

Date of hearing and delivery of  
Judgment & Order : 02.02.2023.

Whether fit for reporting : YES/NO.

**HON'BLE THE CHIEF JUSTICE(ACTING)  
HON'BLE MR. JUSTICE ARINDAM LODH**

**JUDGMENT AND ORDER(ORAL)**

C.J(Acting)

The petitioners herein have filed this present writ petition for issuance of writ in the nature of Mandamus/Certiorari or any other appropriate writ, order, or direction of like nature read with Section 482 of the Criminal Procedure Code, 1973 assailing the legality and sanctity of several criminal proceeding instituted against them by the State-respondents. Hence, the petitioners have prayed for the following reliefs:-

*" In the premises as aforesaid it is therefore most respectfully prayed that your lordships may be graciously pleased to admit the petition and call for the records(FIR/compliant/Charge sheet) from the respective police stations and issue Rule upon the Respondents to show cause as to why the criminal proceeding instituted against the petitioners vide (1) R.S. Pur P.S. case No.191/2020 dated 25.11.2020 & Charge Sheet No.68/2021 dated 23/04/2021;(2) Baikhora P.S. Case No.2020/BKR/084 dated 25.11.2020 & charge sheet No.30/2021 dated 18.05.2021; (3) Ompi P.S. case No.2020OMP014 dated 23.12.2020 & Charge Sheet No.3/2021 dated 31/01/2021; (4) Fatikroy P.S. case No.2020 FTK 029 dated 24.12.2020 & Charge Sheet No.2/2021 dated 23.04.2021; (5) Birganj P.S. Case No.2020/BRG/070 dated 23.12.2020 & Charge Sheet No.9/2021 dated 28.02.2021;(6) Teliamura PS Case No.2020 TLM129 & Charge Sheet No.28/2021 dated 18.05.2021; (7) Raishyabari PS Case No.2020/TSB/008 dated 24.12.2020 & Charge Sheet No.\_\_\_\_ dated 18/01/2021;(8) Fatikroy PS Case No.2020FTK015 dated 15/06/2020 & Chargesheet No.15/2021 dated 29.04.2021; (9)*

*Fatikroy PS Case No.2020FTK026 dated 26.11.2020 & Chargesheet No.1/2021 dated 30.01.2021; (10) Kanchanpur PS Case No.2020KCP048 dated 25.11.2020 & Charge Sheet No.28/2021 dated 23.05.2021; (11) KBK PS Case No.2020/KBK/023 dated 23.12.2020 & Charge Sheet No.7/2021 dated 18.05.2021; (12) Gandacherra PS Case No.2020GNC026 dated 23.12.2020 & Charge Sheet No.12/2021 dated 13.05.2021; (13) Ganganagar PS Case No.2020GNR003 dated 25.11.2020 & Charge Sheet No.02/2021 dated 12.05.2021; (14) Ganganagar P.S. Case No.2020ABS058 dated 23.12.2020; (15) Kanchucheera PS Case No.2018KCR017 dated 24.12.2020; (16) Champahour PS Case No.TLMPS129/2020 dated 25.11.2020.(17) Fatikroy PS Case No.2020 FTK025 dated 29.01.2021 (18) Ambassa PS Case No.2020ABS058 & Charge Sheet No.18/2021 dated 13.05.2021; (19) Dhalai PS Case No.003/2020 & Charge Sheet No.2/2021, dated 12.05.2021 should not be quashed and set aside being illegal, arbitrary and an abuse of the process of law and after hearing the parties may be pleased to make the Rules absolute and/or pass such order/s as to your Lordships may deem fit and proper.*

*AND*

*Pending disposal of the case, your Lordships in the Interim may be pleased to pass an order, directing the Respondents not to proceed any further in respect of the aforesaid cases and/or may be pleased to pass any such further order/orders as Your Lordships may deem fit and proper."*

2. Heard Mr. Manish Goswami, learned counsel assisted by Ms. S. Debbarma, learned counsel representing the petitioners and Mr. S. Kar Bhowmik, learned Sr. counsel assisted by Mr. S. Bal, learned counsel appearing for the respondents.

3. It is the case of the petitioners that one Sri Biswajit Debbarma, Fire Fighter succumbed to the injuries caused due to an attack by members of Nagarik Suraksha Manch and Mizo Convention on 21.11.2020 while he was on his way to home in the afternoon at Agnipassa on NH-08.

4. On 23.11.2020 the wife of the deceased-Biswajit Debbarma filed a complaint and an FIR was registered. But no

satisfactory action was initiated by the respondents. Thereafter, firstly on 23.11.2020 they have taken up the agitation by calling a bandh and again on 25.11.2020, they all assembled on the National Highway to protest and blocked the Highway. It was peak COVID-19 period.

5. On such action of the petitioners herein, the Police registered several FIRs in several Police Stations under Sections 34, 143, 145, 149, 151, 157, 186, 188, 269, 270, 283, 341, 353, 436, 506, IPC read with Section 8-B of the National Highway Act, 1956 and also under various sections of Disaster Management Act 2005, Epidemic Diseases Act 1987, Tripura Police Act, 2007 and Prevention of Damage to Public Property Act, 1984 Subsequently, the investigation is completed and the charge-sheets have also been filed.

Mr. Manish Goswami, learned counsel appearing for the petitioners in his argument on fundamental rights envisaged in Constitution of India has put the main emphasis on Article 19.(1)(a) and(b) of the Constitution of India which is extracted herein-under:-

**"19. Protection of certain rights regarding freedom of speech etc.-(1) All citizens shall have the right—**  
**(a) to freedom of speech and expression;**  
**(b) to assemble peaceably and without arms;"**

6. He further contended that the 1<sup>st</sup> petitioner-Organization has taken up the cause of the death of the victim and the injustice caused to the wife of the deceased person, Late Sri Biswajit Debbarma. Despite having video graphic and visual evidence, no action has been initiated by the State-respondents in the manner in which it was supposed to.

7. To strengthen his argument, he relied upon several judgments of the Hon'ble Supreme Court.

7.1. In ***Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad, and anr.***, reported in **(1973) 1 SCC 227**

**"Para-69-** *Freedom of assembly is an essential element of any democratic system. At the root of this concept lies the citizens' right to meet face to face with others for the discussion of their ideas and problems-religious, political,, economic or social. Public debate and discussion take many forms including the spoken and the printed word, the radio and the screen. But assemblies face to face perform a function of vital significance in our system, and are no less important at the present time for the education of the public and the formation of opinion than they have been in our past history. The basic assumption in a democratic polity is that Government shall be based on the consent of the governed. But the consent of the governed implies not only that the consent shall be free but also that it*

*shall be grounded on adequate information and discussion. Public streets are the 'natural' places for expression of opinion and dissemination of ideas. Indeed it may be argued that for some persons these places are the only possible arenas for the effective exercise of their freedom of speech and assembly."*

7.2. In **Anita Thakur and ors., Vs. Government of Jammu and Kashmir and ors.**, reported in **(2016) 15 SCC 525** "**Para-12-** We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. [Article 19\(1\)\(a\)](#) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. [Article 19\(1\)\(b\)](#) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under [Article 19\(1\)\(d\)](#), again, ensures that the petitioners could take out peaceful march. The 'right to assemble' is beautifully captured in an eloquent statement that "an unarmed, peaceful

*protest procession in the land of 'salt satyagraha', fast-unto-death and 'do or die' is no jural anathema". It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution."*

7.3. In ***Mazdoor Kisan Shakti Sangathan Vs. Union of India and anr.***, reported in **(2018) 17 SCC 324** wherein the Hon'ble Apex Court has given reference to some of its earlier judgments "**Para-49- In Babulal Parate v. State of Maharashtra**, this Court observed:

*31. The right of citizens to take out processions or to hold public meetings flows from the right in Art. 19(1)(b) to assemble peaceably and without arms and the right to move anywhere in the territory of India."*

**51.** The Supreme Court has also gone beyond upholding the right to protest as a fundamental right and has held that the State must aid the right to assembly of the citizens. *In the Constitution Bench Judgment, Himat Lal K. Shah v. Commr. of*

*Police, Ahmedabad*, while dealing with the challenge to the Rules framed under the Bombay Police Act regulating public meetings on streets, held that the Government has power to regulate which includes prohibition of public meetings on streets 9 (1962) Supp 3 SCR 369 10 (1973) 1 SCC 227 or highways to avoid nuisance or disruption to traffic and thus, it can provide a public meeting on roads, but it does not mean that the government can close all the streets or open areas for public meetings, thus denying the fundamental right which flows from [Article 19\(1\)\(a\)](#) and [\(b\)](#). The Court held:

"33. This is true but nevertheless the State cannot by law abridge or take away the right of assembly by prohibiting assembly on every public street or public place. The State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order.

**59.** We may reproduce the following discussion from the judgment of this Court in [Subramanian Swamy v. Union of India, Ministry of Law & Ors.](#)<sup>11</sup>:

"Balancing of fundamental rights 11 (2016) 7 SCC 221 136. To appreciate what we have posed hereinabove, it is necessary to dwell upon balancing the fundamental rights. It has been argued by the learned counsel for the petitioners that the right

conferred under [Article 19\(1\)\(a\)](#) has to be kept at a different pedestal than the individual reputation which has been recognised as an aspect of [Article 21](#) of the Constitution. In fact the submission is that right to freedom of speech and expression which includes freedom of press should be given higher status and the individual's right to have his/her reputation should yield to the said right. In this regard a passage from *Sakal Papers (P) Ltd.* has been commended to us. It says: (AIR pp. 313- 14, para 36) "36. ... Freedom of speech can be restricted only in the interests of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. It cannot, like the freedom to carry on business, be curtailed in the interest of the general public. If a law directly affecting it is challenged, it is no answer that the restrictions enacted by it are justifiable under clauses (3) to (6). For, the scheme of [Article 19](#) is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and clause (1) does not prefer one freedom to another. That is the plain meaning of this clause. It follows from this that the State cannot make a law which directly restricts one freedom



*even for securing the better enjoyment of another freedom.”  
(emphasis supplied)*

*137. Having bestowed our anxious consideration on the said passage, we are disposed to think that the above passage is of no assistance to the petitioners, for the issue herein is sustenance and balancing of the separate rights, one under [Article 19\(1\)\(a\)](#) and the other, under [Article 21](#). Hence, the concept of equipoise and counterweighing fundamental rights of one with other person. It is not a case of mere better enjoyment of another freedom. In [Acharya Maharajshri Narendra Prasadji Anandprasadji Maharaj v. State of Gujarat](#), it has been observed that a particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the State in the light of the directive principles in the interests of social welfare as a whole. The Court's duty is to strike a balance between competing claims of different interests. In *DTC v. Mazdoor Congress* the Court has ruled that articles relating to fundamental rights are all parts of an integrated scheme in the Constitution and their waters must mix to constitute that grand flow of unimpeded and impartial justice; social, economic and*

political, and of equality of status and opportunity which imply absence of unreasonable or unfair discrimination between individuals or groups or classes. In *St. Stephen's College v. University of Delhi* this Court while emphasising the need for balancing the fundamental rights observed that: (SCC p. 612, para 96)

"96. ... It is necessary to mediate between [Article 29\(2\)](#) and [Article 30\(1\)](#), between letter and spirit of these articles, between traditions of the past and the convenience of the present, between society's need for stability and its need for change."

7.4. In ***Arnab Manoranjan Goswami Vs. State of Maharashtra and ors.***, reported in **(2021) 2 SCC 427 "Para-67.....** The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution..... On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower Courts in this country must be alive..... Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed...."

7.5. He also referred to the judgment of the Hon'ble Supreme Court of United States passed in ***De Jonge Vs. State of Oregon*** reported in **1937 SCC Online US SC 2** "**Para-3-**  
*We are concerned with but one of the described offenses and with the validity of the statute in this particular application. The charge is that appellant assisted in the conduct of a meeting which was called under the auspices of the Communist Party, an organization advocating criminal syndicalism. The defense was that the meeting was public and orderly and was held for a lawful purpose; that, while it was held under the auspices of the Communist Party, neither criminal syndicalism nor any unlawful conduct was taught or advocated at the meeting either by appellant or by others. Appellant moved for a direction of acquittal, contending that the statute as applied to him, for merely assisting at a meeting called by the Communist Party at which nothing unlawful was done or advocated, violated the due process clause of the Fourteenth Amendment of the Constitution of the United States.*"

7.6. Another Judgment of the Hon'ble Supreme Court of United States passed in ***Thomas Vs. Collins, Sheriff***, reported in **1945 SCC Online US SC 18** "**Para-21-***The case confronts*

us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the [First Amendment](#). Cf. *Schneider v. State of New Jersey*, [308 U.S. 147](#), [60 S.Ct. 146](#), 84 L.Ed. 155; *Cantwell v. Connecticut*, [310 U.S. 296](#), [60 S.Ct. 900](#), 84 L.Ed. 1213, 128 A.L.R. 1352; *Prince v. Massachusetts*, [321 U.S. 158](#), [64 S.Ct. 438](#). That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice. Compare *United States v. Carolene Products Co.*, [304 U.S. 144](#), [152](#), 153, 58 S.Ct. 778, 783, 784, 82 L.Ed. 1234.

**22.** For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger.**19** The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion

would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, cf. *De Jonge v. Oregon*, 299 U.S. 353, 364, 57 S.Ct. 255, 259, 81 L.Ed. 278, and therefore are united in the First Article's assurance. Cf. 1 Annals of Congress 759—760".

7.7. He also referred to **Sections 1 and 2** of the **Article 20** of the **Universal Declaration of Human Rights:-**

"1. Every one has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association."

7.8. He also referred to **Article 21** of the **International Covenant on Civil and Political Rights:-**

*"Article-21*

*The right of peaceful assembly shall be recognized. No restriction may be placed on the exercise of the right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order(ordre public) the protection of public health or morals or the protection of the rights and freedoms of others."*

Stating this, Mr. Goswami, learned counsel appearing for the petitioners prayed that the cases registered against the petitioners herein need to be quashed as they were exercising their fundamental rights in accordance with law.

8. Mr. S. Kar Bhowmik, learned Sr. counsel assisted by Mr. S. Bal, learned counsel appearing for the respondents contended that many cases have been registered against individual petitioners and several other persons. In pursuance of the investigation in 3(three) cases, final report has been filed and in other cases, charge-sheet has been filed. Accordingly, he has contended that the present petition filed under Section 482 of the Code of Criminal Proceeding needs to be dismissed. Further the exercising of their fundamental rights during COVID-19 period by blocking National Highway is a gross violation of Section 8B of National Highway Act causing hardship to Ambulance, Public, daily need supplies etc. Further they have

not obtained any permission for such assembly and have given call for Bandh. This is against Constitution of India and infringement to public rights and liberties. In so far as the FIR of wife of the deceased-Biswajit Debbarma is concerned, action has been taken as per law.

9. Now, in order to appreciate the contention of the petitioners under Article 19 of the Constitution of India, this Court feels that it is relevant to identify the place where the said agitation has taken place. As submitted by the learned counsel appearing for the petitioners and as well as it is evident from the record, the cause of action and unlawful assembly was at National Highway-08. In this regard, it is pertinent to extract Section 8B of the National Highway Act, 1956 which is reproduced herein under:-

*" 8B- Punishment for mischief by injury to national highway.- whoever commits mischief by doing any act which renders or which he knows to be likely to render any national highway referred to in sub-section (1) of section 8A impassable to less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with a fine, or with both."*

10. In view of the specific prohibition under Section 8B of the National Highway Act, 1956, the action of the petitioners in the manner in which they have blocked the National Highway cannot be appreciated. It is not for this Court to enter into the disputed question of facts on the point of

investigation of whether the protest which was made was with arms and whether any injuries have been caused or not and to go into other provisions of IPC under which FIRs have been registered. It is for the Trial Court to go into the merits of the factual aspect in respect of each individual case as per procedure.

11. In the broader aspect with regard to Article 19 of the Constitution of India is concerned, there is no doubt that the petitioners are having their full fundamental rights and liberty to express their freedom of speech and as well as assemble peacefully without arms. The said fundamental right is granted by way of reasonable restrictions. In view of the said restrictions, Section 8B of the National Highway Act comes into play. Whether any violence has taken place and whether it was an unlawful assembly is immaterial but once the National Highway itself has been blocked by the petitioners it amounts to a clear violation of Section 8B of the National Highway Act and the petitioners cannot claim immunity under Article 19(1)(a)(b) of the Constitution of India. Further, no document is placed before this Court to say that in order to exercise their rights under Article 19 of the Constitution of India, the petitioners have approached any competent authority seeking permission to exercise their fundamental right by identifying the place, time,



and date for their assembly. In absentia, any assembly in contravention to Section 8B of the National Highway Act and also unlawful assembly at any public place, this Court feels that it is a gross violation of Article (19)(1)(a)(b) and misconceiving the fundamental rights. Further the citations relied by the petitioners-counsel do not support the case of the petitioners to appreciate under Article 19 of the Constitution of India.

12. In so far as the quashing of the petition is concerned, the learned counsel appearing for the petitioners has relied upon the Hon'ble Supreme Court Judgment passed in the ***State of Haryana and ors Vs. Bhajan Lal and ors*** reported in ***1992 Supp.(1) SCC 335*** wherein in ***Para-102*** of the said Judgment, certain guidelines have been framed which is reproduced herein-under:-

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code.

(3) Where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

13. In pursuance of the said guidelines, the petitioners have not stated in their pleadings with regard to any malafide intention against any particular officer in registering a particular FIR against any particular individual and more so no specific argument is advanced in relation to the guidelines framed in **Bhajan Lal(supra)**. In view of the absence of a specific allegation against any person, an omnibus argument on this issue cannot be appreciated.

14. The petitioners have not placed on record any documentary evidence like the registration certificate of the 1<sup>st</sup> petitioner-organization, its aims, objectives and by-laws to say that it is competent to get filed this present quash petition on behalf of and along with the accused persons in all criminal cases. This Court feels that the petitioner organization is not an accused person and has no *locus standi* to seek for quashing the

FIRs and the charge sheets registered against individual accused persons.

15. However, it is made clear that this Court is not going into the other provisions, under which the FIRs have been registered since the disputed question of facts would come into play wherein conducting a proper trial would give a clear scope to decide whether the accused persons are guilty or not. This Court for the present is only deciding on the point of Article 19 of the Constitution of India, Section 8B of The National Highway Act, and Section 482 of the Criminal Procedure Code seeking quashing of various cases filed against the petitioners and the relief sought is rejected. This Court further holds that the 1<sup>st</sup> petitioner in this case has no *locus standi*. The accused column reflects the names of the individuals.

16. Here it is also pertinent to note that the period in which the incident has taken place, relates to the international issue of the COVID-19 pandemic period. Though it is on record, presently, in this writ petition, this Court is not taking cognizance of statement of the Officer made under Section 161 of Cr.P.C. who has *suo moto* registered the case, wherein he has categorically stated that because of the blockade of the National Highway, movement of the public, ambulance and other essential commodity vehicles etc., were obstructed.

17. This Court cannot ignore the fact of the killing of a Government Servant, Late Mr. Biswajit Debbarma(Fire Fighter) by the members of Nagarik Suraksha Manch and Mizo Convention on 21.11.2020. In the said crime, FIR has been registered and the Police Department appears to have given an impression to the petitioners that the matter is not given proper importance and thus the said cause of action of unlawful assembly on National Highway has taken place. This Court do not appreciate the manner in which the petitioners have acted during the peak of COVID-19 situation blocking the National Highway and causing inconvenience and hardship to public, passengers, Ambulance, daily medicine supplies etc. In so far as the issue of deceased-Biswajit Debbarma is concerned, this Court expresses its concern and observes that the Police Department is to take all measures and to assist the prosecution effectively to arrest all concerned if not arrested and complete the investigation and further to meet the goal of justice to the wife of late-Biswajit Debbarma.

18. In view of the above discussion, there is no merit in the petition and, accordingly it fails and the same is dismissed with a cost of *Rs.10,000/- (Rupees ten thousand only)* to be paid by the 1<sup>st</sup> petitioner in favour of the Tripura High Court Bar Association.

19. However, it is made clear that the Court below while conducting the trial will act independently without being influenced by the observations made herein.

20. Accordingly, this present writ petition is dismissed with costs and as a sequel, interlocutory application(s), if any also stands disposed.

**JUDGE**

**CHIEF JUSTICE (ACTING)**

suhanjit

