

Naitik Party and Another Vs State of U.P. and Others

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Dec. 3, 2013

Citation: (2014) 1 ADJ 155 : (2014) 4 ALJ 308 : (2014) 102 ALR 573

Hon'ble Judges: Dhananjay Yeshwant Chandrachud, C.J.; Devendra Kumar Arora, J

Bench: Division Bench

Judgement

Dr. Dhananjay Yeshwant Chandrachud, C.J. and Devendra Kumar Arora, J.

The first petitioner which is a registered political party while

the second petitioner who is a practicing Advocate and member of a political party have questioned the legality of an order dated 27 April 2011 of

the Principal Secretary (Home), Government of Uttar Pradesh, Lucknow. A brief factual background would be necessary to appreciate the

context in which the impugned order has been issued.

2. A Bench of three learned Judges of the Supreme Court Destruction of Public and Private Properties Vs. State of A.P. and Others, , took

serious note of various instances where a large scale destruction of public and private properties took place in the name of agitations, bandhs,

hartals and the like, and initiated suo motu proceedings. The Supreme Court appointed two Committees, the first headed by Hon"ble Mr. Justice

K.T. Thomas, a former Judge of the Supreme Court, while the second was headed by Mr. F.S. Nariman, Senior Advocate. The Committees,

inter alia, considered the destruction of public and private properties under the provisions of the Prevention of Damages to Public Property Act,

1984 and suggested various guidelines, to ensure that while the fundamental rights of assembly and freedom of speech and expression were

protected, this would have to be balanced with the need to maintain law and order and to protect the interest of the general community in the

orderly movement of civic and social life. The report of Justice Thomas Committee suggested the following modalities and guidelines in regard to

the regulation of demonstrations.

(I) The organizer shall meet the police to review and revise the route to be taken and to lay down conditions for a peaceful march or protest;

(II) All weapons, including knives, lathis and the like shall be prohibited;

(III) An undertaking is to be provided by the organizers to ensure a peaceful march with marshals at each relevant junction;

(IV) The police and State Government shall ensure videography of such protests to the maximum extent possible;

(V) The person in charge to supervise the demonstration shall be the SP (if the situation is confined to the district) and the highest police officer in

the State, where the situation stretches beyond one district;

(VI) In the event that demonstrations turn violent, the officer-in-charge shall ensure that the events are videographed through private operators and

also request such further information from the media and others on the incidents in question.

(VII) The police shall immediately inform the State Government with reports on the events, including damage, if any, caused.

(VIII) The State Government shall prepare a report on the police reports and other information that may be available to it and shall file a petition

including its report in the High Court or Supreme Court as the case may be for the Court in question to take suo motu action.

3. The Supreme Court approved the recommendations of the Justice K.T. Thomas Committee and Mr. F.S. Nariman Committee and held that

they constitute sufficient guidelines which needed to be adopted. The Supreme Court left it open to the appropriate authorities to take effective

steps for their implementation.

4. Following this, the Principal Secretary (Home) issued a circular on 27 April 2011. The circular states that the right to organize peaceful

demonstrations is a fundamental right in every democracy but at the same time, a demonstration which assumes a violent character, gives rise to

lawlessness besides causing serious disruptions in the life of common citizens. On occasions, the movement of ordinary citizens and essential

commodities are disrupted whereas on certain occasions damage is caused to public and private properties. In this background, the circular made

specific reference to the judgment of the Supreme Court and issued certain directions. These include the following; (i) the organizers, in the course

of organizing dharanas, agitations and processions would, in consultation with the police and the administration, finalize the place, route and time of

protests and would specify the modalities for parking arrangements. The District Administration would ensure that there is coordination between

the administration and organizers in regard to the place, time and route; (ii) an undertaking would be taken from the organizers in a prescribed

format that the protests would be conducted in a peaceful manner; (iii) no weapons would be allowed to be carried in such organizations or

protests; (iv) the District Administration would conduct videography of such protests; (v) the District Magistrate would cause to notify the places

for organizing such protests with due publicity amongst ordinary citizens; (vi) at the level of the Tahsil, permission of the Deputy/District Magistrate

or the Additional Collector would be obtained. At the level of the District Headquarters, the District Magistrate/A.D.M./City Magistrate or the

S.D.M. would be the specified authorities. The format in which the permission would be granted has been specified, (vii) no public or private

property would be damaged in the course of agitations and if any such damage is caused, it will be indemnified by the organizers; (viii) In case of

political rallies, responsibility for compliance would be placed on the District President/State President or the National President, as the case may

be. Similarly, in the case of social or religious organizations, responsibility for compliance would be placed upon the Chief Officer of the institution.

In order to ensure the peaceful conduct of such rallies, it is necessary that no damage should be caused to religious places nor should there be any

insult to the religious beliefs of a particular segment of the society. Administrative compliance would be cast on the competent police officials

against whom proceedings would be initiated, in the event, that there was any dereliction of duties. The format of the undertaking requires the

organizers to state that they are conversant with the judgment of the Supreme Court in the case noted earlier and that the event, which is proposed,

would be carried out peaceably for which they would be responsible. Moreover the conduct of the event shall not result in disruptions of the public

roads and transport or public facilities and the orderly life of the community shall not be disrupted. Other conditions which are imposed while

granting permission would be duly observed. Notice of seven days is required to be furnished before organising any such event. The format, in

which permissions are to be granted, sets out the conditions for the grant of permission including, viz (i) a restraint on carrying weapons or arms;

(ii) a condition that speeches, slogans, posters or banners will not insult religious feelings; (iii) not to use filthy language or make vulgar comments;

(iv) no damage would be caused to public or private property, and if any such damage is caused, action in accordance with law would be taken;

(v) responsibility for compliance would attach to the organizers; (vi) there shall be no destruction of any idol, monument, institution or place of

worship; (vii) no damage would be caused to the vendors, shopkeepers by the persons in the route of processions; (viii) compliance of directions

issued by the police and administrative officers will be followed and in the event of breach of any condition, the permission shall be deemed to be

revoked.

5. Two submissions have been urged primarily in support of the petition which is filed in the public interest. Firstly, it has been submitted that the

restriction on the fundamental rights under Article 19 of the Constitution can only take place by a duly enacted law or legislation and the circular

which has been issued by the Principal Secretary (Home) does not constitute law as defined for the purpose of Article 19; secondly, the circular, if

read with the undertakings and the form for grant of permission, is violative of the fundamental right to the freedom of speech and expression and

of the right of every citizen to assemble peaceably.

6. In *Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad and Another*, , the Supreme Court held that even before the Constitution, a

citizen had a right to hold meetings on public streets, subject to the control of the appropriate authority regarding the time and place of the meeting

and subject to considerations of public order. Though the Constitution recognizes the right to assemble peaceably and without arms, it is well

settled that this does not grant a liberty to a citizen to exercise this freedom in whatever manner or place that he chooses. The State cannot prohibit

assembly on every public street or public place but can make regulations in aid of the right of assembly by imposing reasonable restrictions in the

interest of public order. A provision, which vests an arbitrary discretion on, whether or not, to grant permission to hold a public meeting, would be

an unreasonable restriction. At the same time, there is nothing wrong or unconstitutional in requiring previous permission for holding a public

meeting in a public place or street for, the right under Article 19(1)(b) does not extend to hold a public meeting at any place and time. The

fundamental right is capable of regulation so that every member of the community can exercise the right.

7. In a more recent judgment of the Supreme Court delivered in *Ramlila Maidan Incident Vs. Home Secretary, Union of India (UOI) and Others*, ,

the body of the law on the subject has been revisited. The Supreme Court has held that when the orders passed by the executive are supported by

a valid and effective law, the restriction imposed thereby is likely to withstand the test of reasonableness. In order to be reasonable, a regulatory

measure must have a direct nexus with the object and be proportionate with the right sought to be restricted consistent with the requirement of the

society. While referring to the judgment of *Himat Lal* (supra) the Supreme Court held that there is a constitutional difference between a reasonable

regulation and arbitrary exclusion. The power of the appropriate authority to impose a reasonable regulation, in order to ensure the safety and

convenience of people in the use of public highways, has not been regarded as inconsistent with the fundamental right of assembly. Similarly, the

judgment of three learned Judges in *Destruction of Public and Private Properties* (supra) was also followed wherein it has been held as follows:

286.5. It is neither correct nor judicially permissible to say that taking of police permission for holding of dharnas, processions and rallies of the

present kind is irrelevant or not required in law. Thus, in my considered opinion, the requirement of associating police, which is an important organ

of the State for ensuring implementation of the rule of law, while holding such large-scale meetings, dharnas and protests, would not infringe the

fundamental rights enshrined under Articles 19(1)(a) and 19(1)(b) of the Constitution. This would squarely fall within the regulatory mechanism of

reasonable restrictions, contemplated under Articles 19(2) and 19(3). Furthermore, it would help in ensuring due social order and would also not

impinge upon the rights of others, as contemplated under Article 21 of the Constitution of India. The police authorities, who are required to

maintain the social order and public tranquility, should have a say in the organisational matters relating to holding of dharnas, processions, agitations

and rallies of the present kind. However, such consent should be considered in a very objective manner by the police authorities to ensure the

exercise of the right to freedom of speech and expression as understood in its wider connotation, rather than use the power to frustrate or throttle

the constitutional right. Refusal and/or withdrawal of permission should be for valid and exceptional reasons. The executive power, to cause a

restriction on a constitutional right within the scope of section 144, Cr.P.C., has to be used sparingly and very cautiously. The authority of the

police to issue such permission has an inbuilt element of caution and guided exercise of power and should be in the interest of the public. Such an

exercise of power by the police should be aimed at attainment of fundamental freedom rather than improper suppression of the said right.

8. The circular, which has been issued by the Principal Secretary (Home), is essentially in furtherance of the binding directions which were issued

by the Supreme Court in the case involving *Destruction of Public and Private Properties* (supra). The Supreme Court specifically accepted the

recommendations of the Justice K.T. Thomas Committee and Mr. F.S. Nariman Committee and thereafter left it open to the appropriate

authorities to take effective steps for their implementation. Properly construed, the impugned circular dated 27 April 2011 does not constitute an

abridgement or restriction on fundamental rights. The circular recognizes the right of every citizen to hold processions, agitations and dharnas. This

is a valuable right in a democracy and is protected by Article 19 of the Constitution both as an independent part of freedom of speech and

expression and a part of the right to assemble peaceably and without arms. At the same time, the exercise of the right has to be in a manner

consistent with the public interest in protecting the right of the community at large to carry on peaceful agitation and not to be disrupted in the

enjoyment of their own right to life, which is protected under Article 21 of the Constitution. The Supreme Court has noticed the adverse

consequences when public agitations result in causing damage to private and public property. In the cases of damage to private properties as is

largely the case, innocent citizens are deprived of their properties mostly without any inculpatory action on their part. In cases of damage to public

properties, any damage to public property is necessarily a damage to the public interest in protecting and securing public facilities which are meant

for the enjoyment of the community at large. The circular which has been issued by the Principal Secretary (Home), thus, seeks to maintain the

balance between two important fundamental rights; the first being the right of those who wish to organize demonstrations and protests, and the

second the fundamental right of every member of the community at large to be secure in the lawful pursuit of life and to lead a dignified life.

9. There is no merit in the submission that the circular does not constitute legislation and, therefore, be quashed. There is no dispute about the basic

principle of law that the deprivation of a fundamental right under Article 19 of the Constitution must be supported by a valid legislation and not by a

mere executive fiat or order. Article 162 of the Constitution, as is clear from the opening words, is subject to other provisions of the Constitution.

Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others, The challenge to the circular on that ground must fail

because properly construed, the circular does not constitute an abridgment of the fundamental right conferred by Article 19 to the freedom of

speech and expression or to assemble peaceably without arms. The circular is a facilitative instrument and lays down guidelines to ensure that the

exercise of those rights takes place in an orderly manner bearing in mind the need to conserve and protect corresponding rights which are vested in

every citizen of society. Secondly, the circular has been issued for enforcement of the binding judgment of the Supreme Court. The law declared

by the Supreme Court binds every citizen and authority under Article 141 of the Constitution. Every administrative and public authority is duty

bound to enforce the directions of the Supreme Court which has been done in the present case.

10. During the pendency of these proceedings, the Division Bench, in an interim order dated 16 July 2013, had noted that a balance is required in

such cases between two sets of fundamental rights; one of the society at large to leave a peaceful and orderly life and the other of the members of

the democratic polity to assemble and speak out their feelings. The Court observed that the right to hold such assemblies is to be only regulated in

a reasonable manner but cannot be denied on the whims and fancies of executive officers. Hence, it was noted that the denial of the right must be

for good reasons to be clearly spelt out in the guidelines. A reasonable time limit should also be prescribed for disposal of applications for grant of

license or permission.

11. Having regard to this, the Home Department was called upon to reconsider the matter and to place its views before the Court by the next date.

In pursuance of the directions of the Court, it has been submitted by the learned Additional Advocate General that the entire issue is now engaging

the attention of the Home Department and views have been elicited of diverse authorities of the State including the Director General of Police and

of the administrative departments. The learned Additional Advocate General has stated that the entire process would be completed within a period

of three months from today and a considered decision would be taken.

12. We are of the view that there are two areas of consideration in particular where the power to grant permission or to refuse, must be carefully

structured. Firstly, the refusal of permission must be based on objective considerations having a bearing on the need to maintain public order.

Where permission is required to be refused, it must be based on an objective application of mind to all the relevant facts and circumstances and

should be based upon considerations, which are recorded in the form of a reasoned order. The refusal of permission cannot be a matter of

subjective opinion but must be a decision on the basis of a due application of mind to the relevant and germane circumstances. Extraneous

circumstances cannot be taken into consideration for instance, whether the organizer of a meeting holds views which are antithetical to the

administration of the day. In fact, the very object and purpose of holding demonstrations and protests is to express views at variance to the views

of the Government of the day. Democracy allows dissent. Hence, any attempt to control dissent must be seriously frowned upon. Refusal of

permission must consequently not be a ruse to deny a voice to a perspective in the political spectrum. Secondly, all applications for the grant of

permission should be disposed of expeditiously and preferably within a period of seven days of the receipt of the application. Within this period, an

effort should be made, after holding meetings with the organizers of the proposed meeting, to find out solutions that would ensure that the meeting

or organization of a protest can take place in an orderly fashion at a pre-determined place. This would ensure that the denial of permission does

not become the norm but an exception while at the same time, protests do not result in a situation where the orderly life of the community is

disrupted. While the right to give vent to political views, ideas and opinions has a high priority in a democratic system, equally that cannot be at the

expense of the right which inheres in every member of the society to lead a life which is free of disruptions and danger. Both sets of consideration

must be kept in mind.

13. We direct that the Government shall have due regard to these observations, as well as to the law laid down by the Supreme Court in the

decisions noted earlier, when it considers the manner in which, a further refinement of the administrative circular is required. We may also note that

after the impugned circular, a further circular has been issued on 17 June 2011. Since the State Government is in the process of carrying out a

comprehensive review that would also include a review of the circular dated 17 June 2011, which was placed on record together with the counter-

affidavit. We would also commend to the State Government to elicit the views from a broad section of society so as to ensure that the modalities

which are ultimately finalized have the confidence of citizens, civil society organizations and diverse views across the political spectrum. We

accordingly dispose of the petition in the terms as stated above.