

Form No.J(2)
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 2345 of 2024

With

CAN 1 of 2024

The State of West Bengal & ors.

Vs.

Joint Platform of Doctors & anr.

For the appellant : *Mr. Kalyan Bandyopadhyay*, Sr. Advocate
Mr. Sirsanya Bandyopadhyay, J. S.C.
Ms. Amrita Panja Moulick, Advocate
Mr. Arka Kumar Nag, advocate
Mr. Rahul Singh, Advocate

For the respondents : *Mr. Bikash Ranjan Bhattachasryya*, Sr. Advocate
Mr. Samim Ahmmed, Advocate
Ms. Saloni Bhattacharya, Advocate
Mr. Enamul Islam, Advocate

Heard on : 23.12.2024.

Judgment on : 23.12.2024.

Harish Tandon , J:

1. The point is raised in the instant appeal on the scope and the jurisdiction of the writ court in entertaining the writ petition assailing the decision of the executive in declining to grant permission to hold in sit-in-demonstration at Dorina Crossing, Esplanade, Kolkata. The prelude to the litigation is required to be adumbrated before we

embark our journey on the peripheral of the points raised by learned senior advocate appearing for the appellant.

2. The respondent No. 1 is Joint Forum of Doctors and the respondent No. 2 is one of its member who approached the police authorities for permission to hold peaceful protest raising certain grievances relating to an unfortunate and barbaric incident of R.G. Kar Medical College and Hospital at the night of August 9, 2024. The entire nation was shocked with such incident and the civil societies came forward raising a concern not only on the safety and security of the Doctors, interns or the medical staffs but also for an appropriate step to be taken to impart justice to such victim.
3. The respondents have decided to hold a peaceful sit-in-demonstration at Dorina Crossing, Esplanade, Kolkata for bringing the real person within the clutches of the law and to generate the awareness amongst the common people in this regard. Admittedly, the permission is declined by the police authorities on 16th December, 2024 citing a reason that because of the ensuing Christmas eve and the new year eve, large number of people from different parts of the State and the city of Kolkata visit the place where the proposed peaceful sit-in-demonstration is sought to be held by the respondents and there is every possibility that congestion would be created because of the same causing inconvenience and/or difficulties to the peoples who celebrate such festival.
4. The writ petition came to be filed claiming various reliefs and the primary relief being that they should be permitted to continue with the demonstration at Dorina Crossing, Esplanade, Kolkata without any undue influence by the police authorities by setting up necessary infrastructure and the designated demonstration site and be treated equally with the other political parties and organizations who have organized the protest rallies and/or demonstration by setting up the stage.

5. The Single Bench passed an interim order allowing the peaceful sit-in-demonstration by the respondents and the place where the demonstration would take place is 50ft. away from the main crossing. The Single Bench further ensured that there is no difficulty to the commuters or the peoples in celebrating the festival of Christmas and restricted the numbers to 200 to 250 at a time. The Single Bench further ensured that the entire area should be guarded by the guardrails which would engulf the followers and the protestors and will also eradicate any congestion with the assembly of common people.
6. The State has come up in the instant appeal flagging an issue that the Court should not usurp the power of the administrative authorities in taking a decision in the administrative fiat and if plausible or reasonable grounds have been assigned in the administrative order, it calls a minimal interference in the judicial side. The Judgment of the Apex Court in the case of **Union of India and Others vs. Modiluft Ltd.** Reported in **(2003)6 SCC 65**, **State of U.P. and Others Vs. Modern Transport Co., Ludhiana** reported in **(2002)9 SCC 514**, **State of U.P. And Others vs. Ram Sukhi Devi** reported in **(2005)9 SCC 733** and a Division Bench Judgment of Madras High Court in case of **Rama. Muthuramalingam, State Propaganda Committee Member, Thanthai Periyar Dravidar Kazhagam, No. 31, Nagraja Lyer Colony, South Fourth Street, Mannargudi, Tiruvarur District vs. The Deputy Superintendent of Police, Mannnargudi, Tiruvarur District and Others** reported in **(2004)5 CTC 554** are cited before us. In support of the contention that the High Court cannot sit as an appellate authority over the decision and orders of the administrative authorities as the maintenance of law and order is ordinarily an executive function and it would not be proper on the part of the Court to transgress into such domain.
7. We have no quarrel to the proposition laid down in the above noted reports. There is a separation of three organs envisaged in the

Constitution of India and its powers and functions are also well defined. The transgression and/or overlapping amongst the three organs is always eschewed and care and protection are always envisaged so that all the three organs can act independently in discharge of their solemn duties. The Courts have imposed self-restraint in entering into the arena of an administrative functions unless and until it fails on the test of reasonability (Wednesbury principle).

8. The aforesaid reports have further taken into account the interim order passed in a proceedings which would impliedly render the final relief to be granted to the party without affording an opportunity to the adversary to portray its view and/or decision in relation to the facts pleaded therein.
9. Such broad principles of law is well settled and does not require any dissent therefrom yet none of the Judgments have foreclosed the powers of the writ Court in passing an interim order solely on the plea that it would tantamount to granting the final relief. The aforesaid notion shall be fructified with the observations of the Apex Court in case of **Modern Transport Co., Ludhiana (supra)** in the following:

“3. There is nothing to indicate that any notice was issued and adequate opportunity given to the appellants herein to file a reply in opposition to the writ petition. The copy of the order filed also does not indicate any counsel being present on behalf of the appellants herein. Without giving any reason whatsoever, orders were passed by the High Court directing the release of the truck and the goods. This was the only prayer in the writ petition which, in effect, stood allowed by the impugned order dated 17.11.2000.”

(emphasis supplied)

10. In case of **Ram Sukhi Devi (supra)**, the Apex Court though held that the Court should ordinarily not pass an interim order which would impact the final relief but does not rule out the power of the Court in absolute term but highlighted that in such event, there should be a better reason based on a *prima facie* case, the balance of convenience and inconvenience and the irreparable loss and injury and above all on the public interest in the following:

“8. To say the least, approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by learned Single Judge as to why the government order dated 26-10-1998 was to be ignored. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition. This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage. The position is worsened if the interim direction has been passed with stipulation that the applicable government order has to be ignored. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a prima facie case having been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. [See *CCE v. Dunlop India Ltd.*¹ (SCC at p. 265), *State of Rajasthan v. Swaika Properties*² (SCC at p. 224), *State of U.P. v. Visheshwar*³, *Bharatbhusan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa*, *Shiv Shankar v. Board of Directors, U.P. SRTC and Commr./Secy. to Govt. Health and Medical Education Deptt. Civil Sectt. v. Dr. Ashok Kumar Kohli.*] No basis has been indicated as to why learned Single Judge thought the course as directed was necessary to be adopted. Even it was not indicated that a prima facie case was made out though as noted above, that itself is not sufficient. We, therefore, set aside the order passed by learned Single Judge as affirmed by the Division Bench and without expressing any opinion on the merits of the case we have interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons. Since the controversy lies within a very narrow compass, we request the High Court to dispose of the matter as early as practicable, preferably within six months from the date of receipt of this judgment.”

(emphasis supplied)

11. The Division Bench of Madras High Court in **Rama. Muthuramalingam, State Propaganda Committee Member, Thanthai Periyar Dravidar Kazhagam, No. 31, Nagraja Lyer Colony, South Fourth Street, Mannargudi, Tiruvarur District (supra)** in unequivocal term held that ordinarily the interference against the administrative order should be avoided but if it offends the test of reasonability, there is no fetter on the part of the Court to grant it in the following:

“11. This Court should not ordinarily interfere in administrative matters, since the administrative authorities are specialists relating to the administration. The Court

does not have the expertise in such matters, and ordinarily should leave such matters to the discretion of the administrative authorities., It is only in rare and exceptional cases, where the Wednesbury principle applies, that the Court should interfere, vide Tata Cellular v. Union of India, 1994 (6) SCC 651; Om Kumar v. Union of India, 2001 (2) SCC 386, etc.”

12. The law enunciated in the above report as discerned from its meticulous meaning, there is no ambiguity in our mind that the Court should be slow and circumspect in interfering with the administrative decisions unless it fails the test of reasonability. It is also not a rule of universal application that the Court cannot pass an interim order of a nature as it would tantamount to granting the final relief if the facts and circumstances is so evident and imminent from the record and the test of balance of convenience and inconvenience and the irreparable loss and injury would cause impairment to the right, the Court may pass an interim order at the interlocutory stage but after providing reasons in support thereof.
13. We are conscious that the order which is bereft of reasons cannot be regarded as an order in the eye of law. The reason is the heart and soul of any order without which it cannot survive. There is no fetter on the part of the appellate Court to provide reasons, in the event, the appellate Court found that the ultimate decision appears to be correct. The question hinges on the right of civil society to hold demonstration which is peaceful and non-violent being one of the facets of the fundamental rights guaranteed under the Constitution.
14. As indicated above, the issue pertains to an unprecedented, unfortunate and unimaginable incident happened in the R.G. Kar Medical College and Hospital and the investigation was entrusted upon the CBI in one of the public interest litigation filed before this Court. Subsequently, the Apex Court has initiated *suo moto* proceedings and it appears that the prayer for injuncting restraining the people of the country to make a peaceful protest at the behest of the State was declined therein which would be evident from the order dated 22nd August, 2024 in the following:

“9.Mr. Kapil Sibal, senior counsel appearing on behalf of the State of West Bengal and the Kolkata police submits that while this Court has permitted peaceful protest, the order should not be misconstrued to mean that the authorities are precluded from exercising their regulatory powers in accordance with law. This Court has not injuncted the State from exercising such lawful powers as are entrusted in terms of the law. However, we categorically reaffirm that peaceful protest should not be disturbed or disrupted, and the State shall not take any precipitate action against those who are peacefully protesting against the incident which took place at RG Kar Medical College Hospital.”

15. Every citizen of a country has a right to make a peaceful protest provided a sufficient safeguard is taken in this regard which does not encroach upon the rights of the people at large. There has been a nationwide protest in relation to such unprecedented incident and the Doctors forum being a responsible citizen of the country are aware that any protest which would cause inconvenience or encroach upon the rights of the parties are not acceptable. Every citizen of the country has a right to make a peaceful protest and, therefore, while refusing to grant such permission, the authorities must also bear in mind the other past incidents where the permission was granted. Though Mr. Bandyopadhyay, learned senior advocate highlights that in the past there has been a congestion in an around the area where the protest was held but there has been several other incidents where the permission was granted and the inconvenience to the public has been seen.
16. We thus do not think that there is any justification in the stand of the police authorities in refusing to grant permission but equally we cannot overlook that the respondents themselves in the writ petition indicated that there will be only a gathering of 100 peoples but in the impugned order, the learned Judge has increased it to 200 to 250 people. The Court cannot substitute its own view and pass an order which is neither pleaded nor prayed for by the parties.
17. Apart from the same, we find that the Single Bench has taken all care so as to eradicate any congestion or inconvenience or disturbances in a free movement of the vehicles and the people on the eve of

Christmas festival and have directed the guardrails to be put in and around the stage. We have been given the video photograph taken at the site where the protest is ongoing and we do not find any disruption in the traffic or disturbances and/or inconvenience having created to the commuters at the said locality.

18. We thus modify the order to the extent that instead of 200 to 250 people should be restricted to 100 as prayed for by the respondents. We appreciate the steps having taken by the police administration so that there is no disruption in the peaceful protest by providing an adequate securities and we hope and trust that it would continue until 26th December, 2024. Apart from the modification as indicated above, the other portion of the impugned order is not interfered with. Since the matter is returnable by the Single Bench on 13th January, 2025, the Single Bench is requested to decide the matter on the point to be taken before it.
19. For abundant protection, we made it clear all the points available to the parties shall not be treated as concluded in the instant Judgment and if any such point is taken, the Single Bench is free to take a decision without being influenced by any observations made hereinabove.
20. Accordingly, the appeal and the connected application are disposed of.
21. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Harish Tandon, J.)

(Hiranmay Bhattacharyya, J.)