

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No. 676 of 2021

All India Trinamool Congress & Another

.....Petitioners

VERSUS

The State of Tripura and 6 Others

.....Respondents

For Petitioner(s) : Mr. B. Deb, Sr. Advocate.
Mr. S. Lodh, Advocate.
Mr. S. Basak, Advocate.
For Respondent(s) : Mr. S. S. Dey, Advocate General.
Ms. A. Chakraborty, Advocate.

**HON'BLE MR. JUSTICE ARINDAM LODH
ORDER**

21/09/2021

Heard Mr. B. Deb, learned senior counsel assisted by Mr. S. Lodh, learned counsel and Mr. S. Basak, learned counsel appearing for the petitioners. Also heard Mr. S. S. Dey, learned Advocate General assisted by Ms. A. Chakraborty, learned counsel appearing for the respondents-State.

By way of filing the present writ petition, the petitioners have sought for a direction from this Court to organize a protest rally on 22nd September, 2021 protesting against the terrible attacks and inhuman vandalism inflicted on media houses.

Inviting my attention to a communication dated 13.09.2021, Mr. Deb, learned senior counsel has submitted that the petitioners had prayed for organizing a protest rally on 15.09.2021, but, that prayer had been rejected by the authority concerned of the respondents. Thereafter, the petitioners again sought for a date on 16.09.2021, which also was regretted on the ground that permission was already granted to organize a rally on that day and the next date was the day to worship God Biswakarma, and there was serious issue regarding

law and order in and around the city of Agartala. Thereafter, the petitioners again requested the SDPO, West Tripura, Agartala by communication dated 14.09.2021 to organize the protest rally on 22nd September, 2021 at 2.00 pm.

Having found no response to the said communication dated 14.09.2021, the petitioners have approached before this Court by way of filing this writ petition asking a direction upon the respondents to permit the petitioners to organize the protest rally on 22nd September, 2021.

The matter came up yesterday i.e. on 20.09.2021 when, this Court had requested the learned Government Advocate to seek instructions about the decision of the respondents. Today, when the matter came up before this Court, Mr. S. S. Dey, learned Advocate General has placed an order under Section 144 of Cr. P.C issued by the office of the District Magistrate & Collector, West Tripura District dated 20.09.2021, whereby and whereunder, the D.M & Collector has issued prohibitory orders prohibiting all meetings, procession, public gatherings by any political party in Sadar Police Sub-division [East and West Police station areas] w.e.f. 6.00 am of 21.09.2021 till midnight of 04.11.2021. The said prohibitory order was issued under Section-144 of the Cr. PC. It is further ordered, that any person violating these prohibitory measures shall be liable to be prosecuted under the provisions of Section-188 of IPC and as per the provisions of the Disaster Management Act, 2005.

I have perused the said prohibitory order dated 20.09.2021, and have given my due consideration. From the said prohibitory order it appears that the government has considered the various aspects on the eve of Durgapuja, the greatest festival of the State. They have shown the reasons as to why this prohibitory order has been issued. I find that the Government has apprehension of causing serious breach of peace and also has considered the issue out of the 3rd wave of Covid-19. The government has also apprehended deterioration of law and order situation in Sadar police Sub-division, if at this moment it permits organizing of any procession, meetings or public gathering within this area.

In my opinion, this is a policy decision of the government. The power of this Court is very limited in this regard. Making a policy decision is absolutely within the domain of the executives. The Court cannot invade the power vested upon the legislatures as well as the executives unless and until fundamental right is breached.

The correctness of the reasons which prompted the respondents in making a decision, taking one course of action instead of another, is not a matter of concern in judicial review and the Court will always be reluctant for such investigation. The policy decision, in my considered view, must be left to the government as it alone can decide which policy should be adopted after taking due consideration of various facets, it faces to run the administration in the interest of public. It is entirely upon the government to decide the measures and steps to be taken to maintain the law and order in the State and precautionary measures to be adopted on the eve of threat out of 3rd wave of Covid-19. The Court should not substitute its own judgment for the judgment of the executive in such matters. For reference, the order dated 20.09.2021 may be reproduced hereunder:

“Government of Tripura
Office of the District Magistrate & Collector
West Tripura District, Agartala
No.F.4(11)/DM/W/JDL/Vol-IV/2013/8338-48 dated 20.09.2021

ORDER UNDER SECTION 144 Cr. PC.

Whereas, the Superintendent of Police, West Tripura vide letter No. 29483-85/SP/WD/DIB/2021 dt. 18.09.2021 has intimated that holding of meeting/procession/public gathering by any political party in Sadar Police Sub-Division (East Agartala and West Agartala Police Station areas) may not be permitted till completion of Diwali Festival as there is apprehension of serious breach of peace and in view of increasing threat from the third wave of COVID-19.

AND

Whereas, it is also reported that supporters of political parties may try to commit mischief and any kind of further violence at Agartala City may result in sporadic clashes between political groups and may seriously affect the law and order situation;

Whereas, the undersigned is satisfied that allowing any kind of meeting/procession/public gathering by any political party at present may deteriorate law and order situation in Sadar Police Sub-Division (East Agartala and West Agartala Police Station areas) and the situation may worsen if not controlled right now;

Now, therefore, I Shri Rajib Datta, TCS-SSG, District Magistrate & Collector, West Tripura District, in exercise of the powers conferred upon me under Section 144 Cr.P.C., 1973 do hereby order the enforcement of the following prohibitory measures:

Any kind of meeting/procession/public gathering by any political party in Sadar Police Sub-Division (East Agartala and West Agartala Police Station areas) is prohibited w.e.f. 6 A.M. of 21.09.2021 to midnight 04.11.2021.

Any person violating these prohibitory measures shall be liable to be prosecuted under provisions of Section-188 of IPC and as per provisions of the Disaster Management Act, 2005,

In view of the emergent nature of situation and with a view of ensure public peace & tranquility this order is passed ex-parte and is addressed to public in general.

The Superintendent of Police, West Tripura shall take necessary measure to strictly enforce the above order.

Wide publicity of the order shall be made by the Director, ICA, Government of Tripura through electronic media & local daily newspapers.

Given under my hand and seal on 20th September, 2021.

(Rajib Datta, TCS-SSG)
District Magistrate & Collector,
West Tripura, District.”

Learned counsels appearing for the petitioners have submitted that the government has actuated with malice in issuing the said prohibitory order dated 20.09.2021 and it is aimed only to restrain them from organizing any rally in the city of Agartala. The learned counsels further submit that they may be given an opportunity to submit representation to the authority concerned for granting permission to organize protest rally on any future date.

In my opinion, seeking permission to organize rally and submission of representation in this regard entirely depends upon the petitioners. They have the liberty to pursue their cause with the appropriate authorities; and the Court's order is not necessary for such purpose. Accordingly, the petitioners may approach again to the authorities concerned, if they so desire, and in that case, the respondents shall act in accordance with law.

Section-144 of Cr. P.C. gives power to issue order in urgent cases of nuisance or apprehended danger and it will be useful to extract the said provision:

“Section 144. Power to issue order in urgent cases of nuisance of apprehended danger:- (1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material facts of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof:

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray, it may, by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor- in-office.

(6) The State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it under the proviso to sub- section (4).

(7) Where an application under sub- section (5) or sub- section (6) is received, the Magistrate, or the State Government, as the case may be, shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order; and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.”सत्यमेव जयते

Here, I find that the District Magistrate & Collector, West Tripura District has issued the said prohibitory order based on an intimation conveyed to him by the Superintendent of Police, West Tripura vide his letter dated 18.09.2021 whereby, he made a proposal to the D. M. & Collector not to permit any political parties for holding meeting/procession/pubic gathering till completion of Diwali festival as according to SP, West Tripura District, there is serious apprehension of breach of peace, and in view of increasing threat from

the 3rd wave of Covid-19. The said order was also intended to be issued to prevent any mischief which may be committed by any political parties, and may result in sporadic clashes between political groups affecting the law and order situation of the State.

Being the order dated 20.09.2021 is a matter of policy decision of the Government, intending to achieve a definite object and purpose, according to me, the Court cannot invade the jurisdiction vested upon the executives under the Constitution. I am in full agreement with Mr. Deb, learned senior counsel appearing for the petitioners that organizing a peaceful rally is a fundamental right as enshrined under Article-19(1)(a)(b) of the Constitution of India. However, according to me, the group of rights as enshrined under the scheme of Article-19 as listed under Clauses (a) to (g), though, recognized as fundamental rights, but, do not stand on a common pedestal which is clear from the inclusion of Clauses (2) to (6). The Common thread that runs throughout Clauses (2) to (6) is that the operation of any existing law or enactment by the statement or any law which imposes reasonable restrictions to achieve certain objects, is saved. In view of this, the State legislature or its executives can impose all reasonable restrictions to achieve certain objects and in the case in hand, the object, the executives intended to achieve is to prevent breach of peace (law and order) in and around the city of Agartala i.e. in Sadar Sub-Division and also to take precautionary measures to prevent the deadly corona virus in the crowded city of Agartala.

In view of this, interference with the policy decision of the State respondents as indicated in the prohibitory order dated 20.09.2021, in my opinion, is unwarranted and thus, this Court cannot pass any direction permitting the petitioners to organize rally as prayed for by them by way of filing the present writ petition.

Accordingly, the instant writ petition stands dismissed. A copy of the prohibitory order dated 20.09.2021 shall form a part of this record.

JUDGE

A. Ghosh

