Serial No.9

IN THE HIGH COURT AT CALCUTTA
(Appellate Side)
CONSTITUTIONAL WRIT JURISDICTION

WPA (P) 53 of 2021
Date of decision:-11.2.2021

Ramaprasad Sarkar
…Petitioner

-versus-

Union of India and others
…Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL HON'BLE MR. JUSTICE ANIRUDDHA ROY

Present:- Mr. Achintya Kumar Banerjee and
Ms. Indumouli Banerjee, Advocates with
… for the petitioner
Mr. Roma Prasad Sarkar, Advocate
… petitioner in person.

Mr. Y.J. Dastoor, Additional Solicitor General
Mr. Phiroze Edulji,
Ms. Mrinalini Majumdar and
Mr. R.K. Shah, Advocates
… for the Union of India.

Mr Mahesh Jethmalani,
Mr Dhiraj Trivedi, Senior Advocates with
M/s Neelanchan Bhattacharya, Billwadal Bhattacharya,
Vikash Singh, Rajdeep Majumdar,
Mayukh Mukherjee, K.P. Dalpaty and
Rahul Singh, Advocates
… for intervenor.

Mr Partha Ghosh,
Mr Amal Kumar Dutta, Advocates
… for the respondents.

Mr Kishore Datta, Advocate General Mr Abhratosh Majumdar, Addl. G.P.
Mr Sayan Sinha, Advocate
... for the State.

ORDER

1. The present petition has been filed by an advocate, who is practicing in this court, claiming the same to be in public interest.

2. When the case was taken up for hearing on February 9, 2021, a request was made by the petitioner, who appeared in person, that short adjournment be granted to enable him to engage a counsel to argue the writ petition.

3. The case was adjourned for today.

4. At the very outset, Mr Y.J. Dastoor, learned Additional Solicitor General of India raised a preliminary objection regarding maintainability of the writ petition in public interest with reference to locus of the petitioner and the issues raised there. He referred to the representation dated February 02, 2021 filed by the petitioner to various authorities raising his grievance. He submitted that though the representation is dated February 02, 2021 but there is nothing specifically stated in the petition as to when the same was submitted to the authorities concerned. For filing the writ petition in this court, the affidavit was got attested by the petitioner on February 03, 2021 and the writ petition was filed in court on the same day. Apparently after submission of the representation dated February 02, 2021 the petitioner did not even afford an opportunity to the authorities concerned to consider the same.

5. He further referred to the representation dated February 02, 2021 filed by the petitioner wherein the petitioner has identified himself as an advocate, member of the Calcutta High Court Trinamul Law Cell. His submission is that the writ petition has not been filed in public interest rather it is politically motivated, hence, should not be entertained. The same deserves dismissal with special costs.

6. Mr Mahesh Jethmalani, learned senior counsel appearing in the matter for interveners pointed out that it is not only towards the end of the representation filed by the petitioner that he identified himself to be member of the Calcutta High Court Trinamul Law Cell but even in paragraph No.1 of the representation also he had stated so. He also

submitted that this court cannot be used as a platform by the petitioner for political gain. Hence, the writ petition deserves to be dismissed at the threshold.

7. On the other hand, learned counsel for the petitioner raised objection regarding appearance of Mr. Dastoor as the Additional Solicitor General of India in the present case.

8. However, Mr. Dastoor, Learned Additional Solicitor General pointed out that he was served with a copy of the writ petition and that Union of India has been impleaded as respondent No.1 in the writ petition, hence he has a right to put in appearance on its behalf.

9. To this, learned counsel for the petitioner submitted that the name of Union of India may be deleted from the Memo of Parties.

10. Heard learned counsels for the parties and perused the paper book.

11. It was pointed out by Mr. Dastoor, learned Additional Solicitor General that a representation dated February 02, 2021 was filed by the petitioner to various authorities, stating therein that a Rath Yatra being planned by a political party in West Bengal, may result in spreading the Covid-19 virus and may also create law and order problem. There is no specific pleading in the writ petition about the mode of service of the representation to the addressees.

12. The writ petition was filed in this court on February 03, 2021 praying for the following reliefs:-

(a) "Leave to dispense with formalities of clause 26 of the High Court Writ Rules.

(b) A Writ of or in the nature of Mandamus or other orders and/or directions, directing the respondent authorities as follows:-

i) To act in accordance with law; ii) To direct the respondent authorities not to give any permission under any circumstances whatsoever to hold the

proposed “Rath Yatra” by the Bharatiya Janata Party within West Bengal;

iii) Not to allow and permit the Bharatiya Janata Party to organize the five Yatras during the present Covid-19 pandemic situation;

iv) To direct the Respondents to take all necessary measures to stop the segments of the Yatras within the state of West Bengal if such “Rath Yatra” is hold without the appropriate permission of the appropriate authority;

v) to consider the representation made by the petitioner dated 02.02.2021 and not to grant any permission for holding “Rath Yatra” within the state by Bharatiya Janata Party;

vi) alternatively, if the permission for holding “Rath Yatra” is accorded then appropriate Covid-19 protocal must be ensured by the State respondent authorities;

(c) A Writ in the nature of Certiorari do issue commanding the Respondents to produce or cause to be produced all records pertaining to the case of the above proceedings before the Hon’ble High Court including the representation submitted by the petitioner so that conscionable justice may be administered in accordance with law;

(d) Ad-interim order in terms of prayers above;

(e) Any other or further order or orders and/or direction or directions as to Your Lordships may deem fit and proper." (sic)

13. The fact remains that when the writ petition was filed in this court, the representation filed by the petitioner may not have even been received by the addressees therein, even if sent by the petitioner. Though the prayer made in the writ petition is for issuance of a Writ of Mandamus.

14. Further, as has been pointed out by Mr. Mahesh Jethmalani, learned Senior Counsel and Mr Y.J. Dastoor, learned Additional Solicitor General that the present writ petition is politically motivated. It is so evident from paragraph No.1 and the identity of the petitioner as disclosed towards the end of the representation filed by him. The same are extracted below:

> "This is to inform you that I, Sri Rama Prasad Sarkar, son of Late Bhabani Prasad Sarkar, residing at Andul-Bus Stand (Howrah) I am a practitioner advocate for the last 26 years, practicing at Kolkata High Court and a member also of High Court Trinamul Law Cell. I am a public spirited citizen. So many PIL matters I had filed before the Hon'ble High Court at Calcutta."
>
> x x x x
>
> Thanking you for your kind co-operation and necessary action.
> With best regards.
>
> Yours faithfully,
> (Rama Prasad Sarkar)
> Advocate
> High Court, Calcutta
>
> Member of Calcutta High Court Trinamool Law Cell".

15. On a perusal of the aforesaid facts it is clearly established that the present writ petition has been filed by none else than a practicing advocate in this court, who is a member of the Calcutta High Court Trinamul Law Cell, the political party in power at present in the State of West Bengal.

16. Filing of a writ petition by an advocate, who is directly connected with a political party in power raising issues against other political party during

election time cannot be said to be in larger public interest. It can be said to be a private interest litigation.

17. In any case, it is for the authorities in the State to have considered the issues. Even as per the pleadings in the writ petition, the Rath Yatra was to start from February 6, 2021 and as stated in the court, has already started. Besides that, number of political rallies are being held at different places in the State.

18. For the reasons mentioned above, we do not find that the present writ petition can be entertained as a public interest litigation. The same is, accordingly, dismissed.

19. However, there shall be no order as to costs.

(Rajesh Bindal, J.)

(Aniruddha Roy, J.)

Kolkata

11.02.2021

SG/KS