



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 108 OF 2024

Nanda Bai Sarjerav Misal } **Petitioner**
versus
State of Maharashtra & Ors. } **Respondents**

**WITH
CRIMINAL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 15 OF 2024

Jaishri Laxamrao Patil & Anr. } **Petitioners**
versus
State of Maharashtra & Ors. } **Respondents**

Mr. Subhash Jha a/w Mr. Harekrishna Mishra, Mr. Siddharth Jha, Ms. Apeeksha Sharma, Mr. Sumit Upadhyay, Ms. Neha Balani and Mr. Deepesh Shahani i/by Law Global Advocates for the petitioners in PIL/108/2024.

Dr. Gunaratan Sadavarte, petitioner no.2-in-person with Mr. Sandip S. Gaikwad for petitioner in Cri.PIL/15/2024.

Dr. Birendra B. Saraf, Advocate General with Mr. P. P. Kakade, Govt. Pleader, Mr. O. A. Chandurkar, Addl. Govt. Pleader and Mrs. G. R. Raghuwanshi, AGP for State in Cri. PIL/15/2024.

Dr. Birendra B. Saraf, Advocate General with Mr. Chirag Shah, Spl. Counsel with Mr. P. P. Kakade, Govt. Pleader, Mr. O. A. Chandurkar, Addl. Govt. Pleader and Mrs. G. R. Raghuwanshi, AGP for State in PIL/108/2024.

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CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. & AMIT BORKAR, J.

DATE: 23rd AUGUST 2024

P.C.:

1. Not on Board. On urgency being mentioned, both these petitions have been taken on Board.
2. Proceedings of these PIL petitions have been instituted expressing grave concern about the adverse consequences which the citizens of Maharashtra in general and those of Mumbai in particular are likely to suffer on account of a call of Maharashtra Bandh given by certain political parties.

The consequences which may be borne by the citizens in general, which include school going children, daily wagers, office going persons, businessmen, factory workers, shop keepers, persons employed with service sector and government servants etc., on account of the call of Bandh tomorrow, may lead to crippling the life of entire Maharashtra. Based on the past experiences suffered by the citizens at large on account of these calls of state-wide Bandhs, it need not be outlined as to what extent damage may be caused to loss of public and private properties, economic and business activities, the general health services and education of students.

3. The Apex Court, in the case of **Communist Party of India (M) vs. Bharat Kumar and Ors.** reported in **(1998) 1 SCC 201** dismissed the challenge made to a Full Bench judgment of Kerala High Court in the case of **Bharat Kumar K. Palicha & Anr. vs. State of Kerala & Ors.** reported in 1997 SCC OnLine Ker 134. The Full Bench of Kerala High Court, *inter*

alia, observed that no political party or organization can claim that it is entitled to paralyze the industry and commerce in the entire State or nation or is entitled to prevent the citizens not in their support from exercising their fundamental rights or from performing their duties. Para 17 of the judgement of Full Bench of Kerala High Court in the case of **Bharat Kumar K. Palicha & Anr.** (supra), which was affirmed by Hon'ble Supreme Court, is extracted hereinbelow: -

"17. No political party or organization can claim that it is entitled to paralyse the industry and commerce in the entire State or Nation and is entitled to prevent the citizens not in sympathy with its view point from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State of the Nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it. The claim for relief by the petitioners in these Original Petitions will have to be considered in this background."

4. Para 18 of the Full Bench judgement of Kerala High Court in the case of **Bharat Kumar K. Palicha & Anr.** (supra) is also extracted hereinbelow: -

"18. The contention that no relief can be granted against the political parties in these proceedings under Article 226 of the Constitution cannot be accepted in its entirety. As indicated already, this Court has ample jurisdiction to grant a declaratory relief to the petitioners in the presence of the political party respondents. This is all the more so since the case of the petitioners is based on their fundamental rights guaranteed by the Constitution. The State has not taken any steps to control or regulate the bundhs. The stand adopted by the Advocate-General is that the Court cannot compel the State or the Legislature to issue orders or make law in

that regard. As we find that organized bodies or Associations or registered political parties, by their act of calling and holding bundhs, trample upon the rights of the citizens of the country protected by the Constitution, we are of the view, that this Court has sufficient jurisdiction to declare that the calling of a 'bundh' and the holding of it is unconstitutional especially since, it is undoubted, that the holding of 'bundhs' are not in the interests of the Nation, but tend to retard the progress of the Nation by leading to national loss of production. We cannot also ignore the destruction of public and private property when a bundh is enforced by the political parties or other organisations. We are inclined to the view that the political parties and the organisations which call for such bundhs and enforce them are really liable to compensate the Government, the public and the private citizen for the loss suffered by them for such destruction. The State cannot shirk its responsibility of taking steps to recoup and of recouping the loss from the sponsors and organisers of such bundhs. We think, that these aspects justify our intervention under Article 226 of the Constitution.

In view of our discussion above, we allow these Original Petitions to the extent of declaring that the calling for a bundh by any association, organization or political party and the enforcing of that call by it, is illegal and unconstitutional. We direct the State and its officials, including the law enforcement agencies, to do all that is necessary to give effect to this declaration.

The Original Petitions are allowed to the above extent. We make no order as to costs."

5. Following the Apex Court's approval to the judgement of Kerala High Court in ***Bharat Kumar K. Palicha & Anr.*** (supra), in ***All India Anna Dravida Munnetra Kazhagam vs. Chief Secretary, Government of Tamil Nadu & Ors.*** reported in **(2009) 5 SCC 452**, the Apex Court has observed that neither

anybody can give a call for Bandh nor can the same be enforced. The Apex Court further observed that in such matters where it is not possible to give notice to all the necessary parties and hear them because of paucity of time and in case interim order is not passed which, *prima facie*, in the opinion of the Court is concluded by a judgement of the Apex Court, the main case would become infructuous and hence, appropriate interim order should be passed. Para 18 of the judgement in ***All India Anna Dravida Munnetra Kazhagam*** (supra) is also extracted hereinbelow: -

"18. Ordinarily, the High Court as well as this Court refrains from passing an interim order the effect of which would be granting the main relief. But in cases where a party approaches the court without loss of time, there is no laches on its part, it is not possible to give notices to all the necessary parties and hear them because of paucity of time and in case interim order is not passed in a case like the present one, which, prima facie, in the opinion of the court is concluded by judgment of this Court, the main case would become infructuous, different considerations would arise and appropriate interim order should be passed."

6. It is noticeable that the said order, while issuing notices, the Hon'ble Supreme Court restrained the respondents therein from proceeding with the call for Bandh in the State of Tamil Nadu, which was scheduled on a particular day.

7. Today, the petitioner appearing in-person in CRPIL/15/2024 has tendered photostat copies of screen shots of some news channel where it is shown to be announced that on Maharashtra Bandh, the local trains, buses and roads shall be closed. Our attention has also been drawn to Exhibit 'C'

appended with CRPIL/15/2024, which is a screen shot of some message flashed from Twitter handle of a political party which shows that a call has been given by the said political party for observing the Bandh by all citizens who are sensitive to the incident which occurred recently.

8. From the material made available before us, we are, *prima facie*, convinced that the call given by the political parties is a call to observe Bandh tomorrow in the entire State of Maharashtra, which means call for cessation of all kinds of activities which will result in the life of the State coming to halt, that may entail heavy loss to the industrial activities, business activities, economic activities and other such activities. Such a call, if observed, is likely to affect not only the studies of children and other students but will also impact adversely the emergency services such as health services and other public conveniences like supply of electricity and water and the services of local trains in Mumbai. It is needless to say at this juncture that local trains in Mumbai are its lifeline and in case the call of Bandh is permitted to be observed, it is likely that the entire life of Mumbai may come to a halt.

9. In view of the aforesaid and keeping in view the law laid down by Hon'ble Supreme Court in the case of **Communist Party of India (M)** (supra) and by the Kerala High Court in **Bharat Kumar K. Palicha & Anr.** (supra) and in the case of **All India Anna Dravida Munnetra Kazhagam** (supra), we are of the opinion that in case the direction by this Court restraining all concerned from proceeding with the call for Bandh is not given, huge loss, not only in terms of economy and business, but also in terms of providing essential services and

basic amenities including health services will occur which needs to be prevented.

10. Issue notice to respondents 1 to 5 in PIL/108/2024 and to respondent no. 1 in CRPIL/15/2024, returnable on **9th October 2024**.

11. Dr. Saraf, learned Advocate General has appeared for respondents 1 and 2 in PIL/108/2024 and for respondent no. 1 in CRPIL/15/2024 and waives service of notice.

12. Until further orders, all concerned are restrained from proceeding with the call for Bandh in the State of Maharashtra on 24th August 2024 or any other subsequent date.

13. At this juncture, we may also notice that a Division Bench of this Court in the case of ***B. G. Deshmukh & Ors. vs. the State of Maharashtra & Ors.*** decided on 23rd July 2004 has issued various directions to meet the challenges caused by a call given for Bandh. The Division Bench in ***B. G. Deshmukh & Ors.*** (supra), has, *inter alia*, declared that enforcement of a Bandh would amount to an unconstitutional act.

14. We, thus, direct that the State Government and all its authorities, including the Chief Secretary, Additional Chief Secretary, Department of Home, Director General of Police, District Collectors and heads of police administration in all districts shall strictly enforce the directions given by the Division Bench of this Court in its judgment dated 23rd July 2004 in ***B. G. Deshmukh & Ors.*** (supra).

(AMIT BORKAR, J.)

(CHIEF JUSTICE)