

KSDJ & VAPJ:
05.05.2023

ORDER
IN
WRIT PETITION NO. 9952 OF 2023 (GM-RES)

Bsv
CT:VK





IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF MAY, 2023

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 9952 OF 2023 (GM-RES)

BETWEEN:

SRI. AMRUTHESH N P
S/O LATE N C PUTTUSWAMY,
AGED ABOUT 62 YEARS,
R/O NO 28, 103, 10TH MAIN,
J C NAGAR, KURUBARAHALLI,
BENGALURU - 560 086.
MOB - 9448460811
AADHAR NO 710343980415

...PETITIONER

(BY SRI.N P AMRUTHESH (PARTY IN PERSON) FOR
SRI. VISHWANATH SABARAD,ADVOCATE)

AND:

1. STATE OF KARNATAKA,
VIDHANA SOUDHA, AMBEDKAR ROAD,
BENGALURU - 560 001.
REP BY ITS CHIEF SECRETARY
2. DIRECTOR GENERAL & INSPECTOR
GENERAL OF POLICE
KARNATAKA STATE POLICE HEADQUARTERS
NO 02, NRUPATHUNGA ROAD,
BANGALORE - 560 001.





3. COMMISSIONER OF POLICE.,
BENGALURU CITY, INFANTRY ROAD,
BANGALORE - 560 001.
4. ELECTION COMMISSION OF INDIA,
NIRVACHAN SADAN,
ASHOKA ROAD, NEW DELHI - 110 001.
REP BY ITS CHIEF ELECTION COMMISSIONER
5. ELECTION COMMISSION OF INDIA.,
KARNATAKA STATE UNIT ,
NIRVACHANA NILAYA,
MAHARANIS COLLEGE CIRCLE,
SHESHADRI ROAD, BANGALORE - 560 001.
REP BY ITS CHIEF ELECTORAL OFFICER

...RESPONDENTS

(BY SRI. R SUBRAMANYA., AAG A/W
SMT. M C NAGASHREE., AGA FOR R1 TO R3;
SRI. S R DODAWAD., ADVOCATE FOR R4 & R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO i)ISSUE A WRIT OF MANDAMUS CALLING FOR THE RECORDS FROM THE RESPONDENT NOS.1, 2, 3 IN RESPECT OF THE GRANTING OF THE PERMISSIONS, TRAFFIC REGULATIONS, IF ANY AND TO SCRUTINIZE THE SAME BY THIS HON'BLE COURT AND ii)ISSUE A WRIT OF MANDAMUS DIRECTING THE RESPONDENT NOS.2 AND 3 NOT TO GRANT ANY PERMISSION FOR THE ROAD SHOWS CONDUCTED BY ANY OF THE POLITICAL PARTIES AND ANY OF THE ORGANIZATIONS IN THE STATE OF KARNATAKA SPECIALLY IN THE CITY OF BENGALURU

THIS PETITION COMING ON FOR ORDERS THIS DAY, **KRISHNA S DIXIT., J.**, MADE THE FOLLOWING:

ORDER

This judgment being rendered in a PIL needs to be precluded by what the former Chief Editor of the New York Times (1 December,1989) Mr. A M Rosenthal ecstatically



had commented as under, about our Parliamentary Elections of November, 1989:

*"When India voted, a whole world voted.
A whole world - hundreds of millions of people,
speaking in a great orchestra of different
languages, praying to different gods, living in a
continental hugeness that not long ago was
divided into hundreds of principalities, people
driven to centuries of war against each other by
rulers seeking conquest, foreigners seeking
booty, religious zealots seeking blood, educated
people by the millions, illiterate peasants by the
scores of millions, from mountains through
great stretches of plains to southern seas.*

*Once again this whole world voted as one
nation in a countrywide election, nine times
now."*

It is said that Elections are the festivals of Democracy. In India, these festivals are celebrated with all pomp & glory signifying something, *albeit* unseemingly.

2. Petitioner, a practicing lawyer has presented this Social Action Litigation with the following prayers:

"i) Issue a Writ of Mandamus calling for the records from the Respondent Nos.1, 2, 3 in respect of the granting of the permissions, traffic regulations, if any and to scrutinize the same by this Hon'ble Court.



ii) Issue a Writ of Mandamus directing the Respondent Nos.2 and 3 not to grant any permission for the road shows conducted by any of the political parties and any of the organizations in the State of Karnataka specially in the city of Bengaluru.

iii) Issue a Writ of Mandamus directing the Respondent Nos.1 to 5 to restrict and control the road show, Vijayotsava after the counting of the election, 13-05-2023, which will avoid the clashes between the political parties and any unfortunate events caused by anti-social elements."

He has scripted the interim prayer as under:

"Pending Disposal of the above Writ Petition the Petitioner most respectfully prays that this Hon'ble High Court may be pleased to stay the road show, which is going to be held on 06/05/2023 and 07/05/2023, conducted by the Bharatiya Janata Party, the road show measuring more than 36 kms in the City Of Bengaluru."

3. Hon'ble the Chief Justice of this Court having constituted this Vacation Bench is pleased to organize the Special Sitting this day, regard being had to the pleaded urgency in the PIL at hands inasmuch as, the political rallies/road shows which are the subject matter of challenge herein, are scheduled to be organized tomorrow



& a day after i.e., on 6th & 7th days of May, 2023, with the participation of the Hon'ble Prime Minister of the country.

4. Copies of the Petition having been served, the Respondent – State & its officials are represented by the Additional Advocate General; the Respondent – Election Commission of India & the Chief Electoral Officer, Karnataka, are represented by their Panel Counsel; the District Election Officer, Bengaluru - Mr. Tushar Girinath, IAS, who intervened in the matter, is represented by the learned Senior Advocate Mr. Vikram Huilgol. All these learned advocates oppose the Petition succinctly contending that: political rallies of the kind are routinely held in every General Election, be it to the Parliament or to the State Legislative Assemblies and that the Petitioner is not justified in seeking a complete embargo on the same; the registered & recognized National Political Party namely Bharatiya Janata Party which is going to organize the political rallies is a necessary party and the same having not been arrayed as one of the Respondents to the



Petition, the PIL is liable to be rejected. Learned Sr. Advocate Mr. Huilgol hastens to add that, rallies of the kind are organized even in other Democracies in foreign jurisdictions like USA & UK and therefore, a complete ban as sought for by the Petitioner cannot be granted.

5. Learned AAG assisted by a battery of high ranking Police Officials present in the Court echoed the above submissions and contends that the election rallies by the political parties and the candidates in the electoral fray is not a new thing to the country; such events are reportedly organized since decades if not still longer in the back; the State administration and the Police are fully prepared to manage the law & order situation during the scheduled rallies. He also agrees with the submission of learned Panel Counsel for the Election Commission of India that since the issuance of Press Note dated 29.03.2023 announcing the General Elections to the Karnataka State Legislative Assembly, 2517 political rallies have been organized in the State of which 371 were held in



Bengaluru City itself and that, not even one sporadic untoward incident is reported. So contending, they pray for the dismissal of the Petition.

6. Having heard the Petitioner party in person and learned counsel appearing for the Respondents this Court is inclined to grant a limited indulgence in the matter with some observations as warranted by the circumstances, for the following reasons:

a) The submission of the party in person that rallies of the kind would disrupt the day to day lives of several classes of people, more particularly the school & college goers, hawkers & peddlers, employees/workmen of garment & other industries and such other wage earners is in a measure true; however, his submission that because of such possible disruption, no political rallies during the election process should be permitted anywhere in the State, is too farfetched an argument that runs counter to the election jurisprudence of more than seven decades. It needs no research to know that, rallies of the



kind were held right from the 1st General Elections to the Parliament in the year 1952 and after. The political parties recognized by Election Commission of India, their candidates and others in the electoral fray have a legal right to undertake election campaign *inter alia* by organizing political rallies in the public. Such a right, as of necessity needs to be recognized & acceded to. An argument to the contrary, falls foul of the electoral realities.

b) Petitioner, a practising lawyer who argued the case in person of course with the leave of Court, his advocate on record having had some ailment could not cite one single decision of the Apex Court or of any of the High Courts in the country to support his claim for clamping an absolute embargo on the conduct of political rallies & road shows during the election times. He also could not draw the attention of Court to any of statutory provisions or the orders/circulars issued by the Election Commission of India or such other authorities that would



adumbrate his case even in the least. On the contrary learned Panel Counsel appearing for the Election Commission of India cited decisions of two High Courts which refused to ban the holding of political rallies of the kind. Mr. Huilgol who represents the DEO is more than justified in notifying to the court with the help of Google that political rallies do happen even on the foreign soil i.e., USA & UK where Democracy is the norm of governance. That being position, in the absence of statutory prohibition, events of the kind cannot be banned in judicial review, as rightly contended by him. However, this is not to say that the events of the kind can be held with absolute immunity from regulation & control at the hands of authorities.

c) It is profitable to refer to the decisions of two High Courts which throw some light on the issue being debated here: In RITUPARNA SARKAR DUTTA VS. STATE OF WEST BENGAL & ANOTHER, AIR 2018 CAL 197, the



Division Bench of the Kolkata High Court at paragraph

Nos. 11,14 & 15 observed as under:

"(11) Thus, it is clear that although Art. 19(1)(b) of the Constitution guarantees the fundamental right of every citizen to hold peaceful assembly or processions, the same is not an absolute right. Such right can be curtailed by imposition of reasonable restrictions in the interest of law and order and the general public. Just as Art. 19(1)(b) guarantees a fundamental right Art. 19(1)(d) also guarantees a fundamental right of every citizen to move freely throughout the territory of India. Art. 21 has been interpreted by the Courts to guarantee the fundamental right to livelihood. No citizen or group of citizens can exercise one fundamental right so as to adversely affect or impinge upon some other fundamental right of another citizen. Thus, it cannot be gainsaid that the right to hold peaceful assembly/rally/procession cannot be exercised in a manner which would curtail other persons' rights to free movement and right to livelihood.

14) Although, ideally, political meetings/rallies/processions should be held on holidays i.e. weekends or other public holidays as the same is likely to cause less inconvenience to the members of the public, we do not deem it proper to pass any such absolute direction. We leave it to the wisdom of the State administration as to whether or not permission should be granted for holding of a political rally/meeting/procession on any particular day. We trust and hope that the concerned authorities shall take an informed



and responsible decision in each individual case keeping in mind the paramount importance of minimizing the inconvenience to the general public.

15) However, we make one thing abundantly clear. No major or arterial road/street must be completely blocked and made inaccessible whether to pedestrians or to motor traffic by reason of holding of a meeting/rally/procession. A reasonable part of every road/street must be kept free of blockage and open to pedestrians and motor traffic. This is absolutely imperative keeping in mind the importance of essential and emergency services like ambulances, fire brigades etc. These are lifesaving services and cannot be allowed to be impeded in any manner. All necessary steps must be taken by the administration to ease the flow of traffic and for that purpose reasonable diversions of traffic may be made and the public at large should be kept informed of the same through the different types of media including television and radio. Normal life cannot be permitted to be brought to a standstill by reason of holding of a political meeting/rally/procession or for that matter any kind of assembly."

Similarly, in W.P.No.16371/2022, between R. RAMARAJA VARMA Vs. STATE OF KERALA & OTHERS, disposed off on 27.05.2022 a learned Single Judge of the Kerala High Court at paragraph No.5 has observed as under:

"If a member of a rally raise provocative slogans, the persons who organize the rally is



also responsible. If a rally is conducted, it is the duty of the leaders to control the members of the rally. Whether the members of the rally raised the slogan with the knowledge of the leaders or whether there is any connivance between the leaders who organized the rally with the persons who raised provocative slogans is a matter to be investigated by the police. Prima facie, they are responsible. So they should be implicated as accused in the case and the police should investigate the matter. But I make it clear that, the police should investigate the matter untrammelled by any observation in this judgment. The Police officers will do the needful in accordance to law against all persons who violated the law of the land."

The observations hereinabove reproduced come to the rescue of the Respondents herein.

d) The Political rallies of the kind have some elements of dissemination of knowledge & information to the public at large and they generate lot of political awareness in the voting masses as contended by learned Sr. Advocate Mr. Huilgol, cannot be disputed. Through these rallies & road shows, the political parties and the candidates in the electoral fray may tell the people as to their plans & programs, should they emerge victorious.



Therefore, an absolute embargo on such events is not in the best interest of democratic process. The Apex Court in UNION OF INDIA vs. ASSOCIATION FOR DEMOCRATIC REFORMS, 2002 (5) SCC 294 has recognized right of the voters to know *inter alia* the criminal & financial antecedents of the candidates in the electoral fray. As an offshoot thereof, they have also a right to awareness about the election process in a democracy; in a considerable measure, political rallies of the kind serve this purpose. Mr. Huilgol is right in contending that the political parties and the candidates have also the Fundamental freedoms constitutionally guaranteed under Article 19(1) such as right to expression, right to assemble peaceably, right to movement and the like. A complete embargo on the political rallies as sought for by the Petitioner cannot be directed except in violation of pith & substance of these rights. However, this is not to say that the rallies of the kind can be held in any manner and in any way and at any time *sans* any control & regulation as observed in the rulings *supra*.



e) Learned AAG appearing for the State on instructions by the Commissioner of Police, Bengaluru City Mr. Pratap Reddy, IPS present in the Court submits that all precautionary and regulatory measures have been put in place for the political rallies of the morrows in which the Hon'ble Prime Minister of the country is stated to be participating along with other dignitaries and that the Petitioner is not justified in expressing a hue & cry about the argued likely untoward incidents at the eleventh hour. Mr. Pratap Reddy personally addressed the Court giving full particulars of the regulatory action and the availability of necessary police & other personnel, in an appreciable way. He also mentioned about the provisions of Blue Book requirement when the Prime Minister of the country participates in the scheduled events.

f) The District Electoral Officer, Mr. Tushar Girinath, IAS, also made his submissions mentioning about the preparedness for the subject political events and stated that the statistical data about these rallies held during the



election in question do not support the apprehension of the Petitioner about the possible disruption of city life and the probable happening of untoward incidents in the road show. These high ranking Officers are not drawn from kindergarten. They have put in long service and therefore, would have accumulated administrative expertise in matters of the kind. Subjects like this ordinarily pertain to the domain of the Executive, and Courts cannot run a race of opinions with Government of the day, especially when assurance of maintaining law & order is given by its high functionaries

g) The DEO, a long serving IAS Officer & the Commissioner of Police, Bengaluru City submit, and this Court has no reason to disagree with the same that no difficulty would arise to the run of city life should permission be granted to the political party in question for organizing the political rallies in the form of road shows tomorrow i.e., 06.05.2023 during 9.00 am & 1.30 pm covering a road length of about 26 kms and on



07.05.2023 during 9.am & 11.30 am covering a road length of about 6.5 kms. The comparative shortness of the time duration and road length on 07.05.2023 is stated to be because of the NEET Examinations scheduled to be held on the said day from 2.00 pm onwards. This is really appreciable.

h) Ideally speaking, we would have declined interference in the matter in the absence of the subject political party which is going to organize the events tomorrow & day after, not being arrayed as a Respondent even when it answers the description of necessary party in the light of Apex Court decision in RAZIA BEGUM vs. SAHEB ZADI ANWAR BEGUM AIR 1958 SC 886. However, we do not chose to do that extreme, since the Petitioner who argued his case in person and whose voice is recorded in the Computer System of the Court relaxed the rigors of his scripted prayer and signified 'No Objection' for the holding of the road shows for a limited period and for short road lengths. He gave up the claim for absolute ban



on the scheduled events. No prejudice would be caused to the said political party by virtue of this order in its present form & substance.

i) The above having been said, this Court places on record, the broad submission made from the side of Respondents that while the political rally if undertaken tomorrow & a day after, all precautionary measures would be taken keeping in view the movement of ambulances, school & college buses, commutation of students & of the general public and the movement of essential supply vehicles. Court also keeps on record the assurance of the Respondent – State and its Officials of taking all lawful measures for de-escalation of likely environmental hazards and possible damage to the private & public properties during the conduct of morrows' rallies; their responsible statement that the level of inconvenience to the public would be immensely diminished by taking appropriate measures including the diversion of the traffic to the available alternate routes is also placed on record. If &



when any untoward incident happens or is likely to happen, the Commissioner of Police assures of taking all preventive & remedial measures including securing of the Security Bonds from the concerned under Section 107 of Cr.P.C., 1973. He hastens to add that this decision in this regard would be taken on case to case basis keeping in view all the parameters of law & facts. There is no reason to doubt a sincere assurance of the kind coming from a high ranking police official.

j) The petitioner, when asked as to why he did not present the Petition much earlier, explains that he got the information of the intended political rallies of enormous size only through newspapers a day before and therefore, he has presented the Petition at hands this day. Although, such a contention is not in so many words pleaded in the Petition itself, some credence can be given to this version since copies of newspaper reports dated 03.05.2023 & 04.05.2023 are produced as Annexures-A to F to the



Petition and they vouch at least to some extent Petitioner's say.

k) Lastly, we have also noted the responsible statement made by the learned AAG and the DEO present in the Court that a Committee is formed for considering the application for the grant of permission to conduct political events & road shows during the election process; it comprises of inter alia the Commissioner of Police; it is headed by the DEO who happens to be a senior IAS Officer; an institutional decision would be taken on such applications in accordance with law, keeping in mind all relevant factors. This assurance given to the public at large through the medium of this Court is also placed on record. We are of the considered view that a normative regime for the consideration of applications of the kind should be established by framing elaborate guidelines with the participation of all stakeholders like the Election Commission of India, the high ranking police officials, representatives of the political parties and a few eminent



members of the civil society. However, this is a matter essentially falling within the domain of the Government of the day and therefore, much is not necessary to specify and less is insufficient to leave it unsaid. So far as the conduct of post election rallies/political events are concerned, they are already made normative by a plethora of decisions of the Apex Court and therefore, we do not intend to deliberate on the same much.

In the above circumstances, this Petition is laid to rest, costs having been made easy.

This Court deeply appreciates the presence & effective participation of the District Election Officer, Mr.Tushar Girinath, IAS and the Commissioner of Police, Bengaluru City, Mr.Pratap Reddy, IPS.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Bsv/BSR