HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU

WRIT PETITION (PIL) Nos.5; 3; 8 and 10 of 2023
and
WRIT PETITION Nos.1369 and 1562 of 2023

(Through physical mode)

W.P.(PIL) No.5 of 2023:

Kaka Ramakrishna, Aged about 67 years, Secretary, Communist Party of India, A.P., S/o K. Peravalaiah, R/o A4, Koushik Aaditya Apartments, 1st Floor, Municipal Park, Tadepalli, Guntur District – 522501, Aadhar Card No.434833475697, Mobile No.9440045688, Bank Account NO.020110100011906, Andhra Bank, Himayatnagar Branch, Hyderabad.

..Petitioner.

Versus

The State of Andhra Pradesh rep. by its Principal Secretary to Government, Home Department, A.P. Secretariat, Velagapudi, Guntur District, Andhra Pradesh and another

..Respondents.

Counsels for the Petitioners:

W.P.(PIL) No.5 of 2023: Mr.Raju Ramachandran, Senior Counsel on behalf of Mr. N. Ashwani Kumar.

W.P.(PIL) No.3 of 2023: Mr. V.R.Reddy Kovvuri

W.P.(PIL) No.8 of 2023: Mr. T. Sreedhar

W.P.(PIL) No.10 of 2023: Mr.Ravi Shankar Jandhyala, Senior counsel on behalf of Mr.Syed Ghouse Basha.

W.P.No.1369 of 2023: Mr.Javvaji Sarath Chandra

W.P.No.1562 of 2023: Mr. Siddharth Luthra, Senior counsel on behalf of Mr. Ginjupalli Subba Rao

Counsel for respondents: Advocate General for the State of AP

ORDER

Dt:12.05.2023

This Court has heard Sri Raju Ramachandran, Learned senior counsel, Sri Siddharth Luthra, Learned Senior Counsel, Sri T. Sreedhar, Learned Senior Counsel, Sri Ravi Shankar Jandhyala, Learned Senior Counsel and Sri Javvaji Sarath Chandra, learned counsel in this batch of matters. This Court has heard the learned Advocate General for the respondents.

2) The challenge in all these matters is to G.O.Rt.No.1, Home (Legal.II) Department, dated 02.01.2023, by which the Government of Andhra Pradesh sought to regulate public meetings / assembly on roads, road sides and margins. Directions were issued under the Police Act, 1961 in this G.O. All the writ petitioners have challenged the said G.O.

3) Sri Raju Ramachandran, learned senior counsel, took the lead in arguing the matters. He made his submissions in W.P.(PIL) No.5 of 2023. According to him Right to Free Speech is a Fundamental Right, which cannot be totally curtailed and can only be subject to reasonable restrictions as per the provisions contained in Article 19 of the Constitution of India. Learned senior counsel submits that the effect of this G.O. is to virtually ban the public meetings on roads, road margins etc. He states that democracy and dissent go hand in hand and the purpose of these public meetings is to propagate ideas, thoughts etc., among the public and also to bring out the failures etc., of the powers that be. He also points out that under the Police Act on the basis of which the impugned G.O. is issued the State can only regulate the conduct of meetings, but cannot ban the same altogether. He submits that the contents of the G.O. amount to a stifling of the voice of the opposition and other political parties and imposes a virtual ban on meetings in public places and roads in particular. It is his submission that the said G.O. is utter violation of Article 19(1)(a) and (1)(b) of the Constitution of India. He relies upon on the following decisions among others:

i) Himat Lal K. Shah v Commissioner of Police[1];
ii) Parmhans Vajpayee v State of Bihar[2]
iii) Ramlila Maidan Incident, In re[3]
iv) Amit Sahni (Shaheen Bagh, in re) v Commissioner of Police and others[4]

4) Sri Sidharth Luthra, learned senior counsel, appearing in W.P.No.1562 of 2023 continued the arguments after Sri Raju Ramachandran. He also raises similar grounds and submits that rallies, padayatras and meetings are an integral part of the Indian political system since long. He points out that the powers conferred on the authorities in this G.O. are vague and that neither exceptional circumstances nor rare circumstances mentioned in the G.O. are defined and thereby an arbitrary power is conferred upon the police to ban the public meetings. He also reiterates that G.O. has been issued with a *mala fide* intention of stifling public opinion. According to him the Constitutional guarantees of assembly, protest, rallies and marches are being stifled by the impugned G.O. He also points out that it is a violation of the constitutional guarantees. Learned senior counsel submits that under the

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[1] (1973) 1 SCC 227
[2] 1989 SCC OnLine Pat 62
[3] (2012) 5 SCC 1
[4] (2020) 10 SCC 439

guise of regulating the assemblies, State is virtually prohibiting the same. He also argues that there is a blanket restriction instead of a case by case examination in this case. Lastly, he submits that no discretion is left to the State authorities and the G.O. is a virtual blanket ban. He relies on the following case among others:

i) ***Mazdoor Kisan Shakti Sangathan v Union of India and Another[5] (Jantar Mantar case)***

ii) ***Makeshwar Nath Srivastava v The State of Bihar and Others[6]***

iii) ***Vineet Narain and Others v Union of India and Another[7]***

iv) ***State of Mysore v H. Sanjeeviah[8]***

v) ***Indibiliy Creative Private Ltd., and Others v Government of West Bengal and Others[9]***

vi) ***Modern Dental College and Research Centre and Others v State of Madhya Pradesh and Others[10]***

vii) ***Internet and Mobile Association of India v Reserve Bank of India[11]***

viii) ***Kharak Singh v State of U.P. and others[12]***

ix) ***Brij Bhushan and Another v State of Delhi[13]***

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[5] (2018) 17 SCC 324
[6] (1971) 1 SCC 662
[7] (1998) 1 SCC 226
[8] (1967) 2 SCR 361
[9] (2020) 12 SCC 436
[10] (2016) 7 SCC 353
[11] (2020) 10 SCC 274
[12] AIR 1963 SC 1295
[13] 1950 SCC OnLine SC 20

x) ***Anuradha Bhasin v Union of India and Ors.*[14]**

xi) ***Rupa Ashok Hurra v Ashok Hurra and Another*[15]**

***Kartar Singh v State of Punjab*[16]**

5) Sri T. Sreedhar, learned senior counsel appearing for the petitioner in WP (PIL) No.8 of 2023 also argues on similar lines and states that a virtual ban is being imposed. According to him, also the power to regulate cannot be converted into a power to ban rallies and processions altogether. He also relies upon the following case law:

i) ***Ramlila Maidan Incident, In re (3 supra)***

***ii) Emperor v Quasim Raza*[17]**

iii) ***Ambedkar Mandran–Thiruchuli (Dr.) v Superintendent of Police*[18]**

6) Mr. Ravi Shankar Jandhyala, learned senior counsel also argues on similar lines and points out that historically the freedom that we have gained is through a number of rallies, protests etc., that were integral part of the Indian Freedom Movement. He submits that the holding of meetings and taking out processions in public places is one of the primary activities of the political parties to disseminate the

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[14] (2020) 3 SCC 637
[15] (2002) 4 SCC 388
[16] (199) 3 SCC 569
[17] ILR (1935) 57 All 790 (All) = 1934 SCC OnLine All 396
[18] (2015) SCC OnLine Mad 10792

party's philosophy and also to raise dissent or a lawful protest. It is his contention that this has been recognized by the highest courts of the land and the Right of Free Speech is a constitutional guarantee. He also argues that the powers conferred under the Police Act are merely regulatory and they cannot extend to a total ban. Learned senior counsel also relies upon the case law, which is referred to in his writ Petition and also an interlocutory order passed in W.P.M.P.No.32424 of 2008 and Batch.

7) Mr. Javvaji Sarath Chandra, learned counsel appearing for the writ petitioner in W.P.No.1369 of 2023 also argues on similar lines. He relies upon the case law, which is annexed to his W.P.No.1369 of 2023.

i) Himat Lal K. Shah (1 supra)
ii) Babulal Parate v State of Maharhstra and Others[19]
iii) Peoples Council for Social Justice, Ernakulam v State of Kerala and Ors.[20]
iv) Ramlila Maidan incident (3 supra)
v) M.R.F. Ltd., v Inspector Kerala Govt. and others[21]
vi) Om Kumar and Others v Union of India[22]
vii) State of Madras v V.G.Row[23]

[19] (1961) 3 SCR 423
[20] 1997 SCC OnLine Ker 135
[21] (1998) 8 SCC 227
[22] (2001) 2 SCC 386
[23] (1952) 1 SCC 410

8) In reply to this, the learned Advocate General representing the State argues the matter at length. His primary submissions on the merits of the matter are that a complete ban on public meetings or processions is not contemplated by the said G.O. He points out that because of certain fatal accidents that occurred in the recent past, involving loss of life etc., in a stampede**,** the Government decided to "regulate" the conduct of meetings. He points out that directions were issued to the authorities to keep in mind the issues which are discussed in the G.O. itself before granting permissions. It is reiterated that a reading of the G.O. does not suggest that there is a blanket ban on all meetings and on the contrary it prescribes the methodology for granting permission for holding the meetings. Relying upon the case law mentioned below, learned Advocate General arguing that the State is only regulating the conduct of the meetings. He points out that roads are made for smooth movement of vehicular traffic and for transportation. Therefore, if there is a hindrance to the same by holding meetings tec., the State can definitely impose reasonable restrictions. He points out that by regulating public meetings,

processions etc., no Fundamental Right of the petitioners is affected and that the right of Free Speech is not at all restricted.

9) Relying on ***State of Bihar and another v J.A.C. Saldanha and others***[24]***; Mazdoor Kisan Shakti Sangathan case (5 supra); Amit Sahni (Shaheen Bagh, in re) v Commissioner of Police and others***[25], ***Himat Lal K. Shah case*** and ***Railway Board v Niranjan Singh***[26] learned Advocate General submits that time and again the highest courts of the land have recognized the fact that public roads, pathways, parks, etc., cannot be indefinitely blocked by political parties and that on the ground of free speech or freedom of movement, hindrance cannot be caused to the general public.

10) On the issue of the Vacation Court taking up the matter, learned Advocate General submits that despite printing out the Division bench in the Vacation Court that there is no urgency to hear the matter and that no urgency is pleaded by the Writ Petitioner, the Division Bench proceeded to entertain the matter. He also points out that the vacation Notification

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[24] (1980) 1 SCC 554
[25] (2020) 10 SCC 439
[26] AIR (1969) SC 966

which has been issued on 05.01.2023 in Roc.No.550/SO/2022 was brought to the attention of the Division bench and it was pointed out that only urgent matters, viz., Habeas Corpus, Anticipatory Bail, Bail applications, which are refused by the lower Courts and any other matter, which cannot wait till the end of the vacation like eviction, dispossession, demolition etc., shall be heard by the Vacation Court. Learned Advocate General also points out that in the Notification issued by the Hon'ble the Chief Justice it is specified that the case relating to policy of decision should not also be taken. Learned Advocate General relies upon the following three cases –

i) ***State of Rajasthan v Prakash Chand and others***[27]
ii) ***Campaign for Judicial Accountability and Reforms v Union of India and Another***[28]
iii) ***Asok Pande v Supreme Court of India and others***[29]

to argue that it is the Hon'ble the Chief Justice of the State alone, who is the master of the roster and that once the subjects were allotted by the Master of the roster viz., the

[27] (1998) 1 SCC 1
[28] (2018) 1 SCC 196
[29] (2018) 5 SCC 341

Hon'ble Chief Justice, the Vacation Court cannot take up any matter contrary to the said directions. Therefore, he submits that the impugned order passed is without jurisdiction and as it is a *coram non judice.*

<u>CONSIDERATION BY THE COURT</u>:

11) This case presents a problem that has been an issue for long and will continue to be an issue as long as political parties exist and democracy is there. The right to free speech, demonstrations etc., and the right of the State to regulate the same is the question involved.

<u>POLICE ACT AND ITS PROVISIONS</u>:

12) On purely legal issues this Court notices that the following sections of the Police Act, 1861, which are referred to and relied on by the State in the impugned G.O., are to be considered at the very outset.

> "30. Regulation of public assemblies and processions and licensing of the same:-
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> (l) The District Superintendent or Assistant District Superintendent of Police may, as occasion required, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

(2) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the district, or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a license.

(3) On such application being made, he may issue a license, specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place, and otherwise giving effect to this section:
Provided that no fee shall be charged on the application for, or grant of any such license.

(4) Music in the streets:- He may also regulate the extent to which music may be used in streets on the occasion of festivals and ceremonies.

30A. Powers with regard to assemblies and processions violating conditions of licence:-
(l) Any Magistrate or District Superintendent of Police or Assistant District Superintendent of Police or Inspector of Police or any police-officer in charge of a station may stop any procession which violates the conditions of a license granted under the last foregoing section, and may order it or any assembly, which violates any such conditions, as aforesaid, to disperse.
(2) Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section, shall be deemed to be an unlawful assembly.

> 31. Police to keep order on public roads, etc:- It shall be the duty of the police to keep order on the public roads, and in the public streets, thoroughfares, ghats and landing-places, and at all other places of public resort, and to prevent obstruction on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighborhood of places of worship, during the time of public worship, and in any case when any road, street, thoroughfare, ghat or landing-place may be thronged or may be liable to be obstructed."

13) A plain language interpretation of these sections clearly shows that the power given to the Police authorities is to regulate the assemblies and processions only. The very heading of the Section 30 clearly states that it is for the purpose of "regulation" of public assemblies, processions and licensing of the same.

14) If the Section is split up into its composite parts it is clear that under Section 30(1) the District Superintendent or Assistant District Superintendent of Police "may" direct the conduct of all assemblies and processions on the public roads or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

15) In Section 30(2) it is specified that if the Magistrate of the district or of the sub-division of a district, is of the opinion that if the procession etc., is uncontrolled and is "likely to cause a breach of the peace", he may require by general or special notice that the persons convening or conducting such assembly or directing or promoting such procession to apply for a license.

16) As per Section 30 (3) he may issue a license with certain conditions under which the assembly or procession is permitted to take place.

17) Lastly, under Section 30(4) he is also given the power to regulate "the extent to which music may be used in streets on the occasion of festivals and ceremonies."

18) Therefore, a plain language interpretation of Section 30(1) to (4) makes it very clear that the Police Act only gives the power to the authorities to regulate the conduct of assemblies, processions etc., on public roads or thoroughfares. If the officer concerned is of the opinion that the assembly, procession may cause a breach of peace, he may ask the organizers to apply for a license, and prescribe the conditions under which the meeting or procession can be

held. It is clear that the sections recognize the fact that if the officer concerned is of the opinion that there is no likelihood of breach of peace etc., he cannot insist on a license or on permission being obtained. The requirement of obtaining a license is to be preceded by the formation of an opinion of the officer that there may be a breach of peace etc. Under Section 30-A the Magistrate or the Superintendent etc., or any other officer can stop the procession and can order the assembly to disperse if there is a violation of the conditions of license.

Section 31 is as follows:

> 31. Police to keep order on public roads, etc:- It shall be the duty of the police to keep order on the public roads, and in the public streets, thoroughfares, ghats and landing-places, and at all other places of public resort, and to prevent obstruction on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship, during the time of public worship, and in any case when any road, street, thoroughfare, ghat or landing-place may be thronged or may be liable to be obstructed."

19) This section also gives the power to prevent obstructions of public roads and public streets in case of obstruction due to assemblies, processions etc.

20) Thus, on a plain language interpretation of these sections, which are referred to above, (and which form the bedrock of the impugned G.O.), it is clear that the power given to the police or to the Magistrate is only to regulate the conduct of assemblies, processions etc., more so when they are likely to obstruct /block the roads etc. In this Court's opinion the right to assemble peacefully, the right to protest peacefully in streets, public places, thoroughfares etc. cannot be restricted totally by virtue of these sections of law.

CASE LAW ON THE SUBJECT:

21) The important decisions which this Court has found more relevant in the large volume of cases cited are the following:

Himat Lal K. Shah case (1 supra):

22) This is a decision of a five judge Bench of the Supreme Court. In this judgment the Bench of the Hon'ble Supreme Court of India was dealing with the challenge to certain rules for processions and public meetings framed under the Bombay Police Act. Rule 7 stated that no public meeting could be held on a public street unless necessary permission has been obtained. In paragraph 15 of this leading judgment

the Hon'ble Supreme Court of India held that the public has a right to hold assemblies and processions on and along streets though it is necessary to regulate the conduct and behavior or action of persons constituting such assemblies or processions. The meaning of the "regulating" is also considered in paragraph 52. In paragraph 20 it is held by the Bench that even in India the law relating to processions etc., has developed independent of the foreign law and the holding of meetings in streets has been the subject matter of the number of decisions. Ultimately, after considering the various judgments in paragraphs 21 to 29 the following was held in paragraphs 31 and 33:

> **"31.** It seems to us that it follows from the above discussion that in India a citizen had, before the Constitution, a right to hold meetings on public streets subject to the control of the appropriate authority regarding the time and place of the meeting and subject to considerations of public order. Therefore, we are unable to hold that the impugned rules are ultra vires Section 33(1) of the Bombay Police Act insofar as they require prior permission for holding meetings.
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> **32……**
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> **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." (Emphasis supplied)

23) Thereafter, in paragraphs 39 and 43 it was clearly held that unfettered discretion and arbitrary power was given to the Police Officers concerned in the impugned regulation.

24) Justice K.K. Mathew in his concurring judgment also held as follows in paragraph 69:

> "**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."

25) In the leading judgment of ***Ramlila Maidan Incident case (3 supra)*** the following was held in paragraph 30:

> "**30.** No person can be divested of his fundamental rights. They are incapable of being taken away or abridged. All that the State can do, by exercise of its legislative power, is to regulate these rights by imposition of reasonable restrictions on them. Upon an analysis of the law, the following tests emerge:
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> (*a*) The restriction can be imposed only by or under the authority of law. It cannot be imposed by exercise of executive power without any law to back it up.
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> (*b*) Each restriction must be reasonable.
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> (*c*) A restriction must be related to the purpose mentioned in Article 19(2).
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> The questions before the Court, thus, are whether the restriction imposed was reasonable and whether the purported purpose of the same squarely fell within the relevant clauses discussed above."

26) Similarly, in paragraph 33 it was clearly held that whether a restriction amounts to total prohibition or not is a question of fact which has to be determined in each case. The facts of the case are not being reproduced, but the following conclusions in paragraphs 286.4; 286.5 and 286.7 are considered very relevant–

> "**286.4.** The State has a duty to ensure fulfillment of the freedom enshrined in our Constitution and so it has a duty to protect itself against certain unlawful actions. It may, therefore, enact laws which would ensure such

protection. The rights and the liberties are not absolute in nature and uncontrolled in operation. While placing the two, the rule of justice and fair play requires that State action should neither be unjust nor unfair, lest it attracts the vice of unreasonableness or arbitrariness, resultantly vitiating the law, the procedure and the action taken thereunder.

286.5. It is neither correct nor judicially permissible to say that taking of police permission for holding of dharnas, processions and rallies of the present kind is irrelevant or not required in law. Thus, in my considered opinion, the requirement of associating police, which is an important organ of the State for ensuring implementation of the rule of law, while holding such large-scale meetings, dharnas and protests, would not infringe the fundamental rights enshrined under Articles 19(1)(*a*) and 19(1)(*b*) of the Constitution. This would squarely fall within the regulatory mechanism of reasonable restrictions, contemplated under Articles 19(2) and 19(3). Furthermore, it would help in ensuring due social order and would also not impinge upon the rights of others, as contemplated under Article 21 of the Constitution of India. The police authorities, who are required to maintain the social order and public tranquility, should have a say in the organisational matters relating to holding of dharnas, processions, agitations and rallies of the present kind. However, such consent should be considered in a very objective manner by the police authorities to ensure the exercise of the right to freedom of speech and expression as understood in its wider connotation, rather than use the power to frustrate or throttle the constitutional right. Refusal and/or withdrawal of permission should be for

valid and exceptional reasons. The executive power, to cause a restriction on a constitutional right within the scope of Section 144 CrPC, has to be used sparingly and very cautiously. The authority of the police to issue such permission has an inbuilt element of caution and guided exercise of power and should be in the interest of the public. Such an exercise of power by the police should be aimed at attainment of fundamental freedom rather than improper suppression of the said right.

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286.7. As difficult as it is to anticipate the right to any freedom or liberty without any reasonable restriction, equally difficult it is to imagine the existence of a right not coupled with a duty. The duty may be a direct or an indirect consequence of a fair assertion of the right. Part III of the Constitution, although confers rights, duties, regulations and restrictions are inherent thereunder. It can be stated with certainty that the freedom of speech is the bulwark of democratic Government. This freedom is essential for the appropriate functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty in the hierarchy of liberties granted under our constitutional mandate."

27) The judgment cited by Mr. T.Sreedhar reported in ***Emperor v Qasim Raza case (17 supra)*** also held as follows:

"In fact it has not been suggested to us that the act of taking out an unlicensed procession is in itself an offence against any law. It is the right of a citizen to use the public thoroughfares, provided that he commits no offence in doing so, and the taking out of a procession is not in

> itself an offence, nor does it require a special license, except as provided by section 30 of the Police Act. That is a section which empowers the authorities to control processions, and the manner in which they are to be controlled, if it is necessary to control them, is set forth in sub-section (2). Neither in the marginal note nor in the body of the section is any express power given to the authorities absolutely to forbid the taking out of a procession."

28) The learned Advocate General relied upon ***J.A.C. Saldanha case (24 supra)*** to argue that the word 'superintendence' in Section 3 of the Police Act should not be given a narrow interpretation and that the directions given in the impugned G.O. do not amount to restrictions. Relying on ***Mazdoor Kisan Shakti Sangathan case (5 supra)*** learned Advocate General argued that the reasonable restrictions can be put in place and the planning of routes etc., is permitted. Relying upon ***Amit Sahni case (25 supra)*** learned Advocate General argues that the public has a right to assemble peacefully and without arms. They do not have a right to occupy the place and cause restriction to traffic.

LEGAL CONCLUSIONS:

29) The case law cited by the learned Advocate General is noted and appreciated but the fact remains that the G.O. in

question is not dealing with people, who are squatting on public roads or occupying public roads for a long period like in the cases of ***Jantar Mantar case (5 supra)*** and ***Amit Sahni case (4 supra)***. The issue in this case relates to processions and assemblies which are being held or which are scheduled to be held by political parties on roads, highways, streets etc. The judgment in ***J.A.C. Saldanha case (24 supra)*** pertains to the ordering of further investigation and thus it cannot be really applied to the present facts.

30) Even otherwise if the G.O. in question is seen against the backdrop of the important cases, it is clear that the rare and exceptional circumstances under which the licenses are to be granted are not described or enumerated. In para 39 of judgment of ***Himat Lal K. Shah case (1 supra)***:

> **"39.** The real point in this case is whether the impugned rules violate Article 19(1)(*b*). Rule 7 does not give any guidance to the officer authorised by the Commissioner of Police as to the circumstances in which he can refuse permission to hold a public meeting. Prima facie, to give an arbitrary discretion to an officer is an unreasonable restriction. It was urged that the marginal note of Section 33 — power to make rules for regulation of traffic and for preservation of order in public place etc. — will guide the officer. It is doubtful whether a marginal note can be used for this purpose, for we cannot imagine the officer

> referring to the marginal note of the section and then deciding that his discretion is limited, specially as the marginal note ends with “etcetra”. It is also too much to expect him to look at the scheme of the Act and decide that his discretion is limited.”

31) Similarly in paragraph 43 also the following was held:

> **“43.** In our view Rule 7 confers arbitrary powers on the officer authorised by the Commissioner of Police and must be struck down. The other rules cannot survive because they merely lay down the procedure for obtaining permission but it is not necessary to strike them down for without Rule 7 they cannot operate. Rule 14 and Rule 15 deal both with processions and public meetings. Nothing we have said affects the validity of these two rules as far as processions are concerned.”

32) Justice K.K. Mathew in his concurring judgment also concluded as follows,(as did Justice M.H.Beg):

> **“73.** If there is a fundamental right to hold public meeting in a public street, then I need hardly say that a rule like Rule 7, which gives an unguided discretion, practically dependent upon the subjective whim of an authority to grant or refuse permission to hold a public meeting on public street, cannot be held to be valid. There is no mention in the rule of the reasons for which an application for licence can be rejected. “Broad prophylactic rules in the area of free expression and assembly are suspect. Precision of regulation must be the touchstone in an area so closely touching our precious freedoms (see *Naacp* v. *Button*). [(1963) 371 US 415, 438].”

33) It is clear that the power cannot be unfettered and / or purely discriminatory. Unfettered discrimination leads to arbitrariness. It is accepted that absolute power corrupts and this is why courts insist on the tests of reasonability proportionality etc., in such cases.

34) In ***Ramlila Maidan case (3 supra)*** also the following was held with regard to the careful use of the power:

> **"286.5:** It is neither correct nor judicially permissible to say that taking of police permission for holding of dharnas, processions and rallies of the present kind is irrelevant or not required in law. Thus, in my considered opinion, the requirement of associating police, which is an important organ of the State for ensuring implementation of the rule of law, while holding such large-scale meetings, dharnas and protests, would not infringe the fundamental rights enshrined under Articles 19(1)(*a*) and 19(1)(*b*) of the Constitution. This would squarely fall within the regulatory mechanism of reasonable restrictions, contemplated under Articles 19(2) and 19(3). Furthermore, it would help in ensuring due social order and would also not impinge upon the rights of others, as contemplated under Article 21 of the Constitution of India. The police authorities, who are required to maintain the social order and public tranquility, should have a say in the organisational matters relating to holding of dharnas, processions, agitations and rallies of the present kind. However, such consent should be considered in a very objective manner by the police authorities to ensure the exercise of the right to freedom of speech and expression as understood in its wider connotation, rather than use the power to frustrate or throttle the constitutional right.

> Refusal and/or withdrawal of permission should be for valid and exceptional reasons. The executive power, to cause a restriction on a constitutional right within the scope of Section 144 Cr.P.C., has to be used sparingly and very cautiously. The authority of the police to issue such permission has an inbuilt element of caution and guided exercise of power and should be in the interest of the public. Such an exercise of power by the police should be aimed at attainment of fundamental freedom rather than improper suppression of the said right.

35) Through the impugned G.O., it is clear that the State is proposing to regulate the conduct of meetings on highways, municipal roads and panchayat roads. The ostensible reason is that the highways etc., are to be used for transportation of goods and services and that disruption would have a ripple effect on logistics. Municipal roads and panchayat roads are said to be narrow and are meant for the free movement of the people. As per the G.O. obstruction to these roads endangers life and disrupts civil life, emergency services etc.

36) The avowed objection is laudable, but the fact remains that for decades the highest courts of the land have recognized the right of an individual or a group of people to assemble peacefully and to protest peacefully on public roads. In the leading case of ***Himat Lal K. Shah case (1 supra)*** the

Hon'ble Supreme Court of India clearly held that prior to the enactment of the Constitution itself the citizen had a right to hold a meeting on public streets subject to the control of appropriate authority regarding time and place of the meetings and to the consideration of the public order. Thereafter, in para 32 the Hon'ble Supreme Court of India noticed that the Constitution makers conferred Fundamental Right to all citizens to assemble peacefully and without arms. It was also noticed that after coming into force of the Constitution of India only a reasonable restriction can be imposed on this right within Article 19 (3). After considering the power available under Rule 7, framed under Bombay Police Act, it was held that it confers an arbitrary discretion on the police authorities.

37) It is also clear the G.O. is issued by the Principal Secretary to Government in the name of the Hon'ble Governor of Andhra Pradesh. It clearly states that highways are meant for high speed connectivity to ensure logistical integration and any obstruction of the highways will affect the movement of the logistics across the State. Thereafter, it is stated that it "would be ideal" that no license be granted for any application seeking permission to conduct meetings on State highways

and national highways. Only in rare and exceptional cases, for reasons to be recorded in writing, an application could be considered. Same is the case in municipal roads and panchayat roads.

38) In the opinion of this Court the failure to describe what are the rare and exceptional cases or the circumstances confers arbitrary power upon the authorities to refuse permissions for holding meetings. It is also issued by and in the name of the Governor of the State by a very high functionary - a Principal Secretary of the Government and the language used and the dicta – "It is therefore ideal that no license be granted for any application seeking permission to conduct a meeting on State Highways and National Highways." This virtually takes away the discretion that is to be exercised by the officers at a lower level. In effect it directs them not to issue licenses, on roads, highways, streets etc., and to suggest alternative places, for congregations, processions. This virtually amounts to a direction to act in a particular way which is the exact opposite of what the Act contemplates by leaving it to the discretion of the officer. By

an executive order the provisions of the Act are sought to be diluted and also controlled.

39) Even as per Section 30(2) of the Act the license can only be insisted upon if the officer is of the opinion that the procession /meeting may cause obstruction etc. This clearly indicates that a case to case decision must be taken based upon the officers own analysis. After he concludes that there is a likelihood of breach of peace he can insist on a license being obtained and can impose conditions in the license. The G.O. in the opinion of this court takes away this discretion and directs the officers to act in a particular way on all roads, highways, streets etc. It fails on the issue of proportionality also. In the case of ***Index Medical College, Hospital and Research Centre v State of Madhya Pradesh and Others***[30] the following was held.

> **19.** According to Aharon Barak proportionality in the broad sense is based on two principal components. The first is legality, which requires that the limitation be "prescribed by law"; the second is legitimacy, which is fulfilled by compliance with the requirements of proportionality in the regular sense. Its concern is with the conditions that justify the limitation of a constitutional right by a law. There are two main justificatory conditions

[30] 2021 SCC OnLine 318

: an appropriate goal and proportionate means. An appropriate goal is a threshold requirement and in determining it no consideration is given to the means utilized by the law for attaining the goal. A goal is appropriate even if the means of attaining it is or not. The proportionate means must comply with three secondary criteria : (a) a rational connection between the appropriate goal and the means utilized by the law to attain it, (b) the goal cannot be achieved by means that are less restrictive of the constitutional right; (c) there must be a proportionate balance between the social benefit of realizing the appropriate goal, and the harm caused to the right (proportionality stricto sensu or the proportionate effect).

20. The three tests of proportionality propounded by *Dickson, C.J. of Canada in R.* v. *Oakes* are:

(a) The measures adopted must be rationally connected to the objective.

(b) The means should impair "as little as possible" the right or freedom in question.

(c) There must be a proportionality between the effects of the measures which are responsible for limiting the right or freedom, and the objective which has been identified as of "sufficient importance".

40) The fact that an accident or incident occurred at a particular place cannot be used as an "objective/cause" to curtail the right to assemble, to take out processions etc., on all other roads. The cause of the earlier accident or incident relied on by the State should be studied fully and then

safeguards or guidelines can be issued to prevent the repetition of such an incident if there is similarity in the ground level situation etc. Saying that it is not “desirable” or that it is not “ideal” virtually leaves no choice or discretion to the officer. The remedy/cure suggested in the G.O.is not needed for the end objective and will impose a restriction on the individual and his constitutional freedom.

41) In the opinion of this court, this is far more than a reasonable restriction on the right of a citizen or of a political party to assemble and to hold meetings. The case law cited earlier in the preceding paragraphs by the petitioners applies with full force and vigor to the facts on hand.

42) Even in the case of the ***Mazdoor Kisan Shakti Sangathan case (5 supra)*** the Hon’ble Supreme Court of India while dealing with an issue of balancing of fundamental rights in paragraph 70 held that the proper guidelines should be framed laying down the parameters under which permissions can be granted. It is important to note that the Hon’ble Supreme Court of India was dealing with a case pertaining to a core area of New Delhi /in Lutyens Delhi and had also noted the existence of important government offices

like North and South Block, Parliament House, Supreme Court of India, that certain roads are used by high dignitaries like Prime Minister etc., and they ultimately recommended that the authorities must formulate the proper and requisite guidelines. The Commissioner of Police, New Delhi was directed to complete the exercise in consultation with the other authorities within two months from the date of order.

43) Therefore, it is clear from a reading of these judgments that historically, culturally and politically, the tradition of public meetings, processions, assemblies etc., on streets, highways etc., have been recognized in this country. These meetings, processions etc., constitute an important facet of our political life. The freedom struggle is replete with examples of processions, dharnas, satyagrahas etc., conducted on the roads which lead to India's tryst with destiny on 15.08.1947. If the political history of contemporary Andhra Pradesh is also considered, it is clear that there were many processions, padayatras, assemblies etc., which were conducted on public roads/highways across the State.

44) Any G.O. or executive order which takes away the right of a political party or a citizen or a group of people to assemble

peacefully, to protest peacefully etc., has to be viewed strictly. This is a right, which is conferred on the citizens by the Constitution of India. It can only be subject to a reasonable restriction. The restriction can be classified as reasonable if there are guidelines laid down, as noticed by the Hon'ble Supreme Court of India in the ***Mazdoor Kisan Shakti Sangathan case (5 supra)*** and the tests of reasonability / proportionality etc., are met.

45) The right to assemble, to protest peacefully, to express one's opinion freely is too precious a freedom to be taken away by the *ipse dixit* of an officer of the state. Freedom of Speech is the bulwark of democratic Government and is regarded as the first in the hierarchy of liberties ***(Para 286.7 of Ramlila Maidan 3 supra)***. This is too precious a freedom to be left to anyone's unfettered discretion. The power conferred by this G.O. is arbitrary, excessive and also fails on the test of proportionality. It is not a reasonable restriction. While the avowed objective of the State to prevent loss of life etc., can be said to be reasonable, the decision making process is taken away by the directions in the G.O. Ultimately, arbitrary power

is conferred on an officer in relation to a Part 3 fundamental right.

46) Therefore, this Court has to hold that in the circumstances that the net effect of the contents of the G.O.Rt.No.1 is to impose a ban on all meetings at public highways, state highways, municipal and panchayat roads etc. This Court is of the firm opinion that the G.O. does not stand the test of law and accordingly it is set aside. It is left open to the State to frame proper guidelines in the future keeping in view the law on the subject.

47) In addition to the above, in the counter affidavit filed, learned Advocate General has raised a serious issue about the manner in which the Public Interest Litigations was entertained and the interim order came to be passed on 12.01.2023 by the Vacation Bench during the Sankranthi vacation-2023. It is his contention that this is not a matter which could have been taken up during the Sankranti Vacation of 2023. He points out that the Hon'ble Chief Justice as the Master of the Roster issued Notification No.1/SO/2023 dated 05.01.2023 bearing Roc.No.550/SO/2022. He points

out that as per clause (iii) of this notification, the following types of cases should be taken up.

> '3. Hon'ble Vacation Judges will hold the Court on the date mentioned as above to hear the following types of matters, as their Lordships think fit.
>
> i. Habeas Corpus
> ii. Anticipatory bail
> iii.Bail applications, if bail is refused by Magistrates and Sessions Judges/Additional Sessions Judges.
> iv. Any other urgent matter, which cannot wait till the end of the vacation (such as eviction / dispossession, demolition etc.) specifically permitted by the Senior Vacation Judge.'

48) He also refers to General Instructions of clause (4) and submits that cases relating to policy and administrative matters should not be taken up during vacation. Learned Advocate General also pointed out that in all the writ petitions filed and in particular, W.P.(PIL).No.5 of 2023, there was no pleading or prayer of urgency, particularly to hear the matter during the vacation. He points out that the Government Order in question is also a matter of policy. Relying upon the notification mentioned earlier and the practice prevalent in this Court, learned Advocate General submits that the vacation Division Bench committed a mistake in taking up the matter and passing the impugned order of stay even without

giving an opportunity of filing a counter. He submits that the filing of the writ petition itself is an abuse of a process of law.

49) He also submits that the subsequent directions for hearing of cases etc., issued on 06.01.2023 by the Vacation Officer is contrary to the directions of the Hon'ble Chief Justice. He points out that in the subsequent directions issued, clauses (3) and (4) are totally taken away.

50) Relying upon the judgments in ***Prakash Chand's case (27 supra)***, ***Campaign for Judicial Accountability and Reforms case (28 supra)*** and ***Asok Pande case (29 supra)***, it is argued that the Hon'ble Chief Justice is the Master of the roster and it is only the Hon'ble Chief Justice that can assign subjects or allot the work to any Bench or Judge of the Court. Apart from what is assigned to the Judges, it is submitted that no other case can be entertained. It is also argued that no Judge or Judges can give directions that can run contrary to the directions of the Hon'ble Chief Justice.

51) This Court notices that in ***Prakash Chand's case (27 supra)***, the following is stated in para 59:

> "**59.** From the preceding discussion the following broad CONCLUSIONS emerge. This, of course, is not to be

treated as a summary of our judgment and the conclusions should be read with the text of the judgment:

(*1*) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

(*2*) That the Chief Justice is the master of the roster. He *alone* has the prerogative to constitute benches of the court and allocate cases to the benches so constituted.

(*3*) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

(*4*) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

(*6*) That the puisne Judges cannot "pick and choose" any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

(*7*) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

(8) xxx

(*9*) That all comments, observations and findings recorded by the learned Judge in relation to the disposed of writ petition were not only unjustified and

unwarranted but also without jurisdiction and make the Judge *coram non judice*."

52) Similarly, in ***Campaign for Judicial Accountability and Reforms's case (28 supra)***, the following is stated in paras 7 and 8:

"**7.** The aforesaid position though stated as regards the High Court, we are absolutely certain that the said principle is applicable to the Supreme Court. We are disposed to think so. Unless such a position is clearly stated, there will be utter confusion. Be it noted, this has been also the convention of this Court, and the convention has been so because of the law. We have to make it clear without any kind of hesitation that the convention is followed because of the principles of law and because of judicial discipline and decorum. Once the Chief Justice is stated to be the Master of the Roster, he alone has the prerogative to constitute Benches. Needless to say, neither a two-Judge Bench nor a three-Judge Bench can allocate the matter to themselves or direct the composition for constitution of a Bench. To elaborate, there cannot be any direction to the Chief Justice of India as to who shall be sitting on the Bench or who shall take up the matter as that touches the composition of the Bench. We reiterate such an order cannot be passed. It is not countenanced in law and not permissible.

8. An institution has to function within certain parameters and that is why there are precedents, rules and conventions. As far as the composition of Benches is concerned, we accept the principles stated in *Prakash Chand* [*State of Rajasthan* v. *Prakash Chand*, (1998) 1 SCC 1], which were stated in the context of the High

> Court, and clearly state that the same shall squarely apply to the Supreme Court and there cannot be any kind of command or order directing the Chief Justice of India to constitute a particular Bench."

53) This Court is of the opinion that there is sufficient strength in what is stated by the learned Advocate General on this particular issue. As per the prevailing traditions and precedents, vacation Judges are normally to hear and decide the following types of matter only - Habeas Corpus, Anticipatory Bail, Bail application "if bail is refused by a Lower Court" and any other matter which cannot wait till the end of the vacation like eviction, dispossession, demolition etc. In addition, the general instructions clearly state that matters relating to the policy or administrative matters cannot be taken up. These are the instructions issued by the Hon'ble Chief Justice of the State himself.

54) The law on the subject is sufficiently clear. Para 59 of the judgement of the Hon'ble Supreme Court in ***Prakash Chand's case (27 supra)*** makes the position of the Chief Justice explicit and clear. The assignment of roles, roster and subjects by the Chief Justice is his prerogative. It is clearly held in the judgment that the Chief Justice alone has the

prerogative to constitute Benches or to allocate cases. Judges can only do the work that is allotted to them by the Chief Justice or under his directions. It is also made clear in ***Prakash Chand's case (27 supra)*** that Puisne Judges cannot take any other kind of judicial work except those assigned to them by or under the directions of the Chief Justice. Judges cannot also pick and choose cases or assign the same to themselves. No direction can be issued to the Registry by Judge or Judges, which run contrary to the directions given by the Chief Justice ***(Prakash Chand's case 27 supra).***

55) While on the judicial side, the Chief Justice of a High Court is the first among equals, in matters of administrative control he is the Master and he alone has the power and authority to allocate subjects or to prescribe the issues and the matters which can be dealt with by the Judges.

56) If the present case is examined against the backdrop of settled legal position, it is clear that vacation Judges could hear and dispose of matters mentioned in clause 3 of the notification dated 05.01.2023. Any other matter which can be mentioned before the senior vacation Judge, or permitted by a

senior vacation Judge, is an urgent matter which cannot wait till the end of the vacation. Only such matters which cannot wait are to be mentioned.

57) It is also pertinent to note that the Sankranti vacation was only for the period from 09.01.2023 to 17.01.2023 (about 8 days in all). In the opinion of this Court, the issues raised in the current writ petition did not come within the definition of an urgent matter which could not wait till the end of the vacation.

58) Nothing further needs to be said as orders are pronounced on the merits of the main matter itself.

59) **W.P.(PIL) No.3 of 2023** is filed for the following relief:

> "…..to issue appropriate writ(s), direction(s) or order(s), more particularly in the nature of "Writ of Mandamus":
> a) Declaring the inaction/insufficient action of Respondent Nos.1 to 3 herein in regulating the public meetings / road shows conducted by political parties, some of which are arrayed herein as Respondent Nos.4 – 7, and in ensuring that the said public meetings / road shows do not cause loss / inconvenience to the public at large, as being illegal, arbitrary, unjust, violative of Articles 19 (1)(g) and 21 of the Constitution of India;
> b) Consequently, direct the Respondent Nos.1 – 3 herein to ensure proper and complete compliance of the guidelines laid down by the Hon'ble Supreme court of India in the case of In Re: Noise Pollution, reported in AIR

2005 SC 3136 and the Noise Pollution (Regulation and Control) Rules, 2000 in Political Meetings / Road shows held by Political Parties;

c) Direct the Respondent Nos1 – 3 herein to properly regulate and manage the roadways during the conduct of Public Meetings/Road Shows by Political Parties in such a manner that no inconvenience is caused to the public at large;

d) Direct the Respondent Nos.1 – 3 herein to ensure that the public meetings / road shows of Political Parties do not restrain / obstruct essential services like Ambulance and Fire Services; and

e) And pass such other order or orders as this Hon'ble Court deems fit and proper, in the facts and circumstances of the case."

Sri V.R.Reddy Kovvuri, learned counsel for the petitioner argued in line with what is stated in his writ affidavit and wanted the orders to be passed.

60) In view of the findings and conclusions in W.P. (PIL) No.5 of 2023, no further orders are necessary in this W.P.(PIL) No.3 of 2023.

61) Accordingly, W.P.(PIL) Nos.5; 8 and 10 of 2023 and Writ Petition Nos.1369 and 1562 of 2023 are allowed setting aside the G.O.Rt.No.1, Home (Legal.II) Department, dated 02.01.2023, and W.P.(PIL) No.3 of 2023 is dismissed. There shall be no order as to costs.

62) Consequently, the Miscellaneous Applications pending, if any, shall stand closed.

PRASHANT KUMAR MISHRA, CJ D.V.S.S.SOMAYAJULU, J

SSV

HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU

WRIT PETITION (PIL) Nos.5; 3; 8 and 10 of 2023
and
WRIT PETITION Nos.1369 and 1562 of 2023

Date:12.05.2023

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