

2018
HIGH COURT, APPELLATE SIDE,
CALCUTTA

No. 167- R(JS)

Dated, Calcutta, the 12th January, 2018

**From: Sri Subhasis Dasgupta,
Registrar (Judicial Service),
High Court, Appellate Side,
Calcutta.**

**To: 1) All the District Judges of West Bengal,
2) Chief Judge, City Sessions Court, Calcutta**

**Sub:- Direction of the Hon'ble Court in the matter of being AST No. 1/2018
with ASTA No. -2 of 2018 (State of West Bengal & Ors. -Vs.- Debjit
Sarkar)**

Sir/Madam,

In continuation with the Hon'ble Court's letter no. 1-R(JS)SPL dated 11.01.2018, I am directed to forward herewith a copy of the Judgment dated 11.01.2018 passed by the Hon'ble Division Bench comprising of the Hon'ble the Acting Chief Justice and the Hon'ble Justice Arijit Banerjee in the above referred matter for your information and compliance.

Enclo: As stated

Yours faithfully,


Registrar (Judicial Service)

HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Acting Chief Justice Jyotirmay Bhattacharya
AND
The Hon'ble Justice Arijit Banerjee

AST No. 1 of 2018
With
ASTA No. 2 of 2018

State of West Bengal & Ors.
-versus-
Debjit Sarkar

For the appellants:-

A.A.G.,

Adv.,

Mr. Kishore Datta, Ld. A.G.,
Mr. Abhratosh Majumdar, Ld.
Mr. T. M. Siddiqui, Sr. Govt.
Mr. Nilatpal Chatterjee,
Mr. Avra Majumdar

For the respondent.

Mr. Saptangsu Basu, Sr. Adv.
Mr. Kumarjyoti Tewari,
Mr. Aniruddha Chatterjee,
Mr. Brajesh Jha,
Mr. Tarunjyoti Tewari,
Mr. Partho Ghosh,
Mr. Rahul Sarkar,
Mr. Manabendra Bandhopadhyay,
Mr. Nikunj Beralia,
Mr. Debasis Basu,
Mr. Bivekananda Sinha Roy,
Mr. Rajdeep Biswas,
Mr. Subas Ray,
Mr. Soomen Bhattacharyya,
Ms. Ashima Roychowdhury,
Ms. Debjani Ghosh,
Mr. Siv Chandra Prasad

Heard On : 11th January, 2018.

Judgement On : 11th January, 2018.

Arijit Banerjee, J.

In view of the urgency involved in this appeal, we have decided to take up the appeal and the application filed in connection therewith treating the same as on the day's list in the presence of the writ petitioner as well as the respondents.

On 5th January 2018, the Bharatiya Janata Yuva Morcha (BJYM) applied to the Director General of Police and Inspector General of Police, West Bengal, for permission to hold a motorcycle rally from Contai to Cooch Behar spanning over a period of one week starting from 11th January 2018 till 18th January 2018.

By a Memo dated 9th January 2018, the Additional Director General of Police (Law & Order), West Bengal, rejected such application. The rejection order reads as follows:-

"In reference to your letter dated 05.01.2018 in connection with BJYM West Bengal Bike rally from Contai to Coochbehar addressed to The Director General and Inspector General of Police, West Bengal, this is to request you to refrain from going ahead with the aforesaid program as the Gangasagar Mela is going on covering the said period. You are well aware that a huge number of pilgrims from within the State and various parts of India visit the Mela and their smooth to and fro movement covering the entire State is very important. Your proposed rally will cause disruption to the smooth movement of the pilgrims. Hence, keeping in view the above facts in mind permission for your proposed program cannot be given.

We hope that you will be good enough to cooperate with the administration for the overall interest of people and take action accordingly."

The applicant, i.e. Bharatiya Janata Yuva Morcha (BJYM), approached the learned single judge by filing W.P.No. 563 (W) of 2018 challenging the order of rejection. By a judgement and order dated 10th January 2018, the learned single judge granted permission to the writ petitioner to hold the rally subject to certain restrictions detailed in the said order.

Being aggrieved, the State of West Bengal and the police authorities have challenged the said order before us in the present appeal.

We have heard the learned counsel for the parties and we have very carefully considered the impugned judgement and order.

The main objection of the Learned Advocate General representing the appellants is that due to Ganga Sagar Mela, a huge number of police personnel had to be deployed at various places to ensure smooth passage of the pilgrims and their safety. Hence, the State may not have sufficient number of police personnel to monitor the proposed rally to ensure that the rally is held peacefully and without any law and order problem. The learned Advocate General submits that because of such administrative inconvenience, the order of the learned single judge is unimplementable and should be set aside. He further submits that the court should not take an administrative decision, which is within the exclusive domain of the Government. In this connection he relies on a decision of the Hon'ble Supreme Court of India, in the case of -Himachal Pradesh Public Service Commission -vs- Mukesh Thakur & Anr. Reported in (2010) 6 SCC 759. The Learned Advocate General also referred to the decision of this court in the case of -Sasanka Sekhar Dey -vs- State of W. B. reported in 2017 SCC OnLine Cal 1914 : (2017) 2 CHN 55, which was relied upon by the writ petitioner before the learned single judge. He further submits that in that case the political party proposed to hold a drill on a particular day and hence permission was granted in totally

different facts and circumstances. The said case has no application to the facts of the present case.

We find from the rally-route chart, annexed to the writ petition, that the exact roads through which the rally will pass have not been delineated in the chart which only includes the names of the places through which the rally will pass.

We are in agreement with the learned single judge that the right to hold rally cannot be denied. However, all rallies must be held peacefully and without causing inconvenience to the members of the public and without restricting their movement in any manner.

We respectfully agree with the principle of law laid down in the aforesaid Supreme Court decision, but in our opinion, the same has no application to the facts of the present case. In that case, the Hon'ble Supreme Court held that the court should not take over the function of a statutory authority and should not take upon itself the function of evaluating or re-evaluating the answer scripts in an examination. However, it was not laid down that if the constitutional right of a party is sought to be infringed by the administration, the court cannot pass appropriate order to protect such right.

We are not inclined to interfere with the order impugned. The grounds urged before us by Learned Advocate General do not find place in the rejection order that was impugned before the Learned Single Judge. Permission was denied only on the ground that the rally will cause disruption to the smooth movement of the pilgrims heading for the Gangasagar Mela. However, as noted by the Learned Single Judge with which we agree, the rally route is not likely to interfere with the movement of the pilgrims.

Having considered the facts and circumstances of the case and the submissions made on behalf of the parties, we modify the judgement and order of the learned single judge to the following effect:-

i) The writ petitioner shall give up the rally from Burdwan to Santipur on 2nd day, i.e. 12th January, 2018 and the rally covering Birbhum to Baharampur on the 3rd day, i.e. 13th January, 2018.

ii) Mr. Rabi Sankar Dutta, learned advocate, is appointed as a Special Officer who will accompany the rally till the rally reaches its destination.

iii) The learned District Judges of all the districts through which the rally will pass are requested to depute a responsible Judicial Magistrate for the purpose of accompany the Special Officer.

iv) The police authorities are directed to depute a responsible police officer, not below the rank of Deputy Police Commissioner/Deputy Superintendent of Police as the case may be, with adequate police force as the authorities may deem fit and proper to accompany the Special Officer and the rally.

v) The writ petitioner shall make available a detailed route map delineating the roads and highways through which the rally will pass alongwith the tentative time as to when and which place the rally will cross to the learned Special Officer and the appropriate police authorities at least one day in advance.

vi) The rally shall strictly adhere to such intimation given to the learned Special Officer and the police authorities.

vii) In case any untoward incident or any breach of law and order is apprehended or if the rally deviates from the route intimated to the learned Special Officer and the police authorities, the Special Officer shall forthwith stop the rally and the police authorities shall provide all assistance in that regard.

The Special Officer will be entitled to a remuneration of Rs.30,000/- (Rupees Thirty Thousand) only per day, to be paid by the writ petitioner/Bharatiya Janata Yuva Morcha.

The writ petitioner shall also arrange a motor car for the learned Special Officer along with fooding and lodging for the entire period of the rally during which the Special Officer shall accompany the rally.

The writ petitioner shall also arrange for return of the learned Special Officer from Cooch Behar to Kolkata at the end of the rally.

Let a photostat plain copy of this order, duly countersigned by the Assistant Registrar (Court), be given to the learned advocates for the parties, including the learned Special Officer on usual undertaking.

The learned District Judges, the Magistrates and the police authorities are directed to act upon such plain copy of the order.

The registry is directed to communicate a copy of this order to the learned District Judges of the respective districts for its implementation.

The matter will appear on 29th January, 2018 as 'To Be Mentioned' for submission of a report by the learned Special Officer as regards implementation of this order.

For all practical purposes, the appeal and the application filed in connection with this appeal are disposed of.

(Jyotirmay Bhattacharya, A.C.J.)
J.)

(Arijit Banerjee,

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