

07.01.2021
Item No. DL 1
Ct. No.1
AD & Saswata

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**WPA (P) 23 of 2020
(via video conference)**

Ajay Kumar De

-vs-

The State of West Bengal & ors.

Mr. Sabyasachi Chatterjee
Mr. Akashdeep Mukherjee
Mr. Sushovon Dey
Ms. Dolina Sarkar
... for the petitioner

Mr. Kishore Datta, Ld. AG
Mr. Sayan Sinha
... for the State

Mr. Y.J. Dastoor, Ld. ASG
Mr. Vipul Kundalia
... for the UOI

We have read the order minuted on 06.01.2021. The learned Advocate General has orally delineated before us the plethora of steps taken for crowd management, for provision of medical facilities, for regulating the movement of vehicles, etc. He has also expressed the possibility of the crowd dwindling from what it was last year on account of the pandemic situation.

Be that as it may, life is more important in every sense, in comparison to religious practice, beliefs and faith. We are of the view that the

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medicine, including preventive medicine, have delineated modes of excluding the spreading of the infection in these pandemic times. Even from the layman's point of view, when congregations take dips in flowing water or stagnant water, in the form of ponds, rivers or other water bodies, oral droplets and nasal droplets of any person who is carrying the infection in this pandemic period, can easily percolate into that water body and thereby create chances of infection through those droplets transmitted virus. It also appears to us that 'social distancing' will remain a mirage when such congregations happen. This will be counter productive to the preventive exercise that is due to the people at large. Even in terms of Disaster Management Act, the primary essential focus ought to be fundamentally on preventive disaster management.

We have alerted the State Government through the learned Advocate General in the aforesaid aspect and have requested him to respond by 2.00 PM today, necessarily with an affidavit of a Senior Medical Officer of Health at the helm of the State Medical Administration as

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congregate either in the water or on its banks or otherwise.

This order having been dictated in open Court, the learned Advocate General and the learned Additional Solicitor General, who is also present, will make further submissions as may be found appropriate at 2.00 PM.

(Thottathil B. Radhakrishnan, CJ.)

(Arijit Banerjee, J.)

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07-01-2021
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Through Video Conference
(Later at 02.00 p.m.)

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Ajay Kumar De
Vs.
The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee,
Mr. A. Mukherjee

... For the Petitioner.

Mr. Kishore Dutta, learned Advocate General,
Mr. Sayan Sinha

... For the State.

Mr. Y. J. Dastoor, learned ASG,
Mr. Bipul Kundalia

..... For Union of India.

1. Read the order minuted by us this morning.

2. Pursuant to that, further submissions are made by learned Advocate General on the basis of instructions from the State Government. Hearing him on various aspects, which are matters of concern for the State Government and also noticing that the State Government would like advisories to be issued by the Central Government in this regard, learned counsel for the petitioner has brought to our

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on behalf of the State Government with inputs from medical experts of the State Government as to preventive management of the pandemic situation and public health management, such material is yet to come.

4. Be that as it may, we see that issues relating to health, safety and welfare were matters of concern for the State of West Bengal in relation to Ganga Sagar Mela even earlier. That is the purpose for which the Ganga Sagar Mela Act was brought in 1976. We also see from the legislative history that the said State Act was preceded by an Ordinance for the same purpose. The Act itself says that it is brought with a view to safeguarding the health, safety and welfare of the pilgrims attending the Ganga Sagar Mela. Going by that legislation, Ganga Sagar Mela means the fair held at the Sagar islands in the district of South 24-Parganas on the occasion of Pous Sankranti every year and the State legislature found that it is expedient in the public interest “to provide for the taking of measures with a view to safeguarding health, safety and welfare of the pilgrims attending the Ganga Sagar Mela.” That Act empowers the State Government to issue a notification declaring the whole or any portion of the Sagar Islands as “notified area” for the purpose of that Act. The situation sought to be controlled through that legislation and notification is one which provides for taking of measures to

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seen that there is power to impose a fee upon every pilgrim visiting the Ganga Sagar Mela. We note that provision only to notice that even the proviso to that section shows that there may be children under the age of 12 years, sadhus, sannyasis, beggars and persons including members of organizations who may become participants or be present in connection with the Ganga Sagar Mela.

5. We notice all the aforesaid factors at this point of time because the issues involved in this pandemic situation are not similar to the issues that were there in 1976, but of a larger magnitude. A grimmer situation should necessarily prompt the State to make more rigorous provisions having in mind the duties of the State. It is in consonance with the fundamental right to life guaranteed under Article 21 of the Constitution. The pandemic situation which has visited us now is not something on which there could be any roll back through human intervention, without protective measures being in place.

6. In the aforesaid view of the matter, it will be upto the State Government to come out with clear suggestions as to how the Mela could be regulated, controlled or if necessary, even dropped for the current year taking into consideration the balancing of the larger primary right to life on the fulcrum of the

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7. We, therefore, direct the State Government to have a report in the form of an affidavit placed on record through a Medical Officer at the highest level in the State Government service, clearly delineating the modalities of the preventive management of the situation if Ganga Sagar Mela is permitted to be held this year. The measures indicated should take care of congestion on the banks, in the water bodies, in the roads and other available places including the places where public are provided eateries, toilets and other facilities. The imposition of restrictions and enforcement of social distancing norms as well as use of mask and due sanitization in terms of COVID management protocols ought to be clearly spelt out on behalf of the State Government in such report in the form of affidavit. The decision of the State Government in that regard shall be placed before us without fail when this matter will appear tomorrow (08-01-2021) at 02-00 P.M.

8. We may also indicate, on the submission made on behalf of learned Advocate General, that learned Additional Solicitor General would also make submissions as may be found necessary.

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