

**HIGH COURT OF DELHI**

**Bench: Hon'ble Mr. Justice Subramonium Prasad**

**Date of Decision: 25 October 2023**

W.P.(C) 13871/2023 & CM APPL. 54796/2023

**MISSION SAVE CONSTITUTION**

**..... Petitioner**

**versus**

**UNION OF INDIA & ORS.**

**..... Respondents**

**Sections, Acts, Rules, and Article:**

Article 19(1)(a) and (b), 226 of the Constitution of India

Delhi 28, 29, 31, 36 of the Police Act (DP Act)

Section 144 of the Code of Criminal Procedure (CrPC)

**Subject:** Constitutional Law - Right to Assemble and Demonstrate - Freedom of Speech, Law and Order - Balance of Rights.

**Headnotes:**

*Constitutional Law – Right to Assemble and Demonstrate – Right to peaceful protest and freedom of speech – Fundamental rights guaranteed under Article 19(1)(a) and (b) of the Constitution of India – Importance of safeguarding the right to protest and express grievances within a democratic system – Restrictions on the exercise of these rights permissible under Article 19(2) and (3) – Concerns of public order and security of the State – Lawful authority to regulate public gatherings – Necessity for prior written permission for public meetings, processions, and demonstrations – Scope of judicial review in such cases – Emphasis on maintaining a balance between individual rights and public safety. [Para 9-18]*

*Freedom of Speech – Right to express grievances and dissent – Integral part of a democratic system – Protection of fundamental rights under Article 19(1)(a) – The duty of courts to protect these rights – Need for the State to aid the exercise of the right to freedom of speech – Exercise of the power to restrict this right should serve the ends of constitutional rights rather than subvert them – Limitations on this right in the interest of public order and decency – Use of reasonable restrictions to prevent situations leading to the disturbance of public tranquility – Preventive and not provocative actions by law enforcement agencies – Judicial review of orders imposing restrictions – Limited scope of judicial review. [Para 9-13]*

*Law and Order – Concerns of maintaining public order and security of the State – Police’s role in ensuring public security and social order – Statutory provisions giving power to the police to maintain public order – Regulations for regulating traffic, preservation of order in public places, and preventing disorder – Exercise of discretion by the police in permitting public events – Balancing fundamental rights with the concerns of law and order – The importance of preventing situations that could lead to the disturbance of public tranquility – Law enforcement agencies must act within the limits of the law and cannot indulge in excesses – Necessity for police action to be preventive rather than provocative. [Para 14-16]*

*Balance of Rights – Balancing individual rights with public safety – The festive season and the significance of the period for the Hindu community – Possibility of events with communal overtones causing communal tensions in sensitive areas – The importance of taking into account law and order considerations – Limited scope of judicial review in such cases – Executive authorities given some leverage in decision-making – Scope for applying for fresh permission after the festive season with proper assurance to authorities – Dismissal of the writ petition based on law enforcement agency’s apprehension of law and order situation. [Para 14-18]*

#### **Referred Cases:**

- Amit Sahni v. Commissioner of Police, (2020) 12 S.C.R. 151
- Babulal Parate v. State of Maharashtra, (1961) 3 S.C.R. 423
- Dr. Ram Manohar Lohia v. State of Bihar, (1966) 1 S.C.R. 709
- Himat Lal K. Shah v. Commissioner of Police, Ahmedabad, (1973) 2 S.C.R. 266
- In Re. Destruction of Public & Private Properties, (2009) 6 S.C.R. 439
- In Re. Ramlila Maidan Incident Dt.4/5.06.2011 v. Home Secretary, Union of India & Ors., (2012) 4 S.C.R. 971
- K. Philipraja v. Superintendent of Police, Erode District, W.P. 33335/2013
- Mazdoor Kisan Shakti Sangathan v. Union of India & Anr., (2018) 11 S.C.R. 586

#### **Representing Advocates:**

Petitioner: Mr. R.H.A. Sikander, Mr. Daya Ram Badalia, Mr. Sanawar Choudhary, Mr. Jatin Bhatt, and Mr. Harshit S. Gahlot, Advocates

Respondent No. 1 (Union of India): Mr. Apoorv Kurup, CGSC with Mr. Akhil Hasija, Advocate

Respondent No. 2: Mr. Satyakam, ASC with Mr. Ganesh Kumar Bhatt, Advocate

Respondent No. 3 (MCD): Ms. Khushboo Nahar, ASC with Mr. Kunal Israney, Advocate

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#### **JUDGMENT(ORAL)**

1. Petitioner has approached this Court praying for an appropriate writ/order/direction to quash a communication bearing No. 37469/Arrgt./C, Delhi, dated 16.10.2023, issued by Respondent No.2 herein, i.e. Deputy Commissioner of Police, Central District, revoking the No Objection Certificate granted to the Petitioner herein for holding an event on 29.10.2023. The Petitioner also prays for quashing of a communication dated 17.10.2023, issued by Respondent No.3 herein, cancelling the booking of the Ramlila Ground, Delhi, which had been booked by the Petitioner for holding the said event on 29.10.2023.
2. Shorn of unnecessary details, the facts, leading to the present Writ Petition, are as under:
  - a) Petitioner had approached Respondent No.3 with a request to book the Ramlila Ground for 29.10.2023 for the purpose of organizing an event purportedly to educate people about their constitutional rights. It is stated that in order to organize the said event, the Petitioner was required to obtain a No Objection Certificate (*hereinafter called as "the NOC"*) from the Police Authorities before permission could be granted to hold the said event.
  - b) Accordingly, the Petitioner sent a letter to the DCP, Central Delhi, seeking an NOC to organize the event, which, according to the Petitioner, was being held to educate the people about their constitutional rights. The letter indicates that the Petitioner was expecting a gathering of around 10,000 people in the said event.
  - c) It is pertinent to mention at this juncture that the State has issued a list of Terms and Conditions for holding public events in Delhi and has prescribed Dos and Dents for organizing such events. The conditions include that no participant shall make provocative speeches or use language calculated or likely to inflame passions of the crowd or incite them or promote enmity between different groups or ground of religion, race, place or birth, residence language etc. or act in any manner which is prejudicial to the maintenance of harmony between such groups or disturb public tranquility. The terms and conditions also specify that no participant shall destroy, damage or defile, deface any place of worship or any object held sacred by any class of persons with the intention of insulting any religion or any class of persons or causing enmity between different sections of people/disturbing communal harmony.
  - d) It is stated that the Petitioner received a Communication from Respondent No.2 herein on 06.10.203, permitting the Petitioner to organize an event at the Ramlila Ground which was to educate people about their constitutional

- rights subject to the Petitioner adhering to the terms and conditions and obtaining a prior permission from the land owning agency.
- e) It is stated that on receiving an NOC from the Police the Petitioner deposited a sum of Rs.50,000/- towards holding the said event.
- f) Material on record discloses that on 16.10.2023, Petitioner received a letter from Respondent No.2 stating that some representations have been received from public objecting to the conduct of the event in question and the matter has been reassessed through ACP/SHO Kamla Market wherein it has surfaced that the theme of the event is different than what was projected by the organizers while seeking permission. The letter further states that in the re-assessment it has been disclosed that the language written on the posters available on social media regarding the event shows that the agenda of the event appears to be communal and there is a strong apprehension that holding such even during festive season and at such a sensitive place may spread communal hatred and dent the peace and tranquility of the area. The letter also states that amidst the tension in the Arab countries due to ongoing war between Israel and HAMAS, the authorities apprehend that such kind of events may lead to a law and order situation and spoil the atmosphere of Old Delhi where people belonging to all religions live and, therefore, the NOC granted to the Petitioner vide letter dated 06.10.2023 stands revoked.
- g) Consequently, a communication dated 17.10.2023 was issued by the Respondent No.3 cancelling the booking of the Petitioner herein for the event in question which was to be held on 29.10.2023.
- h) The Petitioner has approached this Court by filing the present Writ Petition challenging the letter dated 16.10.2023 revoking the permission and the communication dated 17.10.2023 cancelling the booking of Ramlila Ground.
3. The Writ Petition came up for hearing on 19.10.2023. Learned Counsel for Respondent No.2 was asked to obtain instructions and the matter was fixed for hearing on 20.10.2023.
4. Learned Counsel for Respondent No.2 stated that when Delhi Police came across the posters which carried the agenda of the event which is to be organized by the Petitioner on 29.10.2023, the organizers were requested to attend a meeting on 15.10.2023 along with a copy of the poster which the Police came across in the media.
5. He states that the Petitioner was also asked to bring a list of VIPs and Speakers who were likely to attend the said event. Learned Counsel for Respondent No.2 has also taken this Court through a complaint received on

16.10.2023 from a resident wherein it is stated that in a video message, which is made viral, a Maulana, namely, Toqeer Raza from Bareilly is seen announcing a panchayat to be held on 29.10.2023 at Ram Lila Ground using abusive language against the Prime Minister. A concern has been raised in the said complaint that this meeting can result in communal tensions in Old Delhi. Learned Counsel for Respondent No.2 has also taken this Court through another complaint which states that the event in question can have the effect of creating communal tension in the Old Delhi area where people of different communities/religions are living peacefully. Learned Counsel for Respondent No.2 has also taken this Court through a recommendation of SHO Kamla Market wherein he has stated that there is an apprehension of communal peace being disturbed due to the proposed event in question and more particularly, because of the tension in Arab countries. He has also taken this Court through a poster which has the effect of inciting communal tension. The said poster is reproduced below:



6. Learned Counsel for the Petitioner contends that the proposed meeting is only to educate people about their constitutional rights. Learned Counsel for the Petitioner has drawn the attention of this Court to various judgments of

Apex Court to contend that the right to protest is an integral part of democracy and is enshrined in Article 19(1)(a) of the Constitution of India. He places reliance on the following judgments:

- Amit Sahni v. Commissioner of Police, (2020) 12 S.C.R. 151;
- Babulal Parate v. State of Maharashtra, (1961) 3 S.C.R. 423;
- Dr. Ram Manohar Lohia v. State of Bihar, (1966) 1 S.C.R. 709;
- Himat Lal K. Shah v. Commissioner of Police, Ahmedabad, (1973) 2 S.C.R. 266;
- In Re. Destruction of Public & Private Properties, (2009) 6 S.C.R. 439;
- In Re. Ramlila Maidan Incident Dt.4/5.06.2011 v. Home Secretary, Union of India & Ors., (2012) 4 S.C.R. 971;
- K. Philipraja v. Superintendent of Police, Erode District, W.P. 33335/2013;
- Mazdoor Kisan Shakti Sangathan v. Union of India & Anr., (2018) 11 S.C.R. 586;

He states that the Petitioner is amenable to changing the dates and also for changing the contents of the poster and other literature but without giving an opportunity to the Petitioner, the NOC granted by Respondent No.2 has been withdrawn. He states that the reasons given in the letter dated 16.10.2023 withdrawing the NOC are arbitrary and the same cannot be accepted. He states that some complaints received from a few people cannot be a basis for revoking the permission.

7. Per contra, learned counsel for Respondent No.2 contends that the apprehension raised by the Police is not fanciful and is based on the material which could not have been discarded by the Police.
8. Heard the Counsels for the Parties and perused the material on record.
9. It is well settled that holding public events to ventilate grievances and to ensure that the grievances are heard is a fundamental right which is enshrined in Article 19(1)(a) and (b) of the Constitution of India. The views expressed by the aggrieved party may or may not be accepted and it is the duty of the Courts to protect the rights of the people which are guaranteed in the Constitution of India. The Apex Court in Babulal Parate (supra) has held that the right of citizens to take out processions or to hold public meetings flows from the right in Article 19(1)(b) to assemble peaceably and without arms and the right to move anywhere in the territory of India. The right to make a demonstration can take the form of an assembly with the intention to convey the feelings of the persons who are a part of the demonstration to the authority and such right to demonstrate falls within the freedom granted under

Article 19(1) of the Constitution of India. In Ramlila Maidan Incident, In re, (2012) 5 SCC 1, the Apex Court has observed as under:

*“245. Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of a democratic system. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquillity, as it may disturb the social order. This delegated power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to subvert them.”*

10. Similarly, in Anita Thakur v. State of J&K, (2016) 15 SCC 525, the Apex Court recognized the right to peaceful protest and has held as under:

*“12. We can appreciate that holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under Article 19(1)(d), again, ensures that the petitioners could take out peaceful march. The “right to assemble” is beautifully captured in an eloquent statement that “an unarmed, peaceful protest procession in the land of “salt satyagraha”, fast-unto-death and “do or die” is no jural anathema”. It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for Independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution.*

*13. Notwithstanding above, it is also to be borne in mind that the aforesaid rights are subject to reasonable restrictions in the interest of the sovereignty and integrity of India, as well as public order. It is for this reason, the State authorities many a times designate particular areas and routes, dedicating them for the purpose of holding public meetings.*

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*15. Thus, while on the one hand, citizens are guaranteed fundamental right of speech, right to assemble for the purpose of carrying peaceful protest processions and right of free movement, on the other hand, reasonable restrictions on such right can be put by law. Provisions of IPC and CrPC, discussed above, are in the form of statutory provisions giving powers to the State to ensure that such public assemblies, protests, dharnas or marches are peaceful and they do not become “unlawful”. At the same time, while exercising such powers, the authorities are supposed to act within the limits of law and cannot indulge into excesses.”*

11. It has also been constantly held that the right to protest cannot be said to be untrammelled. Article 19(2) of the Constitution of India permits the State to impose such reasonable restrictions on the exercise of the right conferred under Article 19(1) of the Constitution of India in the interests of the sovereignty and integrity of India, the security of the State, etc. Article 19(3) of the Constitution of India gives right to the State to impose certain restrictions on the exercise of Article 19(1) of the Constitution of India in the interests of the sovereignty and integrity of India or public order. Article 19 (1), 19(2) & 19(3) of the Constitution of India reads as under:

*“19. Protection of certain rights regarding freedom of speech etc*

*(1) All citizens shall have the right*

*(a) to freedom of speech and expression;*

*(b) to assemble peaceably and without arms;*

*(c) to form associations or unions;*

*(d) to move freely throughout the territory of India;*

*(e) to reside and settle in any part of the territory of India; and*

*(f) omitted*

*(g) to practise any profession, or to carry on any occupation, trade or business*

*(2) Nothing in sub clause (a) of clause ( 1 ) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence*

*(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 the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause”*

12. The Apex Court in Ramlila Maidan Incident (supra) while dealing with this question has held as under:



*“246. The “law and order” or “public order” are primarily and certainly the concerns of the State. Police, being one of the most important organs of the State, is largely responsible for ensuring maintenance of public security and social order. To urge that the police have no concern with the holding of public meetings would be a misnomer and misunderstanding of law. To discharge its duty, the police organisation of a State is a significant player within the framework of law. In this view of the matter, I may now refer to certain statutory provisions under the relevant Acts or the Rules.*

*247. Chapter V of the DP Act requires special measures for maintenance of public order and security of State, to be taken by the police. Sections 28 and 29 of the DP Act give power to the police to make regulations for regulating traffic and for preservation of order in public places and to give directions to the public, respectively. Under Section 31 of the DP Act, the police is under a duty to prevent disorder at places of public amusement or public assembly or meetings. Section 36 contemplates that the police is to ensure and reserve streets or other public places for public purposes and empowers it to authorise erecting of barriers in streets. It also is vested with the power to make regulations regulating the conduct or behaviour of persons constituting assemblies or processions on or along with the streets and specifying, in the case of processions, the rules by which and the time and order in which the same may pass.*

*248. The power to make regulations relates to regulating various activities including holding of melas and public amusements, in the interest of public order, the general public or morality. Delhi Police has also issued Standing Order 309 in relation to “regulation of processions and rallies” laying down the procedure for making application for grant of permission, its acceptance or rejection and the consequences thereof. This standing order also provides as to how the proceedings in furtherance to an order passed under Section 144 CrPC should be carried out. It further indicates that the entire tilt of the regulation is to grant permission for holding processions or rallies and they need to be accommodated at the appropriate places depending upon the number of persons proposing to attend the said rally or meeting and the nature of the activity that they are expected to carry on. For instance, under clause (h), as Parliament Street and Jantar Mantar cannot accommodate more than 5000 persons, if there is a larger crowd, they should be shifted to the Ramlila Ground and if the crowd is expected to be more than 50,000 and the number of vehicles would accordingly swell up, then it should be shifted to a park or another premises, which can safely accommodate the gathering.*

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*250. There cannot be any dispute that the executive authorities have to be given some leverage while taking such decisions and the scope of judicial review of such orders is very limited. These propositions of law are to be understood and applied with reference to the facts of a given case. It is not necessary for me to reiterate those facts. Suffice it to note that the action of the police was arbitrary. The seven-Judge Bench of this Court in Madhu Limaye [(1970) 3 SCC 746 : AIR 1971 SC 2486] reiterated with approval the law enunciated in Babulal Parate [AIR 1961 SC 884 : (1961) 2 Cri LJ 16 : (1961) 3 SCR 423] and further held that :*

(Madhu Limaye case [(1970) 3 SCC 746 : AIR 1971 SC 2486] , SCC p. 757, para 24)

*“24. ... These fundamental facts emerge from the way the occasions for the exercise of the power are mentioned. Disturbances of public tranquillity, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevented.”*

*The fundamental emphasis is on prevention of situation which would lead to disturbance of public tranquillity, however, action proposed to be taken should be one which itself is not likely to generate public disorder and disturb public tranquillity. It should be preventive and not provocative. The police action in the present case led to a terror in the minds of members of the assembly and finally the untoward incident.”*

13. Similarly, in Mazdoor Kisan Shakti Sangathan (supra), the Apex Court, while dealing with the restrictions imposed by the State under Section 144 of the Cr.P.C prohibiting holding of meeting etc. in areas such as Parliament House, North and South Blocks and other Central Government offices, etc., has observed as under:

*“66. The petitioner in Writ Petition (Civil) No. 1153 of 2017 wants boat club area to be available for demonstrations, etc. The petitioner has successfully demonstrated that it is their fundamental right under Articles 19(1)(a) and 19(1)(b) of the Constitution. At the same time, it is also not denied that there can be reasonable restrictions on exercise of this right in the larger public interest. The respondents have also highlighted in equal measure the sensitivity of this area because of its proximity to the Parliament House, North and South Blocks and other Central Government offices, including frequent visits of Heads of foreign States and other such factors. The respondents are also justified in pointing out that alarmingly large number of requests for holding demonstrations at this place are made. Further, intelligence reports reveal that some of such demonstrations, if allowed, may cause serious law and order situation. The respondents are also correct to the extent that this Court has not adopted “clear and present danger test” [Ed.: Devised by Justice Holmes in 1919, see *Schenck v. United States*, 1919 SCC OnLine US SC 62 : 63 L Ed 470 : 249 US 47 (1919)] , as applied by the US courts, and instead it is the “apprehension of breach of peace test” which is to be used in order to decide as to whether a particular demonstration/dharna is to be allowed or not. When orders passed under Section 144 CrPC are examined in this context, one may not find foul with such orders. These orders do not, on their face, appear to be infected with any illegality as they prohibit public meetings, assembly of five or more persons, processions, demonstrations, dharnas, etc. “without written permission”. Further, such orders are passed on the basis of intelligence reports which indicate that “unrestricted holding of public meetings”, processions, demonstrations, etc. in the area are likely to cause obstruction to traffic, danger to human safety and disturbance of public tranquillity.*

67. *The tenor or these orders and the specific language used therein bring about the following two features:*

(a) *there should not be “unrestricted” holding of public meetings, processions, etc.; and*

(b) *as a corollary, the order mentions that such public meetings, processions, demonstrations, etc. would not be allowed “without written permission”.*

68. *The reading of these orders, thus, would indicate that there is no absolute prohibition from holding public meetings, processions, demonstrations, etc. Such activities are to be restricted in larger public interest and, therefore, before any group of persons or person wants to carry out any such processions and dharnas, it has to take prior written permission. This clearly implies that whenever such a request is made, the authority is to examine the same and take a decision as to whether it should allow the proposed demonstration, public meeting, etc. or not, keeping in view its likely effect, namely, whether it would cause any obstruction to traffic or danger to human safety or disturbance to public tranquillity, etc. If requests made are considered and then allowed or rejected keeping in view the aforesaid considerations, there cannot be any quarrel as to the validity of such an order made under Section 144 CrPC. That is, however, not the ground reality.”*

14. The entire country is celebrating Navratri from 15.10.2023 to 24.10.2023 and Diwali, which will be celebrated on 12.11.2023. Between Navratri and Diwali, there are several festivals like *Karvachauth*, *Dhanteras*, etc. This period is extremely auspicious for Hindu Community. Though the event has been styled for the purpose of educating people of their constitutional rights but the tenor of posters which have been produced by the learned Counsel for Respondent No.2 indicates that the event in question can have communal over-tones which can result in increasing communal tensions in the Old Delhi area, which is a “sensitive” area as people of different religions live here and communal violence in the area is not unknown. The apprehension raised by the SHO of that area, who is aware of the ground reality, cannot be ignored. Though Article 19(1) (a) & (b) of the Constitution of India gives freedom to raise one’s voice but at the same time, the possibility of the event creating a law and order situation which can result in loss of lives, property, etc is an important factor which has to be taken into account by the law enforcement agencies and, therefore, the reason given in the letter dated 16.10.2023 cannot be said to be arbitrary. 15. It is well settled that the Executive Authorities have to be given some leverage while taking these decisions and the scope of judicial review is limited [Refer: Babulal Parate (supra)].

16. In view of the above, the letter dated 16.10.2023, withdrawing the NOC granted to the Petitioner herein for conducting an event on the ground

that it can create a law and order situation in the area in the present circumstances and it should not be permitted at this time does not require any interference from this Court under Article 226 of the Constitution of India.

17. However, as suggested by the learned Counsel for the Respondents, that after the festive season is over it is always open for the Petitioner to approach the authorities for a fresh permission by giving the list of speakers and giving proper assurance to the authorities that the event will not raise communal tension in the area. On receipt of such application from the Petitioner in future, Respondent No.2 is directed to consider the application on its own merits.

18. With these observations, the Writ Petition is dismissed along with the pending applications, if any.

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