wherein the Hon'ble Supreme Court after taking note of the decision in *Communist Party of India (M) (supra)* held that the call given by the political parties is a call for "Bandh" and not strike or "Hartal" and accordingly orders were passed taking note of the principle that neither can anybody give a call for "Bandh" nor can the same be enforced.
5. At this juncture, it would be relevant to take note of the decision of the High Court of Kerala in the case of *Bharat Kumar (supra)*, which was affirmed by the Hon'ble Supreme Court in *Communist Party of India (M) (supra)* wherein it was held that no political party or organisation can claim that it is entitled to paralyse the industry and commerce in

the entire State or nation and is entitled to prevent the citizens not in sympathy with its view point, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation. Such a claim was held to be unreasonable and cannot be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it.

6. The petitioners are very clear in their mind that they are not opposing any peaceful form of protest but they are concerned about the large-scale impact that the agitation would be on the proposed call given by the association said to commence from 20th September, 2023.
7. In ***Amit Sahni (Shaheen Bagh. In Re.) – Versus – Commissioner of Police and Ors.*** reported in ***[(2020) 10 SCC 439]***, the Hon'ble Supreme Court while appreciating the existence of the right to peaceful protest against a legislation held public ways and public spaces cannot be occupied in such a manner and that too indefinitely. In the said case, it was found that it was not even one of protest taking place in an undesignated area, but was a blockage of a public way which caused grave inconvenience to commuters. The Hon'ble Supreme Court held that such kind of occupation of public ways, whether at the site in question or anywhere

else for protests is not acceptable and administration ought to take action to keep the areas clear of encroachments of obstructions. Further it was held that the High Court should have monitored the matter rather than disposing of the writ petition and creating a fluid situation.

8. In a decision of High Court of Gauhati in ***Lower Assam Inter, District Stage Carriage Bus Owner's Association – Versus – State of Assam & Ors.*** reported in [(2019) 5 Gauhati Law Reports 642], the Hon'ble Court held that road blockades and rail blockades are nothing but variants of "Bandh"; therefore, those are also illegal and unconstitutional.
9. Having noted the above legal position, all that can be said is that the protest, which has been scheduled to be held from 20th September, 2023 is illegal and unconstitutional. The said Samaj or the members of the Samaj have no vested right in blocking the roadways and railways causing inconvenience to several citizens not only confined to the four districts of West Bengal but also the three neighbouring States.
10. As pointed out earlier, the two agitations, which the said Samaj and its members had conducted in September, 2022 and April, 2023 had not given them the desired result for which they had planned

and conducted the protest. Therefore, the short question would be should they be permitted to do so for the third occasion that too, for an indefinite period?

11. Our prima facie view is that the Samaj and its members should not be permitted to hold the public at ransom by calling for an indefinite protest commencing from 20th September, 2023. Having held so, the issue would be how best the situation has to be monitored.
12. The learned Advocate General, on instruction, would submit that adequate measures have been adopted and additional forces have been requisitioned and the situation is seriously being taken into consideration so that no untoward incident happens. However, the endeavour of the State should be to ensure that the roads and railways are not blocked. It is a matter of great concern that the South-Eastern Railway had to cancel 39 trains. Imagine the plight of people, who had booked their journey in those trains. Some of whom may have to travel for medical emergencies or for other exigencies relating to employment, education, etc.
13. Thus, we are of the prima facie view that the Samaj and its members cannot hold innocent citizens to

ransom by seeking to hold an indefinite protest by blocking the railways and the roadways.

14. In the light of the above, we direct the State Government to deploy additional forces including specialised forces and if necessary, forces from the neighbouring States of Jharkhand, Orissa and Chattisgarh may also be requisitioned by the State Government so that the influx of the protesters to the core area of the protest is prevented. Checks and balances need to be maintained. The roads leading to the proposed site, where the protest is being scheduled to be conducted can be closely monitored and the flow of traffic can be prevented/restricted, unauthorised use of vehicles, goods carriages for transportation of passengers shall be prevented and / or other steps incidental to the same shall be adopted by the State Government.
15. The Railway Protection Force shall also be sensitised and if additional deployment is required in the railway stations, the same shall also be requisitioned.
16. Apart from taking note of the above measure for controlling the law and order situation, the protesters need to be sensitised as to what is the forum before which they will have to agitate their grievance.

17. As mentioned earlier, this Court had declined to entertain a prayer for declaring the particular community as a Scheduled Tribe Community by way of a public interest litigation by observing that the relief has to be sought before an appropriate forum. This aspect of the matter should be known to the people, who joined the protest. Many of whom may not be fully aware about the implications of the protest and the consequences thereof. This can be done by way of public address system or by the use of social media. The leaders of the Samaj can be called for discussion and they may be impressed that such form of protest, as proposed by them, would cause immense hardship to innocent citizens apart from causing huge loss to the State exchequer.
18. All effective steps shall be taken by the State Government and, if in their opinion, additional deployment of force is required, they can also requisition the Central Government for deployment of Central forces so as to work in tandem with the State forces to ensure that the public of the four districts as well as the neighbouring States are in no manner put to difficulty or inconvenience on account of the protest announced to be conducted from 20th September, 2023.

19. At this juncture, it would be beneficial to refer to the observations of the Hon'ble Supreme Court in ***Amit Sahni (Shaheen Bagh. In Re.) (supra)***, wherein the Hon'ble Supreme Court held that it is the responsibility of the respondent authorities to take suitable action, but then such suitable action should produce results.
20. List these matters on 9th October, 2023.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)