

The High Court of Madhya Pradesh

WP.13544.2020

[Ashish Pratap Singh Vs. State of M.P. & Ors.]

Gwalior dated 20.10.2020

Shri Veer Singh Sisodiya & Shri Suresh Agarwal, learned counsel for the petitioner.

Shri Purushaindra Kaurav, learned Advocate General with Shri Ankur Mody, learned Additional Advocate General for respondents/State.

Shri Praveen Newaskar, learned ASGI for Union of India.

Shri Alok Katare, learned counsel for respondents No.5 and 6.

Shri Sanjay Dwivedi, Shri Raju Sharma and Shri V.D. Sharma, learned counsel as *Amicus Curiae*.

Matter is heard through video conferencing.

1. This Court on 03.10.2020 had passed interim order with the ultimate object of minimizing further spread of Covid-19 infection which is on the rise in and around the District of Gwalior especially due to frequent and large number of congregations of persons far exceeding the limit fixed by Covid-19 protocol held by various political parties during election campaign to fill up the various vacant seats of legislative assembly in and around the district of Gwalior.

2. By these interim directions District Magistrates of all the nine districts falling within the territorial jurisdiction of this Bench were

directed to invoke the penal provisions of Disaster Management Act and Indian Penal Code not only against the defaulting members of the congregation who fail to follow the Covid-19 protocol but also against political/governmental/State or social functionaries in whose name or on whose behest and behalf the said congregation take place.

2.1 Thereafter, this Court found that the said interim order dated 03.10.2020 was not achieving its purpose in the face of three reports of the *amicus curiae* and as well as revelations made by the petitioner on affidavit that on 4,5 and 6th of October, 2020 various large congregations at different places were organized by the political parties breaching the Covid-19 protocol with impunity.

3. In view of above revelation, this Court was compelled to pass another stringent interim order on 12.10.2020 directing the District Magistrates to treat the contents of I.A.6084/2020 in which the petitioner revealed facts about the congregations held by different political parties and the contents of three reports of *amicus curiae*, as first information for the purpose of registration of a cognizable offence u/S.154 Cr.P.C. not only against the defaulting common man who is part of the congregations but in particular the political/State/Governmental functionaries in whose name or on whose behalf and in whose presence such congregation were held.

3.1 Today when the case was taken up, the *amicus curiae* drew attention of this Court to its 04th report which further revealed holding of more such congregations where social distancing and wearing of masks was not followed and yet the congregations were attended and addressed by candidates, political/governmental/State functionaries.

3.2 The *amicus curiae* in the aforesaid report has made certain suggestions i.e. political leaders who breach the Covid-19 protocol should be debarred from campaigning in the election, such defaulting candidates be disqualified or bye-elections of the legislative assembly be postponed for at least six months by invoking proviso (b) to Section 151A of the Representation of Peoples Act awaiting improvement in the situation of Covid-19 pandemic.

4. Today, Shri Kaurav, learned Advocate General in compliance of the order earlier passed by this Court on 12.10.2020 has brought on record Document No.6743/2020 pertaining to congregation held in district Datia and Document No.6742/2020 as regards congregation held in District Gwalior.

4.1 In document 6743/2020, it is revealed that five FIRs have been lodged against the petitioners who have sought permission to hold congregations whereas in regard to document No.6742/2020 pertaining to Gwalior it is also informed that five FIRs have been lodged against the

candidates of two political parties.

5. At this juncture, learned counsel for the petitioner points out that IA.6084/2020 further provides such information in regard to congregation held on 05.10.2020 at Modi House, Opposite Landmark Hotel, Gwalior where Shri Narendra Singh Tomar, the Hon'ble Minister of the Central Cabinet and M.P. from Morena was present and addressed the gathering but no FIR has been lodged against the said Shri Tomar. Learned counsel for the petitioner also points out that despite the document No.6743/2020 (regarding Datia) not disputing the congregation which took place on 05.10.2020 at Bhandar, District Datia (M.P.) was held for and on behalf of and in the presence of Shri Kamal Nath, Former Chief Minister of State of M.P., no FIR has been lodged against Shri Kamal Nath.

6. When confronted with the aforesaid default of non-registration of FIR against Shri Narendra Singh Tomar and Shri Kamal Nath, learned Additional Advocate General assures this Court that the FIR u/S.154 shall also be lodged against said Shri Tomar and Shri Kamal Nath as has been lodged against the candidates and the organizers of congregation.

7. It is the common knowledge that the congregation of large number of persons where social distancing, wearing of masks and use of sanitizers is not followed, the spread of Covid-19 infection rises

considerably. The only way to avoid further spread of infection is to maintain social distancing, wearing of masks and use of sanitizers. Instances which have been pointed out in the last nearly 15 days since this petition is pending give a clear indication that functionaries, members of the political parties whether a common worker or the person at the helm is taking no steps to avoid physical congregation. The common agenda of the political parties appears to be to conduct as many and as large congregation as possible with the ultimate object of gaining popularity during election campaign. This obviously is done at the cost of health and lives of those gullible and innocent citizens of this country who come from lower strata of society and are unaware of the risk they incur to their lives by being a part of such congregations. Unfortunately, the political parties who should be making the common man aware of staying away from congregations are doing everything to draw him out of the security and safety of his home to become a part of a congregation to achieve their ulterior motive of gaining popularity to obtain votes, and leaving the common gullible and innocent common man to go home carrying Covid-19 virus with him and transmit the disease to his family members and friends.

8. Election campaign is certainly an inseparable part of the process of election which commences from declaration of election programme and

goes up to the declaration of result. By means of election campaign every candidate is at liberty to adopt all possible legitimate means to convey the manifesto of his party or to propagate his personal intention of indulging in the work of public good. Election campaign is permitted to be conducted by various modes which includes door to door campaigning, through pamphlets, posters, banners and by holding public meetings and congregations. This privilege/right given to the candidate to propagate his manifesto is a statutory right emanating from the Representation of Peoples Act. However, such right has assumed the colour of fundamental right i.e. right to information. Through campaigning, the voters are able to gain information about the intentions, character, conduct, nature etc. of the candidate helping the voter to decide whom to vote.

9. As against the aforesaid statutory right which has assumed colour of fundamental right, there is much higher and sacred right to life which is guaranteed to every citizen u/Art.21 of the Constitution. The Constitution prohibits deprivation of life except in accordance with the procedure established by law. In the factual matrix attending the present case, on one hand is the right of candidate to campaign during election process and on the other hand is the right of a common man of preservation of his right to health and life. Campaigning which is being

conducted by various candidates of political parties as has come to the notice of this Court is being done primarily through congregations where social distancing, wearing of masks and use of sanitizers are not being followed putting the health and lives of the members of congregation to risk. The said two rights, one of the candidates and the other of the common man are pitched against each other.

9.1 In a contest/clash between right to campaigning and right to health and life, it is obvious that the right to health and life takes precedence. Right to health and life is comparatively more exalted, sacred and precious right when compared with the right to canvassing & campaigning. Thus, the right of candidate to campaign has to yield to the right to health and life of the electorate.

10. The circumstances in the present case are extremely unfortunate where political leaders who are supposed to lead by example of conduct, behaviour and character have done little to protect the health and life of the common man by drawing him out of his home to be part of congregation called out by the political parties for gaining popularity and votes for the election.

11. This Court is aware of its limitations to interfere in the process of on going election especially in a democratic set up where elections are considered to be cornerstone of democratic polity under the

constitutional set up of our country. However, this Court cannot be a silent spectator to the rampant violation of Covid-19 protocol at the cost of exposing the common man to infection by drawing him out from the safe zone of his/her home to physically attend congregations exposing him/her to life threatening danger of Covid-19 infection.

12. In the Covid-19 protocol issued by the Election Commission of India suggestions have been made without making it mandatory for political parties to conduct virtual election campaign to avoid physical congregations.

12.1 Virtual election campaign with the aid of electronic means is certainly more expensive than holding a physical meeting but in the extraordinary circumstances of ongoing Covid-19 pandemic which is at its peak in our country it is time for the candidates to realize and adopt extraordinary means to conduct election campaign by virtual mode.

13. This Court does not see any other mode more effective to avoid physical congregation to prevent further spread of Covid-19 infection and also allowing the candidates in the election campaign to exercise their right of spreading information and expression.

14. Consequently, this Court by an interim order directs thus:

1. The District Magistrates of all nine districts falling within the territorial jurisdiction of this Court are restrained from giving

permission to any candidate/political party for holding physical congregations of any number of people unless the political party applying for such a congregation is able to satisfy the District Magistrate concerned that conduction of virtual election campaign is not possible and the District Magistrate passes speaking order recording reasons of being satisfied of the inability of candidate/political parties to conduct virtual campaigning.

2. The decision of the District Magistrate permitting any political party to conduct physical congregation shall become effective only after the Election Commission of India approves the same in writing.

3. The holding of physical congregation even if permitted by District Magistrate and Election Commission of India, can take place only after the political party/candidate intending to hold a congregation deposits money with the District Magistrate which is sufficient to purchase double the number of masks and sanitizers required for protecting and sanitizing the number of persons expected in the congregation and also when candidate files an undertaking on affidavit that he shall be personally liable to distribute masks and sanitizers to all the members of the congregation before the meeting/congregation starts.

