

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 17704 of 2023

**Manab Jati Kalyan Foundation and another
Vs.
The State of West Bengal and others**

For the petitioners	:	Mr. Tarunjyoti Tewari, Mr. Sandip Ray, Mr. Hiranmoy Debnath, Ms. Polly Banerjee, Ms. Paramita Dey
For the State	:	Mr. Ratul Biswas, Mr. Chandan Kumar Mondal
For the respondent nos.5 to 7	:	Mr. Jishnu Chowdhury, Mr. Chayan Gupta, Mr. Sandip Dasgupta, Mr. Saaqib Siddiqui
Hearing concluded on	:	18.08.2023
Judgment on	:	25.08.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner no.1 is an organization having office in New Town, Kolkata and petitioner no.2 is its Chairman.
2. The present application has been filed against the refusal to the petitioners to hold 'Durga Utsab 2023' in the 'New Town Mela Ground', which is an expanse of property used for the purpose of holding different fairs.

3. The respondent-authorities have raised several objections which according to the petitioners are flimsy pretexts to refuse permission to the petitioners.
4. Learned counsel for the petitioner relies on Article 14 of the Constitution of India. It is argued that the petitioners have equal right as others to hold a Durga Puja Festival in the said Mela Ground. It is submitted that in the previous year as well, when the petitioners had moved court against refusal to hold Durga Puja Festival in a bus-stand complex, the court had directed an alternative ground in the vicinity to be provided. The respondents had provided the New Town Mela Ground itself to the petitioners for holding such Puja. As such, it is argued, there cannot be any fetter on the part of the respondents in granting such permission to the petitioners. It is submitted that other cultural events are regularly being held there, including a celebration at the behest of the spouse of the Chairman, NKDA (New Town Kolkata Development Authority).
5. It is submitted that huge emotion is attached with the celebration of Durga Puja. However, although the petitioners have made a representation on February 28, 2023 and several representations and reminders thereafter, the respondent-Authorities have turned a deaf ear thereto.
6. Accordingly, this Court had to be moved and upon a specific direction dated July 13, 2023 passed in WPA No.12767 of 2023, the application of the petitioners was decided and refused by a “reasoned order” dated July 21, 2023.

- 7.** It is argued that one of the grounds of refusal is that the Mela Ground is surrounded by dense residential zone. However, permission to hold Puja has been given to several other entities in the nearby areas and in the City Square Area which is also situated very close thereto, which are surrounded by more residences than the Mela Ground. In fact, the Mela Ground is a designated place for holding festivals and fairs and is not surrounded by residential accommodations.
- 8.** It is submitted that during the Durga Puja festival, several entities hold public Puja Festivals to make the heritage festival a success. Hence, other Pujas nearby cannot be a ground for refusal.
- 9.** It is further argued that the respondents allege that the petitioners' registered office is at Kalyani. However, the mere fact that the petitioners have an office in Kalyani does not fetter the right of the petitioners to hold a Puja in the New Town area in any manner. That apart, it is argued that the petitioners have an intellectual wing of the petitioner no.1-Association within New Town.
- 10.** Learned counsel cites a copy of the order of court dated September 23, 2022, whereby a direction was given to the respondents to provide an alternative plot to the petitioners, upon which the New Town Mela Ground had been given to the petitioners.
- 11.** Learned counsel for the NKDA argues that nobody can have a right to hold worship and provide offerings in a particular place.
- 12.** It is submitted that the petitioners cannot claim as a matter of right the entitlement to hold Puja on the plot-in-question.

- 13.** Insofar as the previous occasion was concerned, it was not the NKDA but the HIDCO which allotted the said plot. Moreover, the same was done as an one-time measure, in deference to the direction of the Court and not by designating the Mela Ground as a Puja area.
- 14.** It is vehemently argued by the NKDA that the Mela Ground has never been used for organizing any other Puja by any entity and is not meant to be so used.
- 15.** It is submitted that permissions to hold fairs are given only at times when there are no other ongoing public festivals.
- 16.** As opposed to such occasion, the time when the petitioners intend to hold the Durga Puja would coincide with Durga Puja Festivals being held all over the State. In fact, several other organizers have been given the permission to hold Durga Puja in close vicinity of the Mela Ground itself. The authorities, it is submitted, are within their jurisdiction to consider the pros and cons of giving such permissions and nobody has a right to claim entitlement to hold Puja, thereby putting public order at peril.
- 17.** It is submitted that there would be utter pandemonium if the Mela Ground is used by the petitioners during the relevant period for organizing a Puja, since there would be huge footfall in the other Puja pandals held in the close vicinity, which would disrupt traffic and safety and security of residents and commuters beyond repair.
- 18.** Learned counsel for the NKDA cites *Dr. M. Ismail Faruqui and others Vs. Union of India and others*, reported at (1994) 6 SCC 360, where the Supreme Court had held that Article 25 of the Constitution does not

contain any reference to property unlike Article 26 of the Constitution. The right to practice, profess and propagate religion guaranteed under Article 25 of the Constitution does not necessarily include the right to acquire or own or possess property or does not extend to the right of worship at any and every place of worship so that any hindrance to worship at a particular place per se may infringe the religious freedom guaranteed under Articles 25 and 26 of the Constitution. The protection under Articles 25 and 26, it was held, is to religious practice which forms an essential and integral part of the religion. A practice may be a religious practice but not an essential and integral part of practice of that religion. While offer of prayer or worship is religious practice, its offering and every location where such prayers can be offered would not be an essential or integral part of such religious practice unless the place has a particular significance for that religion so as to form an essential or integral part thereof.

- 19.** In the same light, learned counsel cites *Dr. Mahesh Vijay Bedekar Vs. State of Maharashtra*, reported at 2016 SCC OnLine Bom 8894, where a Division Bench of the Bombay High Court reiterated the principles laid down in *Dr. M. Ismail Faruqui (supra)*, observing further that by no stretch of imagination, the right conferred by Article 25 will extend to celebrating such festivals and functions on streets and foot-ways unless offering prayers or worship at a particular place is proved to be an essential part of a particular religion by reason of the particular significance of that place.

- 20.** In another judgment of the same Division Bench of the Bombay High Court reported at *2016 SCC OnLine Bom 9422*, between the same parties, which is also cited, the same principle was reiterated.
- 21.** Learned counsel for the NKDA also cites a judgment of a learned Single Judge of the Madras High Court reported at *2012 SCC OnLine Mad [O.R.A. Abubakar Gani Vs. State of Tamil Nadu]* where *Dr. M. Ismail Faruqui (supra)* was followed.
- 22.** Learned counsel also cites a Division Bench judgment of the Allahabad High Court reported at *2019 SCC OnLine All 7000 [Bajrangpuri Ram Leela Committee, Bajrangpuri Machhariya Road, Naubasta, District Kanpur Nagar through its President Ram Vishal Shukla Vs. State of U.P. through District Magistrate, Kanpur and others]* where the Court, *inter alia*, observed that it found no reason to allow any religious activity to be performed in public places, like parks, playgrounds and open spaces, etc.
- 23.** Learned counsel also places reliance on the New Town Kolkata Development Authority Act, 20017 (for short, “the NKDA Act”). Chapter IX of which contains provisions relating to streets and public places. By relying on the same, it is sought to be impressed that all public streets, parking or transportation terminal squares, parks and gardens, etc. are vested in the NKDA and under its control, to be regulated in accordance with the provisions of the Act.
- 24.** Upon hearing learned counsel for the parties, there does not appear to be any specific bar in the NKDA Act, cited by the respondents, for holding any Durga Puja Festival in a mela ground.

- 25.** Although the respondents have vociferously harped on the fact that the Mela Ground has never been used for a Durga Puja Festival and no permission has ever been given for such purpose, such statement is belied by the act of the respondent-Authorities in the last year, where similar permission was given to the petitioners, pursuant to an order of the Court. Although the Court had directed an alternative place in the vicinity to be given, the HIDCO itself had offered the mela ground as a designated Puja ground.
- 26.** The NKDA Act, cited by the said Authority is of the year 2007 and, as such, was very much in force last year. In the order dated September 23, 2022 passed in WPA No.21781 of 2022, the HIDCO Authorities, represented by the same lead counsel as now appearing for the NKDA, had stated that it had no objection in the event the petitioners organize the Puja on another plot of the HIDCO than where they intended to, *designated for such purpose* (emphasis supplied) on payment, subject to fulfillment of all requisite conditions by the petitioners. On instruction, learned counsel, then appearing for the HIDCO, had submitted that permission can be granted in an appropriate zone near the ECO Park. It was submitted that the Rules of the HIDCO prohibit any large gathering or any Puja to be held in a bus terminus, which was the intended place of the petitioners then; however, *such Puja can be held in places designated for such purposes* (emphasis supplied).
- 27.** It was observed by the Court that since the HIDCO Authorities had fairly assured that an alternative plot shall be provided to the

petitioners, subject to compliance of all formalities by the petitioners and payment of due charges, as near the location-in-question as possible, the writ petition was disposed of by granting liberty to the petitioners to apply for permission at any of the alternative locations as mentioned in the printed list to be handed over by learned counsel for the HIDCO. As per the grounds offered by the HIDCO, the New Town Mela Ground was chosen by the petitioners.

- 28.** It is relevant to mention here that the NKDA was a party thereto and was represented at the time of passing the order. The NKDA never took any objection to such arrangement or submission by the HIDCO.
- 29.** In the list of options, the New Town Mela Ground was one of the options which was availed of by the petitioners and the Durga Puja was held therein. There is nothing in the arguments of the respondents to indicate that any untoward incident happened on such occasion.
- 30.** That apart, the argument of the respondent-Authorities regarding the petitioners not having any choice to hold worship or organize religious offerings wherever they wish, falls flat, in view of the implicit character of the Durga Puja Festival held in the State of West Bengal. As is public knowledge, the Durga Puja Festival is not confined merely to the worship or religious offerings component of the incarnation of feminine power but also a melting pot of different cultures. People from all over the state, the country and even from abroad, come to West Bengal purely for the purpose of observing the fanfare and the cultural milieu in the state during Durga Puja Festivals. Hence, there

is as much an element of ceremony, cultural programmes, festival and fanfare involved as religious worship. In such sense, the Durga Puja Festival is much more secular in nature than a pure religious performance of a particular community and cannot, thus, be narrowed down to being a mere 'religious offering' of a particular community.

- 31.** Seen in such context, let us examine the judgments cited by the respondents. The plinth of the ratio of the cited judgments is the rights conferred under Articles 25 and 26 of the Constitution of India. It was observed by the Supreme Court and different High Courts of the country that Article 25 does not confer the right on a person to perform worship in whichever place the person chooses, particularly in public parks, roads, foot-paths, etc.
- 32.** The primary distinguishing feature in the present case is that the site at which the Durga Puja Festival is sought to be held by the petitioners is not a street or a foot-path or even a playground but a specifically designated ground for holding fairs. Even the name "New Town Mela Ground" contains the term "Mela" which signifies "fair".
- 33.** Thus, the premise of the argument of the respondents that the ground cannot be used for a Durga Puja Festival is erroneous. No intelligible or reasonable differentia has been made out by the respondent-Authorities between a Durga Puja Festival and ordinary fairs or other festivals designated to be held on the Mela Ground. Both entail huge footfall and gathering of crowds including parking of vehicles of the people who come to visit.

- 34.** The respondents seek to argue that when permission to hold fairs are given, no other similar festivals or occasions are being organized in the nearby areas, which allows the traffic flow to remain normal. However, such argument is absolutely baseless, since during a Puja Festival, it is a common feature in the entire State that there are numerous huge Durga Pujas organized by several entities quite close each other. In fact, the Kolkata Police and administration have been lauded from several quarters for their law enforcement during the Puja times. Several checks and bounds and measures are put in place during the said few days to control traffic and congestion of people, even other than ensuring safety and security features. Hence, no extra burden would be placed on the overcrowding by a single Puja being organized. In fact, the petitioners had applied for observing the Puja in the month of February this year. It is only the respondent-Authorities whose lackadaisical attitude and negligence over the matter caused the considerable delay in the petitioners obtaining permission.
- 35.** The delay of about six months was occasioned primarily due to the authorities sitting tight over the matter and cannot be attributed to the petitioners.
- 36.** Nothing has been shown by the authorities or even argued to indicate that, after the petitioners' application in the month of February, 2023 no other Puja in the area has been permitted to be organized. Hence, the refusal of the particular application of the petitioners to hold Puja in a validly designated place for organizing public fairs is patently

mala fide and arbitrary and does not pass the Wednesbury test of reasonableness.

- 37.** The guiding light of the judgments cited by the respondents is *Dr. M. Ismail Faruqui (supra)*. In the said case, the stress was on Article 25, which confers the right to practise, profess and propagate religion. It was held by the Supreme Court and the High Courts, following the said judgment, that the said Article does not confer any right to worship at any place of worship unless specific significance of the place in particular is shown to be an essential part of the religion.
- 38.** The basis of such argument in the present case is erroneous, since the petitioners do not assert their right under Article 25, in view of the semi-secular nature of a Durga Puja Festival, which is not only about providing offerings to the feminine incarnation of power but also to provide a common meeting ground for people from all cross-sections of society, irrespective of caste, creed, gender and religion.
- 39.** As opposed to the said cases, the stress in the petitioners' case is on Articles 14 and 19 of the Constitution of India.
- 40.** Article 14 of the Constitution of India confers the right to equality before the law to all persons. In view of other organizers being permitted to hold public fairs on the ground-in-question, which is designated for such purposes, there is no plausible reason why the petitioners' plea for holding a Durga Puja Festival there can be refused. All the more so, since the respondents themselves have provided the said ground last year to the petitioners, as a designated ground, as reflected in their own submission before the Court,

recorded in the year dated September 23, 2022 passed in WPA No.21781 of 2022.

- 41.** Moreover, other organizers applying after the petitioner have also been accorded permission to hold Durga Puja festivities in the vicinity of the Mela Ground.
- 42.** The respondents have also taken a flimsy pretext that the petitioner no.1-Organization is primarily based in Kalyani. Such argument, however, cannot be accepted. Apart from the petitioners' plea that they have a wing situated in New Town, the cause title of the present writ petition itself shows that an office of the petitioner no.1 is situated within New Town. That apart, on a larger logic, the mere fact that a person resides or has office elsewhere cannot be a deterrent for permitting him to organize a festival on a public property by a public organization, on a plot specifically designated for holding public functions.
- 43.** Such concept itself has been abhorred in the spirit of the Constitution. Article 19 of the Constitution guarantees that all citizens have the right to assemble peacefully and without arms and to move freely throughout the territory of India. The specific purpose of such rights shall be frustrated if people are refused permission by public authorities on the ground of their residing elsewhere, unless there is a specific intelligible reason for such discrimination or a policy decision in that regard, also based on intelligible criteria.
- 44.** Of course, there can be reasonable classifications or restrictions in place, by particular authorities regarding certain activities which are

required to be confined to people of a particular area only. However, nothing of such sort, applicable to a Durga Puja Festival on a public Mela ground, has been pleaded or argued by the respondents.

- 45.** In *Mansur Hasan And Others Vs. Muhammad Zaman And Others*, reported at *AIR 1925 PC 36*, the Privy Council was dealing with a religious procession on the streets. It was observed there that persons of whatever section are entitled to conduct religious processions through public streets in such a manner so that they do not interfere with ordinary use of such streets by the public and subject to such directions as the Magistrate may lawfully give to prevent obstructions of the thoroughfare or breaches of the public peace.
- 46.** However, in the present case, a Mela Ground is supposed to be property equipped and located to handle crowd and parking issues as well as traffic congestions. Since it has been established and admitted that several fairs are held on the said Ground and it is a well-known and admitted fact that several Pujas have been permitted to be organized in the year 2023 in the vicinity, within New Town itself, there can be no reason why there would be interference with the ordinary use of the said ground specifically due to the petitioners holding a Puja there.
- 47.** It is nobody's case that the petitioners will flout laws and regulations regarding public peace, noise pollution and/or norms as otherwise prevalent and applicable to the other Puja organizers. In fact, there is no allegation that the petitioners violated any law when they organized a similar Puja on the self-same ground last year.

- 48.** The petitioners are also agreeable to pay full charges, as sanctioned by law and procedure, for observing the said festival. Hence, nothing in the law can prevent the petitioners from getting such permission. In fact, the refusal by the respondent-Authorities is palpably violative of Articles 14 and 19, in particular Articles 19(1)(b) and 19(1)(d) of the Constitution, as well as arbitrary, *mala fide* and unreasonable.
- 49.** Accordingly, WPA No.17704 of 2023 is allowed, thereby setting aside the order passed by the respondent-Authorities under Memo No.7454/CEO/NKDA/2023 dated July 21, 2023 and directing the respondent-Authorities to grant permission to the petitioners to organize and celebrate the Durga Puja Festival for the year 2023 at the New Town Mela Ground, subject to the petitioners paying the requisite charges and complying with the necessary formalities for such purpose.
- 50.** There will be no order as to costs.
- 51.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

Later

At this juncture, a stay of operation of the impugned order is sought for. However, keeping in view the extreme urgency of the matter, since there are only about 50 days left for the Puja being organized, such prayer is refused.

(Sabyasachi Bhattacharyya, J.)