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Ct. No.16
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Through Video Conference)

WPA 9184 of 2020

Ms. Anasua Bhattacharya
Vs.
State of West Bengal & Ors.
with

WPA 9209 of 2020

Ajay Kumar De
Vs.
Government of West Bengal & Ors.
with

WPA 9256 of 2020

Doctors for Patients & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Rachit Lakhmani
Mr. Indrajeet Dey
Mr. Kushal Das
... For the petitioner in WPA 9184 of 2020

Mr. Bikash Ranjan Bhattacharjee
Mr. Sabyasachi Chatterjee
Ms. Ankani Biswas @ Ankan
Mr. Pintu Karar
... For the petitioner in WPA 9209 of 2020

Mr. Abhijit Chatterjee
Mr. Sayantan Basu
Mr. Subhabrata Das
Mr. Tanmoy Ray
Mr. Abhiroop Dhar
... For the petitioners in WPA 9256 of 2020

Mr. Kishore Datta, Ld. AG
Mr. Abhrotosh Majumdar, Ld. AAG
Mr. T.M. Siddiqui
Mr. Sayan Sinha
... For the State in WPA 9184 of 2020
& WPA 9209 of 2020

Mr. Kishore Datta, Ld. AG
Mr. Sayan Sinha
... For the State in WPA 9256 of 2020

Mr. N.C. Bihani
Ms. Papiya Banerjee Bihani
... For the respondent no.4

Mr. Anil Kumar Gupta
Mr. Rahul Arya
Mr. Yash Vardhan Deora
Ms. Easha Manchanda
Mr. Yogesh Kumar Sharma
... For the Intervenor

These matters pertain to firecrackers and the celebrations in the remainder of the festive season. A third petition has been filed by a trust and a doctor representing such trust.

In a supplementary affidavit filed in the third petition, several measures have been indicated for the State to adopt, both to control the use and display of firecrackers during the festive season and for controlling processions and crowd during the Chhat Puja. Several of the petitioners refer to newspaper articles published, inter alia, in the Telegraph, Times of India and Anandabazar Patrika indicating that firecrackers are available and journalists or other persons posing as intending purchasers have been assured of guaranteed supply, whatever may be the order passed by Court or measures taken by the State to prevent the sale or purchase thereof. Several pockets in the city, primarily around the Burrabazar and Chandni Chowk areas, have been specially referred to in the newspaper articles, where traders apparently engaged in selling other wares may actually be selling firecrackers.

It is made clear that no effort should be spared by the State, particularly the police, to take immediate appropriate steps against anyone seeking to sell or purchase firecrackers or the like or any such material which emanates smoke and has the propensity to pollute the air. The risk is far too great for the matter to be left to chance and the State has assured that every step will be taken to implement the order of Court and ensure that there is no bursting or display or the like of firecrackers and similar items during the festive season, including at the Kali Puja and Diwali, Chhat Puja and Guru Nanak's birthday celebrations.

At the Court's suggestion that the District Magistrates and Superintendents of Police of every district and the Commissioner of Kolkata Police be made personally accountable if the order for a complete ban on the sale, purchase and use of firecrackers and the like is breached, it is submitted on behalf of the State that since the order has been passed, it is the obligation of the State to ensure due compliance thereof and it may not be necessary for the Court to either set up any special task force for the purpose or make named officials responsible or liable. The State assures the Court that measures have already been taken to ensure the complete implementation of the order and no effort would be spared to see that the air quality in the State is not polluted and the relevant order carried out without any breach.

As for the Chhat Puja, several suggestions have been made in the supplementary affidavit filed in the third petition. Indeed, several suggestions have been put forth on how to implement the prohibition of firecrackers, in the same affidavit. According to the State, the measures suggested in the third petition or the supplementary affidavit therein may not be practical and if specific directions in such regard were to be issued to the State, it may be difficult to enforce the same on the ground.

The State says that it intends to advise Chhat Puja revellers to restrict the number of persons visiting the water bodies; to ensure that the revellers travel to the nearest water body available so as to avoid long processions down the streets; to see that the Covid protocol is maintained and there is no congregation of large numbers of persons at any place; and, the use of firecrackers during the Chhat Puja celebrations is completely prohibited.

Ordinarily, in matters of the present kind, the Court has to yield to the executive. It is the executive which ought to devise measures to take care of the myriad situations which may arise. It is elementary that the executive would act for the greater good and in public interest and, in such course, there may be a minority which may be adversely affected.

Accordingly, in view of the submission made on behalf of the State, only some broad guidelines regarding the Chhat Puja are indicated:

(i) In the pockets in the State where Chhat Puja is observed, particularly in and around the cities of Kolkata, Siliguri, Durgapur and Asansol, the State should make repeated announcements in the relevant areas requesting no more than two persons per family to attempt to visit any water body this year and for the rest of the family to observe Chhat Puja from home or in and around home.

(ii) Long drawn processions should not be allowed and, in any event, the use of music, other than the *dhak* or small band, should not be allowed. Once the revelry that goes with blaring music is arrested, the processions are expected to be less.

(iii) Persons intending to travel to a water body should come in vehicles upon maintaining the Covid protocol and without jostling with each other to get a toehold in the vehicle. The wearing of masks will be mandatory at all stages.

(iv) Even when a vehicle, which may be a small tempo or lorry or the like comes to a water body or near the same, all persons should not be permitted to alight or go to the water body. Representatives from each vehicle, as may be deemed fit, should be

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allowed to go to the edge of the water body and perform the rituals in an ecologically friendly manner.

As far as Subhas Sarovar and Rabindra Sarobar are concerned, in view of the subsisting order of the National Green Tribunal, these water bodies will be totally out of bounds for Chhat Puja celebrations. However, as the State has indicated that there is a petition of KMDA before the Supreme Court in such regard, ultimately it is the order of the Supreme Court that will prevail. However, if no order is passed on KMDA's petition by the Supreme Court, the National Green Tribunal's order has to be implemented without exception.

The Kolkata Municipal Corporation and the local municipal bodies should depute representatives in the relevant localities for spreading awareness, the need to exercise self-restraint and to observe the Chhat Puja on a low-key. Such measures should be undertaken all over the State where Chhat Puja is observed.

Apart from the above, particularly since local trains are due to resume on November 11, 2020, the State should consider whether it may be in the best interest of all to suspend the operation of local trains on November 14 and November 15, 2020 and on the day of Jagadhatri Puja or to manage the running of trains in such manner that people do not find it convenient to come to the city of Kolkata or travel to other places of interest on Kali Puja day or visit

Chandannagar on Jagadhatri Puja day. The State is left free to make appropriate arrangements with the railway authorities in such regard. It may be remembered that the lack of local trains during the Durga Puja celebrations was one of the principal reasons which avoided crowding during such time.

Both the Kolkata Police and the State police should put up telephone numbers on their websites and on hoardings and boards prominently displayed across the city and the State, indicating effective numbers where complaints regarding the bursting of crackers may be made. Such numbers should be attended to so that the complaints are immediately addressed without the identity of the complainants being revealed. The relevant numbers should be put up on the website and display boards by November 12, 2020.

In the event the State finds any difficulty in controlling crowds or in the implementation of this order, the State is reminded of the authority at its disposal including the power under Section 144 of the Code of Criminal Procedure, 1973 to restrict the number of persons in any particular area. Indeed, it is hoped that the entire State machinery is geared up to implement the orders passed in such regard for the greater good of the citizens and to ensure that the quality of air is not adversely affected by the acts of a few that may imperil lives.

The matter will appear before the appropriate Bench a week after the vacation for reports to be received from the Commissioner of Police, Kolkata and from the Director General of West Bengal Police.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Sanjib Banerjee, J.)

(Arijit Banerjee, J.)