

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 6943 of 2023

Hanumant Katha Aayojan Samiti, having its office at Medininagar, P.O. & P.S.
Medininagar, District- Palamau **Petitioner(s).**

Versus

1.The State of Jharkhand through the Deputy Commissioner, Palamau
2.The Sub Divisional Officer, Sadar Medininagar, Palamau
3.The Superintendent of Police, Palamau ... **Respondent(s).**

CORAM : SRI ANANDA SEN, J.

For the Petitioner(s) : Mr. Rishabh Kaushal, Advocate
For the Respondents : Mr. Sachin Kumar, AAG-II
Mr. Rohit, AC to AAG-I

08 /29.01.2024: Heard, the learned counsel for the parties.

2. Petitioner by filing this writ petition initially had prayed for a direction upon the respondent-authorities to take appropriate action pursuant to their application, seeking consent and permission, for organizing a "*Hanumant Katha*" from 10.02.2024 to 15.02.2024 in Medininagar, District- Palamau.

3. It is their case that as the respondents had not taken any steps and were sitting tight over the application they were forced to approach this Court for the necessary direction as originally prayed for.

4. During the pendency of the writ petition a supplementary counter affidavit was filed. In the said counter affidavit, the respondents-State has produced an order being Memo No.24 dated 10.01.2024, by which the permission sought for by the petitioner for organizing that "*Hanumant Katha*", was rejected. The petitioner thus challenged the said order by filing an amendment application. The amendment application was allowed and amended writ petition is also filed.

5. The State has also file a second supplementary counter affidavit. Thus this matter has been listed today for final disposal of the writ application.

6. Learned counsel for the petitioner submits that no substantive ground has been assigned while passing the impugned order, refusing to grant permission to the petitioner to organize the said congregation. It is his contention that the ground mentioned therein are *non-est* in the eyes of law which does not fall within the purview of Article 19(3) of the Constitution of

India. It is his submission that restriction, as envisaged by Article 19(3) of the Constitution of India, can only be imposed to restrict the right, which has been conferred by the Constitution under Article 19(1)(b) of the Constitution of India. The impugned order does not fall in that category. He submits that so far as the infrastructure is concerned, the petitioner organization is ready to provide necessary and adequate infrastructure at the venue. He states that even if the State is expecting two lakhs persons per day to attend the congregation, whereas sitting arrangements of sixty thousands persons has been made, the said capacity can be increased, as per the place where the congregation is to be conducted in an area having 250 acres of space. He submits that necessary volunteer will be placed and parking space will be specified and they will ensure installation of CCTV cameras and other basic facilities /amenities which the person attending the congregation may need.

7. The Additional Advocate General, Mr. Sachin Kumar submits that a similar type of congregation was held at Patna and there was a chaotic situation there, thus, the State apprehends that there will be a similar law and order problem, if this congregation is allowed to be held. He submits that they are estimating 3 - 4 lakhs people visiting the congregation per day but the sitting arrangement has been made only for sixty thousand persons. He further submits that there is necessity to install temporary CCTV cameras and provide volunteers, considering the huge number of devotees, who will be attending the congregation. There is also a necessity of proper parking space and other facilities like mobile-toilets etc. which also needs to be provided. Since there is nothing in the plan submitted by the petitioner before the respondents, their application seeking permission was rejected.

8. The petitioner herein, is organizing a congregation for "*Hanumant Katha*". They want to organize the same in Medininagar, Palamau. The said congregation would be from 10.02.2024 to 15.02.2024, which will be addressed by Shri Dharendra Krishna Shastri (Bageshwar Dham Sarkar). The petitioner approached the respondents for grant of permission, which was

rejected by the impugned order.

9. Since the order of refusal has been passed by the State authority, I am testing the validity of the order in the touch stone of the judgment passed by the Hon'ble Supreme Court and also in terms of the Constitution of India.

10. Part-III of the Constitution of India confers Fundamental Right to the citizen of the country. Article 19 of the Constitution deals with the protection of certain rights regarding freedom of speech etc.

Article 19(1)(b) is the fundamental right to assemble peacefully without arms. Thus Article 19(1)(b) gives right to the citizen of India to form an assembly peacefully without arms. This right is not unfettered. This right has some restrictions which are enshrined in Article 19(3) of the Constitution of India. Article 19(3) of the Constitution of India reads as follows:-

"19(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of 4[the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

11. After careful examination of Article 19(3) of the Constitution of India, I find that the right to assemble peacefully without arms is not absolute or unrestricted right. The State can restrict any type of assembly, if the same is against the interest of the sovereignty and integrity of India or is against the public order. This means if due to the assembly there is threat to the sovereignty and integrity of the country or the assembly will cause public disorder, there can be restrictions

12. Thus, the ground for restricting or limiting the right conferred under Article 19(1)(b) of the Constitution of India can only be on the restrictions mentioned in Article 19(3) of the Constitution of India. No other restrictions can be imported in Article 19(3) of the Constitution of India to refuse or restrict any assembly which is being organized peacefully without arms.

13. In the instant case an order has already been passed rejecting the application of the petitioner, by which the petitioner sought permission to hold this congregation /assembly. The reasons have been mentioned in the

impugned order itself. The reasons as put forth in the impugned order is that there is a possibility of problem of law and order, if this congregation is allowed to be held.

In the impugned order, admittedly the ground for rejecting permission, is not the ground covered in Article 19(3) of the Constitution of India. The issue of threat to the sovereignty and integrity of India or “public order” has to be the ground to deny permission, but the ground which the respondents have taken is of “law and order problem”. There is difference between “law and order” and “public order”.

14. The Hon’ble Supreme Court in the case of *Ameena Begum vs. State of Telangana and Others*, reported in (2023) 9 SCC 587, in details dealt with the difference between “law and order” and “public order”. The Hon’ble Supreme Court has concluded that the difference is vast. Every breach of law does not lead to public disorder. It is necessary to quote some of the paras of the aforesaid judgment wherein the Hon’ble Supreme Court relied upon the various earlier judgments in this issue:-

36. *It is trite that breach of law in all cases does not lead to public disorder. In a catena of judgments, this Court has in clear terms noted the difference between “law and order” and “public order”.*

“37. *We may refer to the decision of the Constitution Bench of this Court in Ram Manohar Lohia v. State of Bihar, where the difference between “law and order” and “public order” was lucidly expressed by Hon’ble M. Hidayatullah.J (as the Chief Justice then was) in the following words: (SCR pp.745-46. Paras 54-55)*

54. *Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are....*

55. *It will thus appear that just as “public order” in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting “security of State”, “law and Order” also comprehends disorders of less gravity than those affecting “public order”.*

One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."

38. *For an act to qualify as a disturbance to public order, the specific activity must have an impact on the broader community or the general public, evoking feelings of fear, panic, or insecurity. Not every case of a general disturbance to public tranquility affects the public order and the question to be asked, as articulated by Hon'ble M. Hidayatullah, C.J. in Arun Ghosh v. State of W.B. in this (SCC p. 100, para 3)*

"3..... Does it [the offending act] lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?"

40. *In the process of quashing the impugned order, the Hidayatullah, C.J. while referring to the decision in Ram Manohar Lohia also ruled: (Arun Ghosh case, SCC pp. 99-100, para 3)*

3..... Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order..... It is always a question of degree of the harm and its effect upon the community..... This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."

15. Thus, it is clear that if an offence committed against some individuals, the same will not fall within the category of disturbance of the "public order". Where due to some act, public at large is adversely affected by criminal activities of group of persons, such conduct may be said to disturb the "public order".

16. In the instant case the respondents in the impugned order has only mentioned that there would be a law and order problem without describing the nature and its extent thereof. During course of argument they have taken a plea about shortage of sitting arrangement, parking space and shortage of volunteers to manage the crowd. These grounds even if are accepted to be existing are not "law and order problem", far less disturbance of "public order". These at best can be said to be infrastructural short comings.

17. These grounds are not at all valid grounds to restricts this petitioner to organize the said congregation or to refuse permission.

18. Learned counsel for the State submits that in their supplementary counter affidavit and counter affidavit, the other grounds have been mentioned, but surprisingly they also do not relate to the restrictions as envisaged in Article 19(3) of the Constitution. Furthermore, he submits that temporary infrastructure has to be constructed and volunteers are to be deployed. In Patna, similar type of congregation led to chaotic situation because of huge public presence. He also submits that there is some intelligence input that here also similar chaotic situation may arise.

These grounds taken in the counter affidavit cannot be looked into as the same are not part of the impugned order.

19. In the case of *Mohinder Singh Gill v. Chief Election Commission, New Delhi (1978) 1 SCC 504 : AIR 1975 SC 851* it has been held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

Further, the Hon'ble Supreme Court in the case of *East Coast Railway v. Mahadev Appa Rao*, reported in *(2010) 7 SCC 678* at para 9 has held as under:-

"9. There is no quarrel with the well-settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be judged by the reasons stated in the order or any record or file contemporaneously maintained. It follows that the infirmity arising out of the absence of reasons cannot be cured by the authority passing the order stating such reasons in an affidavit filed before the court where the validity of any such order is under challenge....."

Thus these grounds urged by the respondents during argument, which are not part of the impugned order, cannot be looked into.

20. Learned counsel further refers the judgment passed by the Hon'ble Supreme Court in the case of *K. Phanindra Reddy, I.A.S. and Others vs. G. Subramanian*, reported in *2023 SCC OnLine SC 402* and also in the case of *Himat Lal K. Shah vs. Commissioner of Police, Ahmedabad and Another*, reported in *(1973) 1 SCC 227* in support of his contention that the State can impose restrictions.

21. There is no doubt that the respondents can impose restriction, but

ground for such restrictions should be in consonance with the grounds mentioned in Article 19(3) of the Constitution. Further the judgment which the learned counsel for the State is referring to i.e. *K. Phanindra Reddy (supra) and Himat Lal (supra)*, the Court has allowed holding of meetings.

22. Considering what has been held above, the impugned order dated 10.01.2024 passed by the District Magistrate-cum-Deputy Commissioner, Palamau refusing permission for the congregation of "*Hanumant Katha*" is quashed as the same is not in consonance with Article 19(3) of the Constitution of India. The instant writ petition is allowed.

23. The petitioner is directed to give a detailed plan indicating the sitting arrangement *viz-a-viz* the number of devotees expected to attend the congregation per day to the respondent- authorities, and they will also make necessary arrangement, so as to ensure the minimum basic facilities/amenities are provided to the devotees, who will attend the said congregation. Accordingly, the instant writ petition is allowed.