

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL

ON THE 18<sup>th</sup> OF MAY, 2023

WRIT PETITION No. 11885 of 2023

Between:-

MADHYA PRADESH ADIWASI VIKASH PARISHAD  
THROUGH IS PRESIDENT DINDESH KUMAR  
DHURWEY S/O SHRI SHYAMLAL DHURWEY AGED  
ABOUT 50 YEARS, OCCUPATION SOCIAL WORKER, R/O  
WARDE NO .11, BUDHI, BALAGHAT, DISTRICT  
BALAGHAT (MADHYA PRADESH)

...PETITIONER

*(BY SHRI PRAHLAD CHOUDHARY - ADVOCATE)*

AND

1. **THE STATE OF MADHYA PRADESH THROUGH CHIEF SECRETARY, MINISTRY OF CHIEF MINISTER OFFICE, VALLABH BHAWAN, BHOPAL (MADHYA PRADESH)**
2. **THE CHIEF SECRETARY GOVT. OF M.P. MINISTRY OF PUBLIC HEALTH AND FAMILY WELFARE / WOMEN AND CHILD DEVELOPMENT / WATER RESOURCES DEPARTMENT / PANCHAYAT AND GRAMIN VIKASH, VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
3. **THE COMMISSIONER, DISTRICT JABALPUR (MADHYA PRADESH)**
4. **THE COLLECTOR, BALAGHAT DISTRICT BALAGHAT (MADHYA PRADESH)**
5. **CHIEF EXECUTIVE OFFICER, JILA PANCHAYAT DISTRICT BALAGHAT (MADHYA PRADESH)**
6. **RAMKISHORE KAWRE MEMBER OF LEGISLATIVE ASSEMBLY (M.L.A.) PARASWARA 110, DISTRICT BALAGHAT (MADHYA PRADESH)**
7. **BAGESWAR DHAM THROUGH DHEERENDRA SHASTRI (KATHAWACHAK) S/O RAMKRIPAL R/O BAGESHWAR DHAM BHAGWAN BALAJI MANDIR, VILLAGE GARHAGAON, DISTRICT CHHATARPUR (MADHYA PRADESH)**

**...RESPONDENT**

***(BY MS. JANHVI PANDIT – ADDITIONAL ADVOCATE GENERAL)***

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*This petition coming on for admission this day, **JUSTICE VIVEK AGARWAL** passed the following:*

**ORDER**

Dictated in open Court :

This petition is filed in the style of Public Interest Litigation by Madhya Pradesh Adiwasi Vikash Parishad through its president Dinesh Kumar Dhurvey. Petitioner has enclosed copy of resolution signed by Dinesh Kumar Dhurvey, himself authorizing himself to file this writ petition. From the letter head used to bring resolution on record as contained in Annexure P/1, it is evident that there are three functionaries; one is the President another is Office President third one is District President. This resolution is signed by four persons including the President.

2. Petitioner's grievance is that respondents be directed not to organize the functions to be held on 23 and 24.05.2023 for promoting Hinduism in a tribal area which affects the tribal mythology. It is also prayed that with a view to protect religious harmony of the tribals as protected under Section 4 (d) of Pesa Act, 1996 [Panchayats (Extension to the Scheduled Areas) Act, 1996] and Article 19 (5) and Schedule 5 of the Constitution. Prayer is also made to set aside the order dated 02.05.2023

(Annexure P/2) passed by the Collector, Balaghat, deputing various district functionaries in connection with the said organization of programme alleging that there is misuse of Government machinery. It is also submitted that legal action be taken against the authority, who passed the order against the constitutional mandate and any other relief be granted in favour of the petitioner.

3 Learned counsel for the petitioner submits that on the basis of some Dilip Singh Bhuria report, petitioner is of the opinion that there is going to be a serious law and order problem, if respondent No.7, Bageswar Dham, through Dheerendra Shastri (Kathawachak) is allowed to perform his Kathawachan in district of Balaghat on 23 and 24.05.2023.

4. It is submitted that, that may have the effect of offending the religious sentiments of the tribal population, which is the majority population of district Balaghat, inasmuch as it is predominantly a tribal district. It is further submitted that ruling party is trying to misuse the goodwill of respondent No.7, Bageswar Dham, (wrongly mentioned as respondent No.3), who is a Hindu saint and that will disturb peace and harmony in a declared tribal area. Petitioner's contention is that there are newspaper reports to this effect that private respondent No.6 is trying to influence the local population through propagation of Hinduism. It is also submitted

that Collector, Balaghat on the one hand is facilitating the arrangement of programmes and on the other hand has issued orders on 10.05.2023 as contained in Annexure P/5 under Section 144 of Cr.P.C. 1973.

5. Thus it is submitted that interest of the tribal population is at stake and therefore, the impugned action of the authorities be set aside and organization of such Kathawachan be stopped.

6. Reliance is placed on the judgment of Supreme Court in *Dharam Dutt and others Vs. Union of India and others, AIR (2004) SC 1295*. Reading from para 35 of the said judgment, it is pointed out that table extracted after para 35 reveals that what are the nature of right and what are the permissible restrictions under Clause (2) to (6) of Article 19. Reading from Clause (1) (d) and (e) of Article 19, it is pointed out that though gives right to move freely and/ or to reside and settle throughout the territory of India but permissible restrictions are that the general public and the protection of the interest of Scheduled Tribe. Thereafter referring to para 64, it is pointed out that a two Judges Bench of Hon'ble Supreme Court in *Indian Aluminum Company and others Vs. State of Kerela and others (1996) 7 SCC 637*, had made an exhaustive review of the available judicial opinion and summed up the essence thereof in nine points, three of which are relevant for our purpose which we set out as under;- "(i) In order that rule of

law permeates to fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free-play in their joints so that the march of social progress and order remain unimpeded. The smooth balance built with delicacy must always maintained.”

7. Similarly, placing reliance on the judgment in *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and another, AIR (1975) SC 2299*, it is pointed out that Chandrachud. J., as his Lordship then was, cited with approval the opinion of **Harold Laski** that “the separation of powers does not mean the equal balance of powers” and observed that “what cannot be sustained is the exercise by the legislature of what is purely and indubitably a judicial function. In our cooperative federalism there is no rigid distribution of powers: what is provided is a system of solitary checks and balances.”

8. Reading from para 68, it is pointed out that Hon’ble Supreme Court observed that in the judgment dated September 10, 1990, C.W.P.No.9120/1999, the High Court (Bench presided over by the learned Single Judge) unfortunately, unmindful of the correct width and expanse of the rights conferred by sub-clauses (a) and (c) of Clause (1) of Article 19 of the Constitution, did not correctly comprehend the scope of Article 19 (1) of the Constitution and overlooked the fine distinction in the breach of rights complained of by a citizen or citizens – collectively but as

citizens, and the right to certain activities claimed by an association. The High Court just confined itself to finding whether the impugned ordinance could be saved by Clause (2) and (4) of Article 19, and if not, then it was unconstitutional, also because it was too drastic and hence unreasonable.

9. Placing reliance on these judgments, it is submitted that organization of discourse (Kathavachan) by private respondent No.7, may have adverse impact on the social fabric of the tribal community and therefore, indulgence be shown.

10. Smt. Janhvi Pandit, learned Additional Advocate General submits that there is no public interest in the petition, it is politically motivated. Placing reliance on the judgment of Supreme Court in the *State of Uttranchal Vs. State of Balwant Singh Chauhal, (2010) 3 SCC 402* and reading para 181, it is pointed out that Courts must encourage only genuine and bonafide PIL and effectively discourage and curb the PIL filed for extraneous considerations. It is submitted that present PIL is loath with extraneous considerations and political motives.

11. It is also pointed out that it is not mentioned by learned counsel in his petition that under which provision of law permission was required to be taken by the respondent No.7 from the concerned Gram Panchayat in terms of the provisions contained in PESA Act, 1996. It is also submitted that as far as

Annexure P/2 is concerned, that is with a view to maintain law and order because district administration is expecting a huge gathering of persons looking to the past history of respondent No.7, and it is their duty to oversee that no issues in regard to law and order are created causing inconvenience to the common man.

12. It is also submitted that another order passed by the District Magistrate under Section 144 of Cr.P.C. is only to be effect and to educate the public at large that they should keep themselves insulated from exchange of objectionable messages etc., on public media as that has a potential of disturbing peace, law and order. Thus placing reliance on the aforesaid judgments in case of State of Uttranchal, it is submitted that there is no public interest and petition be dismissed. Smt. Janhvi Pandit further submits that order dated 02.05.2023 was subsequently modified by the District Collector and District Magistrate on 5<sup>th</sup> May, 2023 and said order has not been challenged by the petitioner.

13. As far as last submission is concerned, that does not require much indulgence inasmuch as 02.05.2023 and 05.05.2023 are administrative orders passed by the District Magistrate, who has a duty to maintain law and order within his district. Order dated 5<sup>th</sup> May, 2023 only makes arrangements in a different format deploying a different set of people and that being an administrative exercise that does not call for and should not be interfered in the

exercise of judicial discretion of this Court as those orders are specifically within the domain of administrative discretion and administrative authority vested in the District Collector and District Magistrate, Balaghat.

14. Petitioner's preliminary argument is that in terms of provisions contained in Section 4 (d) 4 (f) of Pesa Act, 1996 without taking concurrence of the Gram Sabha no function could have been organized. Learned counsel also places reliance on Clause (m) of Section 4 of Pesa Act, which reads as under:

“It is submitted that the spirit of the Act of 1996 is that while endowing Panchayats in the Scheduled areas with such powers and authority as may be necessary to enable them to function as institutions of self government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with - (vi) the power to exercise control over institutions and functionaries in all social sectors.”

15. Provisions contained in Section 4 (d) and 4 (f) of Pesa Act, reads as under :-

(घ) प्रत्येक ग्राम सभा लोगो की परंपराओं और रूढ़ियो, उनकी सांस्कृतिक पहचान, समुदाय के संसाधनों और विवाद निपटाने के रूढ़िजन्य ढंग का संरक्षण और परिरक्षण करने के लिए सक्षम होगी:

(च) ग्राम स्तर पर प्रत्येक पंचायत से यह अपेक्षा की जाएगी कि वह ग्राम सभा से खंड (ड.) में निर्दिष्ट योजनाओं, कार्यक्रमों और परियोजनाओं के लिए उस पंचायत द्वारा निधियों के उपयोग का प्रमाणन अभिप्राप्त करे:

A plain reading of above, makes it abundantly clear that Section 4 (d) of the Act of 1996 provides that every Gram Sabha shall be competent to preserve and save the traditions, mores, cultural identity, resources of the community and for disposal of disputes in a conservative society by conserving and preserving their traditional methods. Similarly, Section 4(f) provides that it is expected of every Panchayat at village level that it shall oversee the implementation of the prescribed schemes, programmes and projects meant for the said Panchayat by making optimal utilization of the amount so sanctioned and obtain their certification.

16. Thus a combined reading or a separate reading of provisions contained in Section 4(d) and 4(f) does not bring home that there is any provision for taking permission from the Gram Panchayat to organize any religious or public function.

17. Thus first limb of argument put forth by learned counsel for the petitioner that without permission of the Gram Sabha no programme could have been organized is not made out. We have given a careful reading to Schedule 5 of the Constitution of India, which according to the petitioner will be applicable to the facts

and circumstances of the present case inasmuch as Balaghat is a notified tribal district. There is no provision under 5<sup>th</sup> Schedule to the Constitution which provides for provisions as to the administration and control of scheduled areas and Scheduled Tribes. It nowhere provides that before undertaking any public function, concurrence of the Gram Sabha or Gram Panchayat is necessary. The true meaning and import of Clause (m) of Section 4 is that Panchayats in the Schedules area will be given sufficient autonomy to function as an institution of self government for which purpose autonomy will be given by the State Legislature which will ensure that Panchayat at the appropriate level and the Gram Sabha are empowered with seven functions which are mentioned below Clause (m) of Section 4. Since Shri Prahlad Choudhary has placed reliance on Clause (vi), it is evident that it bestows Gram Sabha to exercise control over institutions and functionaries in all social sectors which are within the domain of the Gram Panchayats and not those functions which are beyond the Gram Panchayats.

18. As far as understanding of law goes Gram Panchayat is not bestowed with the authority to maintain law and order in the district or within the Gram Panchayat. Law and order still continues to be the exclusive domain of the district administration under the three tier system of the public administration. Therefore,

when the whole scenario is viewed from this prospective, then submission made by Shri Prahlad Choudhary, that any function which is required to be organized within the boundaries of a Gram Sabha, requires concurrence of Gram Sabha, is not made out because he has not brought any material on record that to organize a public or religious function concurrence of the Gram Panchayat /Gram Sabha is necessary. Therefore, this argument is not a germane to the present controversy.

19. As far as Annexure P/5 is concerned, it is an order passed by the District Magistrate, in exercise of his authority under Section 144 of Cr.P.C. Section 144 of Cr.P.C. deals with power to issue order in urgent cases of nuisance or apprehended danger. It is evident from the order dated 10.05.2023 that it is based on past experiences in regard to law and order situation and foreseeing the apprehended danger, said order dated 10.05.2023 has been passed. It is preventive in nature and that order being preventive in nature does not provide any lever in the hands of the petitioner to twist it in such a manner to make this Court hold that provisions contained in Article 19 dealing with religious and personal freedom can be controlled through exercise of said lever. Therefore, submission of learned counsel for the petitioner that Annexure P/5 is contrary to Annexure P/2 is also not made out.

20. There are two distinct functions of the District Magistrate; one is to prevent any uneventful happening and second is to facilitate law and order by deputing appropriate district functionaries so to prevent any law and order situation. Therefore, both these orders Annexure P/2 and P/5, in fact actually supplement each other rather than contradict as submitted by Shri Prahlad Choudhary, therefore, this ground too is not made out.

21. As far as issue of political leverage and other aspects are concerned when they are examined in the light of the judgment of Supreme Court in *Dharam Dutt and others (supra)*, it is evident that Hon'ble Supreme Court in para 35 of the judgment of Dharam Dutt has held that the framers of the Constitution could have made a common draft of restrictions which were permissible to be imposed on the operation of the fundamental rights listed in Clause (1), but that has not been done. The common thread that runs throughout sub-clauses (2) to (6) is that the operation of any existing law or the enactment by the State of any law which imposes reasonable restrictions to achieve certain objects, is saved; however, the quality and content of such law would be different by reference to each of the sub-clauses (a) to (g) of clause (1) of Article 19.

22. Article 19 deals with protection of certain rights regarding freedom of speech etc. Clause (a) deals with freedom of speech

and expression; Clause (b) deals with right to assemble peaceably and without arms; Clause (d) deals with right to move freely throughout the territory of India; and Clause (g) deals with right to practice any profession, or to carry on any occupation, trade or business. It is not pointed out that for respondent No.7, preaching is a profession or occupation then how that it is in conflict with the interest of the petitioner specially the tribal population of district, Balaghat. Once that is not brought out on record then freedom of speech and expression of respondent No.7, or right of the public of the Gram Sabha or the district of Balaghat or neighboring districts to assemble peaceably and without arms cannot be curbed merely on the basis of certain apprehensions of there being a political motive in the hands of the private respondent No.6.

23. Such motives cannot form backdrop of public interest litigation. There is no material on record that any of the sentiments of the tribal population are going to be disturbed by preaching of respondent No.7.

24. In fact, we are constrained to observe that petitioner has not dealt with and has not mentioned that what are the religious beliefs and practices of the tribal population and how they are in conflict with the preachings of the respondent No.7.

25. In absence of any material on record, the Supreme Court has itself held in case of *Indian Aluminum Company and others*

*(supra)* that the rule of law permeates to fulfill constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free-play in their joints so that the march of social progress and order remain unimpeded, this Court is of the opinion that if we show any indulgence in the matter then will be disturbing the social fabric and disturbing the noble object of the Indian Constitution to achieve egalitarian social order. Therefore, we refuse to show any indulgence in the matter specially when petitioner has failed to show any violation of the statutory provisions contained in the PESA Act, 1996 or of Schedule 5 of the Constitution or as to the provisions contained in Article 19 of the Constitution.

Thus petition fails and is **dismissed**.

**(Vivek Agrawal)**  
**V. Judge**

**(Dinesh Kumar Paliwal)**  
**V. Judge**