

AMIT SAHNI

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v.

COMMISSIONER OF POLICE & ORS.

(Civil Appeal No. 3282 of 2020)

OCTOBER 07, 2020

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**[SANJAY KISHAN KAUL, ANIRUDDHA BOSE AND
KRISHNA MURARI, JJ.]**

Constitution of India – Arts.19(1)(a), (b) – Right to protest, subject to reasonable restrictions – Citizenship (Amendment) Act, 2019 – Protests in different parts of the country – Kalindi Kunj-Shaheen Bagh stretch, including Okhla underpass blocked in Delhi – Public roads encroached – Writ Petition filed before Delhi High Court – Disposed of with directions to authorities – Situation remained the same – Present appeal; intervention applications by various parties – Two interlocutors appointed, their efforts not successful – Arrival of Coronavirus pandemic – Site cleared with some police action – Held: Reliefs in the present proceedings though worked themselves out – Art.19 confers upon its citizens, the right to freedom of speech and expression and the right to assemble peacefully without arms – However, these rights are subject to reasonable restrictions – Present case was not even one of protests taking place in an undesignated area, but was a blockage of a public way causing grave inconvenience to commuters – Such kind of occupation of public ways for protests is not acceptable – Public ways, spaces cannot be occupied indefinitely.

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Disposing of the appeal, the Court

HELD: Constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties. Article 19, one of the cornerstones of the Constitution of India, confers upon its citizens two treasured rights, i.e., the right to freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully without arms under Article 19(1)(b). These rights, in cohesion, enable every citizen to assemble peacefully and protest against the actions or inactions of the State. These rights are subject to reasonable restrictions,

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- A which, *inter alia*, pertain to the interests of the sovereignty and integrity of India and public order, and to the regulation by the concerned police authorities in this regard. Each fundamental right, be it of an individual or of a class, does not exist in isolation and has to be balanced with every other contrasting right. It was in this respect, that in this case, an attempt was made by the
- B Court to reach a solution where the rights of protestors were to be balanced with that of commuters. However, while appreciating the existence of the right to peaceful protest against a legislation, it is made unequivocally clear that public ways and public spaces cannot be occupied in such a manner and that too indefinitely.
- C Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone. The present case was not even one of protests taking place in an undesignated area, but was a blockage of a public way which caused grave inconvenience to commuters. The plea of the applicants that an indeterminable number of people can assemble whenever they choose to protest cannot be accepted. Such kind of occupation of public ways, whether at the site in question or anywhere else for protests is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions. The High Court also should have
- D monitored the matter rather than disposing of the Writ Petition and creating a fluid situation.[Paras 16, 17, 19 and 20][158-A-G' 159-E-F]

- F *Mazdoor Kisan Shakti Sangathan v. Union of India & Anr.* (2018) 17 SCC 324 : [2018] 11 SCR 586; *In re Ramlila Maidan Incident* (2012) 5 SCC 1 : [2012] 4 SCR 971; *Himat Lal K. Shah v. Commissioner of Police, Ahmedabad & Anr.* (1973) 1 SCC 227 : [1973] 2 SCR 266 – relied on.

Case Law Reference

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| G | [1973] 2 SCR 266 | relied on | Para 14 |
| | [2018] 11 SCR 586 | relied on | Para 15 |
| | [2012] 4 SCR 971 | relied on | Para 16 |

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3282 of 2020. A

From the Judgment and Order dated 14.01.2020 of the High Court of Delhi at New Delhi in Public Interest Litigation Writ Petition (Civil) No. 429 of 2020.

Tushar Mehta,SG, Ms. Aishwarya Bhati,ASG, Balraj Dewan, Abhishek Chauhan, Ms. Rajshree Dudey, Gurmeet Singh Makker, Anmol Chandan, Pranay Ranjan, Ms. Swati Ghildiyal, Rajat Nair, Kanu Agrawal for B. V. Balaram Das, Sanjay R.Hegde, Mansoor Ali, Chirag M.Shroff, Ms. Sanjana Nangia, Ms. Abhilasha Bharti, Advs. for the appearing parties. B C

In-person - Amit Sahni, Ashutosh Dubey.

The Judgment of the Court was delivered by

SANJAY KISHAN KAUL, J.

1. Our country made tryst with destiny on the midnight hour of 15th August 1947, shedding the colonial yoke. Despite the pain and turbulence of the partition, the best of the legal and political minds assembled together in the Constituent Assembly to give us one of the most elaborate and modern Constitutions. D

2. One of the bedrocks of the Constitution of India is the separation of powers between the Legislature, the Executive and the Judiciary. It is the function of the Legislature to legislate, of the Executive to implement the legislation, and of the Judiciary to test the constitutional validity of the legislation, if a challenge is so laid. E

3. The Legislature, in its wisdom, enacted the Citizenship (Amendment) Act, 2019, which has its share of supporters and opponents. The Legislature performed its task. A section of the society, aggrieved by this legislative amendment, has filed petitions before this Court under Article 32 of the Constitution of India, assailing the constitutionality and legality of this amendment, which is pending consideration. There is no stay of the legislation for the purpose of record. F G

4. There have been protests against this legislation in Delhi and in different parts of the country. We had noted in our order dated 17.02.2020 that despite the law facing a constitutional challenge before this Court, that by itself will not take away the right to protest of the persons who H

A feel aggrieved by the legislation. We, however, simultaneously noted that the question was where and how the protest can be carried on, without public ways being affected.

5. The aforesaid was in the context of a petition which was originally filed before the Delhi High Court, as Writ Petition (Civil) No. 429/2020, which was disposed of on the very first day, i.e., on 14.01.2020. The grievance made in the petition was that the persons opposing the Citizenship Amendment Act and the National Register of Citizens, the details of which were yet to be propounded, had adopted a method of protest which resulted in the closure of the Kalindi Kunj-Shaheen Bagh stretch, including the Okhla underpass from 15.12.2019. It was submitted that the public roads could not be permitted to be encroached upon in this manner and, thus, a direction be issued to clear the same.

6. The High Court directed the respondent authorities to look into the grievances ventilated by the petitioner in the writ petition in accordance with the law, rules, regulations and Government policies, but simultaneously, it asked the respondent authorities to keep in mind the larger public interest as well as the maintenance of the law and order. It was also emphasised that the respondents had all the powers, jurisdiction and authority to control traffic wherever protests or agitations were going on, in the larger public interest. In such a situation, it was observed that no specific writ, order or direction can be issued as to how to handle the agitation or protest, or even the place of protest and traffic, as the same would be determined based on the ground reality and the wisdom of the police, especially where situations may keep changing every 10 minutes.

7. However, since the situation remained the same, the petitioner therein filed the present appeal by way of a Special Leave Petition against this order of the High Court.

8. We may note that intervention applications were also filed by parties claiming to have the best interests of the agitators in mind, or rather having sympathy for them. In our order dated 17.02.2020, we had put to the learned counsel of one of these applicants our concern that there may be persons of different points of view who may tomorrow seek to emulate this protest and such a scenario would only lead to a chaotic situation. Such kind of protests were, thus, required to cease on public ways everywhere.

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9. In our endeavour of pursuing an out of the box solution, we had considered it appropriate to appoint two interlocutors - Mr. Sanjay R. Hegde, learned senior counsel who was present in Court and Ms. Sadhana Ramachandran, who is a mediator trainer, to meet the protestors at the site. The interlocutors made appreciable effort and submitted a report before this court, which was taken note of by us on 24.02.2020. We had perused the report and found that the nature of demands was very wide and that it did look difficult to find a middle path towards at least facilitating the opening of the blocked public way. However, unfortunate developments in other parts of Delhi required us to adjourn the proceedings.

10. We had the benefit of a second report received on 22.03.2020 and perused the same. We believe that the interlocutors had done their best, but their efforts could not fructify into success, although the number of people at protest site had eventually diminished. The report suggested that the views reflected in private conversations with the protestors were somewhat different from the public statements made to the media and to the protesting crowd in attendance. While the women protestors had sat in protest inside the tent, there was a huge periphery comprising mainly of male protestors, volunteers and bystanders who all seemed to have a stake in the continuance of the blockade of the road. Even after the arrival of the pandemic, when a visit was made to the site on 20.03.2020, it was found that there were about 35-40 *takhts* inside the tent and each *takht* had 2-3 women occupying the space, resulting in a rough estimate of about 75-100 women inside the tent, as well as 200 or more outside the tent having a connection with the protest. While the tent was occupying half of the carriageway, the remaining half of the carriageway had been blocked by creating facilities such as a library, a large model of India Gate and a big metallic three-dimensional map of India located upon a very strong metal scaffolding and was anchored by heavy stones making its removal very difficult. It appeared that an absence of leadership guiding the protest and the presence of various groups of protesters had resulted in many influencers who were acting possibly at cross-purposes with each other. Thus, the Shaheen Bagh protest perhaps no longer remained the sole and empowering voice of women, who also appeared to no longer have the ability to call off the protest themselves. There was also the possibility of the protestors not fully realising the ramifications of the pandemic, coupled with a general unwillingness to relocate to another site.

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- A 11. We are conscious that we chartered a different path and thought of an out of the box solution towards an effort which can loosely be called a mediation. However, this did not produce a solution. But then, we have no regrets as we are of the view that it is better to try and fail, than not to try at all!
- B 12. The hand of God subsequently intervened and overtook the situation as not only our country, but also the world grappled with the Coronavirus pandemic. This pandemic, by its very definition, required coordination across the country and even beyond the borders of our country. This resulted in repeated appeals of the desirability of seclusion as a method to fight the disease. Greater wisdom prevailed over the
- C protestors at the Shaheen Bagh site and the site was cleared, albeit with some police action to remove the aforementioned structures. The pandemic has, however, not seen its end and we are still battling with the same. Thus, really speaking, the reliefs in the present proceedings have worked themselves out.
- D 13. We, however, pen down a few more lines for clarity on the subject on account of its wider ramifications. Learned counsel for the applicants Mr. Mehmood Pracha has sought to canvass that there was an absolute right of peaceful protest, both in respect of space and numbers. He submitted that the right under Article 19(1)(a) and 19(1)(b)
- E of the Constitution of India are only circumscribed by the provisions of Clauses (2) & (3), and the only applicable aspect would be 'public order', but such restriction must be reasonable in character. On the other hand, the appellant herein sought to contend that such a situation should be avoided in the future and some norms may be laid down.
- F 14. Mr. Tushar Mehta, learned Solicitor General referred to judicial pronouncements to rebut the case sought to be made out by the applicants. In *Himat Lal K. Shah v. Commissioner of Police, Ahmedabad & Anr.*,¹ a challenge was made to the rules framed by the Commissioner of Police, Ahmedabad, by the powers conferred under
- G Section 33(1)(o) of the Bombay Police Act, 1951. One of these rules required prior permission to be taken for the holding of public meetings. The Supreme Court opined that the State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interests of public order. With regard to whether or not

H ¹(1973) 1 SCC 227

these rules violated Article 19(1)(b) of the Constitution of India, it was held that while the State cannot impose any unreasonable restrictions, a right to hold meetings on public streets was subject to the control of the appropriate authority regarding the time and place of the meeting and subject to considerations of public order. However, as the rule requiring prior permission of the concerned authority did not contain any guidance as to when such permission to hold a public meeting may be refused, it was found that the same conferred arbitrary powers and gave an unguided discretion to the concerned authority, and this was accordingly held to be *ultra vires* Article 19(1)(b) of the Constitution.

15. In *Mazdoor Kisan Shakti Sangathan v. Union of India & Anr.*,² this Court was concerned with regulating the aspect of demonstrations in the earmarked space by the concerned authorities at Jantar Mantar. The judgment endeavoured to emphasise on the principle of balancing the interests of the residents in the area vis-à-vis the interests of protestors to hold demonstrations at Jantar Mantar. The concerned police authority was directed to devise a proper mechanism for the limited use of the Jantar Mantar area for peaceful protests and demonstrations and to lay down parameters for the same. With regard to the orders being passed under Section 144 of the Code of Criminal Procedure, 1973 prohibiting activities like holding public meetings, processions, etc. in areas in and around the Parliament area, the Court noted that the tenor and language of such orders indicated that the concerned authority was to examine every request and take a decision as to whether it should or should not allow the proposed demonstration, public meeting etc., keeping in view its likely effect, namely, whether it would cause any obstruction to traffic, danger to human safety or disturbance to public tranquility, etc. However, as such orders were repeatedly being passed, the same were held to amount to create a situation of perpetuity, and also amounted to what would be equivalent to the “banning” of public meetings, demonstrations, etc. The police and other concerned authorities were accordingly directed to formulate proper and requisite guidelines for regulating protests in and around the area.

16. India, as we know it today, traces its foundation back to when the seeds of protest during our freedom struggle were sown deep, to eventually flower into a democracy. What must be kept in mind, however, is that the erstwhile mode and manner of dissent against colonial rule

² (2018) 17 SCC 324

- A cannot be equated with dissent in a self-ruled democracy. Our Constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties. Article 19, one of the cornerstones of the Constitution of India, confers upon its citizens two treasured rights, i.e., the right to freedom of speech and expression under Article 19(1)(a) and the right to assemble peacefully without arms under Article 19(1)(b). These rights, in cohesion, enable every citizen to assemble peacefully and protest against the actions or inactions of the State. The same must be respected and encouraged by the State, for the strength of a democracy such as ours lies in the same. These rights are subject to reasonable restrictions, which, *inter alia*, pertain to the interests of the sovereignty and integrity of India and public order, and to the regulation by the concerned police authorities in this regard.³ Additionally, as was discussed in the *Mazdoor Kisan Shakti Sangathan case*, each fundamental right, be it of an individual or of a class, does not exist in isolation and has to be balanced with every other contrasting right. It was in this respect, that in this case, an attempt was made by us to reach a solution where the rights of protestors were to be balanced with that of commuters.

17. However, while appreciating the existence of the right to peaceful protest against a legislation (keeping in mind the words of Pulitzer Prize winner, Walter Lippmann, who said “*In a democracy, the opposition is not only tolerated as constitutional, but must be maintained because it is indispensable*”), we have to make it unequivocally clear that public ways and public spaces cannot be occupied in such a manner and that too indefinitely. Democracy and dissent go hand in hand, but then the demonstrations expressing dissent have to be in designated places alone. The present case was not even one of protests taking place in an undesignated area, but was a blockage of a public way which caused grave inconvenience to commuters. We cannot accept the plea of the applicants that an indeterminable number of people can assemble whenever they choose to protest. Justice K.K. Mathew in the *Himat Lal case*⁴ had eloquently observed that “*Streets and public parks exist primarily for other purposes and the social interest promoted by untrammelled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and*

³ See *In re Ramlila Maidan Incident*, (2012) 5 SCC 1

⁴ (supra)

regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion.”

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18. Furthermore, we live in the age of technology and the internet where social movements around the world have swiftly integrated digital connectivity into their toolkit; be it for organising, publicity or effective communication. Technology, however, in a near paradoxical manner, works to both empower digitally fuelled movements and at the same time, contributes to their apparent weaknesses. The ability to scale up quickly, for example, using digital infrastructure has empowered movements to embrace their often-leaderless aspirations and evade usual restrictions of censorship; however, the flip side to this is that social media channels are often fraught with danger and can lead to the creation of highly polarised environments, which often see parallel conversations running with no constructive outcome evident. Both these scenarios were witnessed in Shaheen Bagh, which started out as a protest against the Citizenship Amendment Act, gained momentum across cities to become a movement of solidarity for the women and their cause, but came with its fair share of chinks - as has been opined by the interlocutors and caused inconvenience of commuters.

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19. We have, thus, no hesitation in concluding that such kind of occupation of public ways, whether at the site in question or anywhere else for protests is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions.

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20. We are also of the view that the High Court should have monitored the matter rather than disposing of the Writ Petition and creating a fluid situation. No doubt, it is the responsibility of the respondent authorities to take suitable action, but then such suitable action should produce results. In what manner the administration should act is *their* responsibility and they should not hide behind the court orders or seek support therefrom for carrying out their administrative functions. The courts adjudicate the legality of the actions and are not meant to give shoulder to the administration to fire their guns from. Unfortunately, despite a lapse of a considerable period of time, there was neither any negotiations nor any action by the administration, thus warranting our intervention.

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A 21. We only hope that such a situation does not arise in the future and protests are subject to the legal position as enunciated above, with some sympathy and dialogue, but are not permitted to get out of hand.

 22. We, accordingly, close these proceedings, once again expressing our appreciation of the difficult roles played by the
B interlocutors.

 23. The Civil Appeal stands disposed of, leaving the parties to bear their own costs.

Divya Pandey

Appeal disposed of.