

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 4078 of 2024

Suwendu Adhikari & Anr.
-versus
State of West Bengal & Ors.

Mr. Rajedeeep Mojumder
Mr. Moyukh Mukherjee
Mr. Suryaneel Das
Mr. Chirajit Pal ...For the Petitioner No. 1

Mr. Billwadal Bhattacharyya
Mr. Tarunjyoti Tewari
Mr. Anish Kumar Mukherjee
Mr. Suryaneel Das ... For the Petitioner No. 2

Mr. Asok Chakraborty, A.S.G. (thorough video conference)
Mr. Srijib Chakraborty
... For the U.O.I.

Mr. Kishore Datta, Ld. A.G.
Mr. Amitesh Banerjee, Ld. Sr. Standing Counsel
Mr. Debangshu Dinda
... For the State

Petitioner no.1 is a Member of West Bengal Legislative Assembly and the Leader of the Opposition.

Petitioner no.2 is also a Member of West Bengal Legislative Assembly.

By filing this writ petition, the petitioners have prayed, *inter alia*, for an order allowing them to visit Sandeshkhali, North 24-Parganas on February 19, 2024 or February 20, 2024. The petitioners have also prayed for setting aside of a communication dated February 15, 2024, issued by the Superintendent of Police, Basirhat Police District, whereby the permission to visit

Sandeshkhali was denied on the ground that visit of the petitioners might lead to a violation of the order passed under Section 144 of the Code of Criminal Procedure, 1973, by the Sub-Divisional Officer, Basirhat.

Mr. Rajedeep Mojumder, learned advocate appearing for the petitioners, has drawn attention of this Court to an order dated February 13, 2024, in WPA No.3869 of 2024 (*Taher Ali Sheikh & Anr. v. The State of West Bengal & Ors.*), whereby a Co-ordinate Bench of this Court was pleased to set aside an order dated February 9, 2024, promulgated under Section 144 of the Code of Criminal Procedure, 1973, by the Sub-Divisional Officer, Basirhat, North 24-Paraganas, in Sandeshkhali Police Station area.

Mr. Mojumder submits that said order was passed on the basis of a police report dated February 9, 2024. On the basis of an another report dated February 13, 2024, again the said Sub-Divisional Officer issued another order dated February 13, 2024 under Section 144 of the Code of Criminal Procedure, 1973, for the period between February 13, 2024 to February 19, 2024. Subsequently, on the basis of yet another police report dated February 18, 2024, the Sub-Divisional Officer, Basirhat, issued another order under Section 144 of the Code of Criminal Procedure, 1973, for a period of February 18, 2024 to February 21, 2024.

Mr. Mojumder submits that these repeated orders under Section 144 of the Code of Criminal Procedure, 1973 are identical and have been issued without any application of mind.

He places reliance upon the judgments reported at **(2020) 3 SCC 637 (*Anuradha Bhasin v. Union of India*)**.

Conversely, Mr. Kishore Datta, learned Advocate General, on the other hand has submitted that promulgation of the orders under Section 144 of the Code of Criminal Procedure, 1973, was in fact a reasonable restriction within the meaning of Article 19(5) of the Constitution of India.

Mr. Datta has argued that the order dated February 13, 2024, was passed by the Co-ordinate Bench at the instance of the local residents of Sandeshkhali to protect the rights and interests. The petitioners cannot take advantage of the said order to visit the disturbed area in purported exercise of their rights.

Mr. Datta has further submitted that the facts as recorded by the Sub-Divisional Officer, Basirhat, in his orders have not been disputed by the petitioners. When the said officer, after taking into consideration of the said facts, has passed the orders on his subjective satisfaction, this Court should not lightly interfere with such order.

Mr. Datta has further cites an intelligence report from the Union indicating a likelihood of law and order problems during the proposed visit of petitioner no.1 on February 15, 2024 at Sandeshkhali.

In support of his submission, Mr. Datta has relied upon the judgments reported at **(1970) 3 SCC 746 (*Madhu Limaye v. Sub-Divisional Magistrate, Monghyr*)** and **(2012) 5 SCC 1 (*Ramlila Maidan Incident, In Re*)**.

I am of the, prima facie, view that the order dated February 18, 2024, has been passed by the Sub-Divisional Officer,

Basirhat, North 24-Paraganas, disregarding the order dated February 13, 2024, passed by the Co-ordinate Bench of this Court. The relevant part of the said order is quoted below:

“Non-arresting of the prime miscreants and their accomplices coupled with restriction on free movement of the villagers, at least in terms of Section 144 of the Code, may pose undue harassment to the inhabitants of the area and make them more vulnerable to further atrocities, especially in view of the peculiar geography of the place. The police need to address this issue with better care and circumspection. It further appears that unless a sense of confidence can be instilled in the minds of the local people they would not be able to come up with their complaints. Simply deputing any officer of any rank to receive complaints may not suffice.

...

This order merely and broadly refers to a tension prevailing in the police station area and a reporting that a large number of people shall gather in front of police station. The exact nature of alleged illegality, committed or apprehended or the exact area that has to be covered have not been mentioned or discussed in the order. It only makes a bald and ritualistic reference to the possibility of breach of peace.

...

In view of the above discussions, the impugned order of promulgation of the order under Section 144 of the Code cannot be sustained either in law or on facts and therefore, is quashed and set aside. However, considering the situation prevailing in the area, the State shall be at liberty to pray for promulgation of any such order in respect of the exact area of disturbance, as for instance, at the two places allegedly attacked along with a radius of a few meters. All concerned are directed to exercise restraint. However, instead of exhausting all their efforts to quell protests by, at best lathi-weilding village women, the police authorities need to fix their priorities better and look for the two alleged prime perpetrators of crime. Only if they are hauled up, can the tortured women of the village muster enough courage to lodge all their complaints. If such complaints are made, the respondent authorities shall also inquire to the wrongdoings of the concerned police personnel as well, whether for abetment of such crimes or for destruction of evidence. The police authorities shall also keep a sharp vigil at the locale, deploy more armed personnel in the area for keeping peace and use modern technology like Drone Cameras to conduct surveillance. With the above observations, the writ petition is disposed of.”

It appears that the first order under Section 144 of the Code of Criminal Procedure, 1973, dated February 9, 2024, was based on a police report dated February 9, 2024. The second order was

passed on February 13, 2024, based on another police report dated February 13, 2024. The said two police reports are almost identical; only the following lines were added in the second report.

“On 13.02.2024 a programme of SP office gherao was organized by BJP in which an unruly mob pelted stones and brickbats aiming at on duty police causing injury to several police personnel.

This is to draw to your attention that the current incidents at Sandeshkhali PS area posing threat to peace and tranquility in the area and there is every chance of violation of peace.

Further it is added that DIG, Intelligence Branch, West Bengal, vide his report has informed that there is a every chance of beach of peace by outside elements by way of provocation to the local public in Sandeshkhali PS area.

Further DIB, Basirhat PD has identified certain areas where miscreants are trying to create beach of peace and law and order problems.”

The aforesaid reports from DIG, Intelligence Branch, West Bengal, and DIB, Basirhat Police District were produced before this Court. Apart from some general apprehensions regarding law and order situation, nothing significant was recorded in the said reports.

The relevant Sub-Divisional Officer’s order dated February 13, 2024, restricted the operation of the order to nineteen places.

Order dated February 18, 2024, is, in fact, a verbatim reproduction of the order dated February 13, 2024. This time, however, the order was restricted to fifteen places only. It clearly appears that order dated February 18, 2024, is a result of non-application of mind of the Sub-Divisional Officer, Basirhat. He acted mechanically in issuing the said order dated February 18, 2024.

When a Co-ordinate Bench of this Court was pleased to set aside his order dated February 9, 2024, he ought to have taken into consideration the observations made in the said order while passing the order dated February 18, 2024.

Right to move freely throughout the territory of the Union, right to assemble peaceably and right to freedom of speech and expression are not ordinary legal rights. These fundamental rights directly flow from Article 19 of the Constitution of India.

I am at one with the argument advanced by the learned Advocate General that the State has its authority to impose a reasonable restriction to such rights by passing an order under Section 144 of the Code of Criminal Procedure, 1973. At the same time, I am of the clear view that such reasonable restriction cannot be imposed by a “cut-copy-paste” order, as has been done in the present case. **[See: Anuradha Bhasin (supra)]**

Accordingly, the order under Section 144 of Code of Criminal Procedure, 1973, dated 18.2.2024, passed by the Sub-Divisional Officer, Basirhat, North 24-Paraganas, is stayed until further order.

The petitioners will be allowed to visit Sandeshkhali Gram Panchayat under Sandeshkhali Block –II on February 20, 2024.

The petitioners, within 9:30 p.m. of this date, shall submit their proposed plan of visit along with the route map before the local police station.

The petitioners shall also file an undertaking before the local police station not to engage in any activities that may lead to deterioration of the law and order situation in the locality.

The State may deploy required number of security personnel to ensure that no untoward incident takes place during their visit.

The Superintendent of Police, Basirhat shall also file a report before this Court on the next date regarding the number of registered criminal cases relating to rape and sexual assault within the jurisdiction of Sandeshkhali Police Station from February 1, 2024, to the present date.

List this matter after seven days under the same heading. The State and the Union will be at liberty to file their affidavits in response to the allegations made in the writ petition, in the meantime.

After the order was dictated, Mr. Kishore Datta, learned Advocate General prays for stay of the operation of this order.

The prayer is considered and rejected.

(Kausik Chanda, J.)