

HIGH COURT OF SIKKIM
Record of Proceedings

WP (PIL). No. 01/2019

ANISH SHARMA & ORS.

PETITIONER (S)

VERSUS

STATE OF SIKKIM & ORS.

RESPONDENT (S)

Date: 26/02/2019

CORAM :

**HON'BLE MR. JUSTICE VIJAI KUMAR BIST, CJ.
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, J.**

For Petitioner (s) : Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri, Ms. Sabina Chettri, Ms. Malati Sharma and Ms. Sudha Sewa, Advocates.
For Respondent (s) : Mr. A. Mariarputham, Advocate
For R-1 to R-7 General, Mr. J.B. Pradhan, Additional Advocate General, Mr. Karma Thinlay, Senior Government Advocate, Mr. Thinlay Dorjee Bhutia, Government Advocate, Mr. S.K. Chettri and Mrs Pollin Rai, Asstt. Government Advocates.

...

The present PIL has been filed seeking directions to restrain respondent No.8, Sikkim Krantikari Morcha, one of the political parties in Sikkim, from going ahead with the state wide bandh called on 28.02.2019 by declaring it illegal and unconstitutional. Learned senior counsel for the petitioner referred to the news item published in the newspaper 'Sikkim Express' dated 22.02.2019, in which the President of the respondent No.8 called upon the people of Sikkim to support the bandh and in the event of not doing so, threatened with dire consequences. The relevant portion of the news article is as follows:

HIGH COURT OF SIKKIM
Record of Proceedings

“.....Bandh means bandh, and if anyone tries to forcefully open would face the consequences. We are on our final fight for the Sikkimese people. Our revolution is not going to stop until the change in the system is brought. We are ready to lay down our lives for the people.”

2. In the Writ Petition, the petitioners aver that there are a number of students coming from far flung places including Singtam and Rangpo to schools and colleges and due to the strike/bandh, it will be difficult for them to travel and come to the schools or colleges which would hamper their studies. It is also submitted that the Central Board of Secondary Education (CBSE) and Indian Certificate of Secondary Education (ICSE) exams of X and XII standards are underway and students appearing for the examinations will face difficulties on account of the bandh. The petitioners have also stated in Paragraph 14 of the Writ Petition that in the recent past, the State has been witnessing disturbed conditions. On 18.02.2019, the entire road stretch from Tadong to Gangtok bazaar area was blocked by demonstrators and due to the same, the public in general including the commuters, taxis, private cars and other vehicles had to suffer a lot. It is stated in Paragraph 16 that in the past also, during such period of unrest just before the elections in 2014, the Gangtok bazaar area was forced to be shut down due to the violent demonstrations launched by supporters of a political party. Allegations have been made against the State Government for failing to take appropriate steps on time in the said matter. That the respondent No. 9 is going

HIGH COURT OF SIKKIM
Record of Proceedings

to organize a peace march on the same day and conflicts are bound to ensue thereof.

3. In response, learned Advocate General for the State submits that preventive measures have already been taken by the Chief Secretary and in this regard Circular No. Home/Confdl./01 dated 20.02.2019, has been issued. The relevant portion is as follows;

“.....

Now, therefore, in view of the aforesaid law of the land as declared by the Hon'ble Supreme Court, it is hereby ordered that any call for strike or bandh or for that matter whatever nomenclature may be used for the purpose of causing bandh or strike or disruption of public life or closure or affecting the fundamental right of the people as a whole or in any manner shall be illegal, unconstitutional and the political parties or organizer causing such bandh or strike or disruption or closure of public life would be liable to be dealt under the law and the State Government would recover the loss from the sponsors an organizers of such band and would also be liable to be dealt with such other law as applicable.

.....”

4. We have carefully considered submissions of learned counsel for the parties.

5. Today is the 26th February, 2019 and the bandh is proposed for 28th February, 2019.

6. In the matter of ***All India Anna Dravida Munnetra Kazhagam vs. Chief Secretary, Government of Tamil Nadu and Others : (2009)5 SCC 452***, the Hon'ble Supreme Court has observed *interalia* that ordinarily, the High Court as well as the Supreme Court should refrain from passing any interim order the effect of which would be granting

HIGH COURT OF SIKKIM
Record of Proceedings

the main relief. But in cases where a party approaches the Court without loss of time, there are no *laches* on its part, it is not possible to give notices to all necessary parties and hear them because of paucity of time and in case interim order is not passed, the main case would become infructuous, in such cases interim order should be passed. We do not have sufficient time to hear the private respondents in the matter while considering the interim relief application, therefore, we are hearing the application for interim relief filed by the petitioners today itself.

7. We are of the view that it is the duty of the State Government to ensure law and order and also to ensure that normal life of the citizens are not disturbed.

8. Considering all these facts, we restrain the respondent No.8 from going ahead with the call for bandh on 28.02.2019 from what has been reported in 'Summit Times' on 20.02.2019 and 'Sikkim Express' on 22.02.2019. We also direct the respondent No.9 not to go ahead with any peaceful procession or rally on 28.02.2019.

9. We direct the Chief Secretary and the Director General of Police of the State to ensure that if anybody is involved in giving effect to any kind of bandh, and intends to disrupt normal public life and also affect the law and order of the State, he shall be booked under necessary provision of law. In case of failure, we make it clear

HIGH COURT OF SIKKIM
Record of Proceedings

that appropriate action will be taken against the Chief Secretary and the Director General of Police.

10. We also direct that in case any public/private property is damaged and if anyone is prevented from moving from one place to another, necessary action be taken against those persons found involved in such damage or restraint and they shall also be liable to pay compensation as directed by this Court.

11. Petition is admitted.

12. Issue notice to the respondents No.8 and 9 by registered post acknowledgement due, fixing 01.04.2019.

13. Let a certified copy of this Order be supplied to the parties on payment of usual charges today itself.

14. We direct the Senior Superintendent of Police, East at Gangtok to serve a copy of this Order on the Respondents No.8 and 9 without fail promptly.

15. List on 01.04.2019 for final hearing. In the meantime pleadings be exchanged.

Judge
26.02.2019

Chief Justice
26.02.2019

Index : ~~Yes~~ / No
Internet : Yes / ~~No~~