

**Form No. J(2)**

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

**Present:**

**The Hon'ble Justice Harish Tandon  
And  
The Hon'ble Justice Hiranmay Bhattacharyya**

***WPA(P) 360 of 2024***

***Debranjana Banerjee***

***Vs.***

***The State of West Bengal & Ors.***

For the petitioner : **Mr. Jaydip Kar, Senior Advocate  
Mr. Pijush Biswas, Advocate  
Mr. Puspasish Gupta, Advocate  
Mr. Abhisek Baran Das, Advocate**

For the respondents : **Mr. Kishore Dutta, Ld. Advocate General  
Mr. Sirsanya Bandopadhyay, Ld. JSC  
Ms. Arka Kumar Nag, Advocate  
Mr. Ritesh Kumar Ganguly, Advocate  
Mr. Debangshu Dinda, Advocate**

Heard on : August 23, 2024

Judgment on : August 23, 2024.

**Harish Tandon, J:**

1. The PIL is filed by the petitioner claiming himself to be the public spirited person and the member of the legal profession as well as the resident of Shibpur in the District of Howrah for issuance of writ of prohibition restraining the respondents from

organizing any protest/rally/demonstration in the name of 'Nabanna Abhijan' or any other name in the surrounding places of 'Nabanna' without proper application seeking permission to organize such event and without any undertaking to ensure the public property, public law and order. The said rally/protest is in relation to an unfortunate and brutal incident relating to the death of a 31 years old Post-Graduate Doctor at R.G. Kar Medical College and Hospital, Calcutta inside the seminar hall.

2. The said incident has shocked the conscience of the citizens and the peaceful protest/really from different quarters of the civil society in the wake of consciousness have been seen since the date of the alleged incident. The instant Public Interest Litigation is filed restraining such protest or rally called by the quarter of the civil society which is further evident from the averments made in the writ petition that it is not affiliated to any political parties or social organizations.
3. The documents annexed to the Public Interest Litigation widely circulated in the social media platform, viz. Facebook, X, Instagram, Whatsapp, Youtube etc., would reveal that in the wake of the justice to be imparted to the said girl, request was made to one member of each family to move towards 'Nabanna' at 2 p.m. on 27.08.2024, in the event, the Chief Minister of West Bengal does not resign on or before 26.08.2024. It is expressly indicated in the aforesaid post that such protest shall be peaceful and no violence would be committed and the police may stand by the side of the protestors during the entire march to 'Nabanna'.

4. Several documents evincing the past protest marches which turned out into violence have also been annexed to the instant application in order to inculcate a sense that there is an apprehension and possibility of the protest or the rally so called may turn out into a violent protest.
5. The relief which is claimed in this PIL is two folds. Firstly, prohibiting the call for march to protest in the surrounding areas of 'Nabanna' and secondly, framing of proper guidelines ensuring the public peace, safety, convenience regarding any protest/rally/demonstration at 'Nabanna' or at any place within the State.
6. The petitioner stresses upon the regulatory mechanism to be adopted in holding the protest or the rally as called for on the premises that the Police have been inactive in this regard. It is sought to be contended that the organization who called for such protest or rally are unidentified and, therefore, such rally should not be permitted without permission to be obtained from the Police.
7. The sum and substance of the entire argument is pointed at a single object of prohibiting the rally or the protest at 'Nabanna' or in other words, no protest or the rally should be permitted in the State unless the permission is sought from the Police.
8. On the other hand, the learned Advocate General places several provisions of the Police Act and the Police Regulation of Bengal, 1943 which contains an exhaustive provision relating to the rally or assembly of the persons in a public place. It is contended that without seeking permission from the Police, such rally or protest cannot be permitted and, therefore, the Court should restrain

the holding of the protest or the rally at 'Nabanna'. The Advocate General has further flagged an issue that assembling or gathering of persons or the rally cannot be permitted within the highly sensitive zone as the right to hold rally/march being a fundamental right is subject to the reasonable restrictions imposed by the State.

9. To buttress the aforesaid submission, the Judgment of the Apex Court in case of ***Amit Sahni (Shaheen Bagh, In Re) Vs. Commissioner of Police & ors.*** reported in ***(2020)10 SCC 439***, ***Babulal Parate vs. State of Maharashtra & Ors.*** reported in ***AIR 1961 SC 884***, ***Mazdoor Kishan Shakti Sangathan vs. Union of India and Ors.*** reported in ***(2018)17 SCC 324*** and ***Ramlila Maidan Incident, in re:*** reported in ***(2012) 5 SCC 1*** are cited. The Advocate General further submits that the protest or rally cannot be permitted nor the gathering can be allowed at a public place and placed reliance upon a Judgment of the Apex Court rendered in the case of the ***Railway Board representing the Union of India vs. Niranjan Singh*** reported in ***(1969) 1 SCC 502***.
10. All the aforesaid judgments have in unequivocal terms held that right to protest in a peaceful manner is ingrained under Articles 19(1)(a) and 19 (1)(b) of the Constitution of India contained in Part-III of the Constitution of India. The right emanating from the aforementioned Articles leads to an inescapable conclusion that no one can be deprived of his fundamental rights nor can be taken away or abridged. Such right is obviously subject to the Article 19 (2) of the Constitution of India and, therefore, it is con-extensive.

11. All the judgments as quoted above are uniform that the right to protest in a peaceful manner is the core fundamental rights of every citizen of the country and, therefore, the injunction to restrain a citizen of the country to protest and flag the issues in peaceful manner cannot be curbed.
12. In fact, the said issue was raised before the Supreme Court in a *suo motu* writ-petition (Criminal No. 2 of 2024) and an argument was advanced to the effect that permission to organize the peaceful protest does not overshadow the regulatory powers of the authority in accordance with law. The Apex Court in its order dated 22.08.2024 in unequivocal terms held that the permission to hold the protest in peaceful manner cannot be construed as an injunction upon the State from exercising such lawful powers entrusted in terms of the law. The Apex Court reiterated and reaffirmed its view that the peaceful protest should not be disturbed or disrupted and the State or its instrumentalities should not take any precipitate action against the incident that took place at R.G. Kar Medical College Hospital in the following words:-

*"Mr. Kapil Sibal, senior Counsel appearing on behalf of the State of West Bengal and the Kolkata Police submits that while this Court has permitted peaceful protests, the order should not be misconstrued to mean that the authorities are precluded from exercising their regulatory powers in accordance with law. This Court has not injuncted the State from exercising such lawful powers as are entrusted in terms of the law. However, we categorically reaffirm that peaceful protests should not be disturbed or disrupted, and the State shall not take any precipitate action against those who are peacefully protesting against the incident which took place at R.G. Kar Medical College Hospital."*

13. The Apex Court in the said *suo motu* writ-petition passed an order on 20.08.2024 when the issue relating to the protests across the State was brought to its notice with categorical observation that the Government of West Bengal shall observe necessary restraint in peaceful protest conducted by any quarter of the civil society in relation to that untoward and brutal incident at R.G. Kar Medical College Hospital in the following:-

*"We expect that the Government of West Bengal shall observe necessary restraint in the face of peaceful protest conducted by a quarter of civil society bearing on the issue which forms the subject matter of the incident which took place at Kolkata. It shall be ensured that the power of the State is not unleashed on peaceful protestors."*

14. It would be unnecessarily burdening the order if all the judgments so cited are dealt with in seriatim for the simple reason that the petitioner has categorically averred in the instant writ-petition that that the said protest and/or rally is called by the quarter of the civil societies who are not affiliated with political parties or social organizations.
15. In view of the order of the Apex Court, we do not think that any prohibitory order as sought for can be granted in favour of the petitioner.
16. Though the principal relief as claimed has been declined but we find that another relief is claimed in the instant Public Interest Litigation pertaining to framing of the guidelines ensuring public peace, safety, convenience regarding any protest/rally/demonstration at 'Nabanna' or at any place within the State to which we feel that the respective respondents should disclose their stand.

17. Let the respondents file their affidavit-in-opposition within three weeks from date, Reply thereto, if any, shall be filed by the petitioner within a week thereafter.
18. The instant matter is made returnable four weeks hence.
19. Since the respondent No. 8 has not appeared in the instant matter, let this order be communicated by the petitioner to the said respondent immediately.

**(Harish Tandon, J.)**

**(Hiranmay Bhattacharyya, J.)**