

Daily Order

Judge Name Case No/Year Date of Order Daily Order

CHIEF JUSTICE AND PRADEEP SINGH YERUR WP 52731/2019 20/12/2019 W.P.
No.52731/2019,

W.P. No.52768/2019,

W.P.No.52718/2019 &

W.P. No.52738/2019

In all these petitions, there is one common prayer where there is a challenge to the order dated 18th December, 2019 passed by the Commissioner of Police, Bengaluru, in purported exercise of the powers under Section 144 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.).

2. In W.P.No.52731/2019, it is brought to our notice that a permission letter was issued on 18th December 2019 to an organization named therein for conducting protests against the Citizenship (Amendment) Act (for short, "the CAA") on 19th December, 2019 from 10.30 a.m. to 12.30 p.m. in front of Town Hall, Bengaluru. About 150 people were to participate in the protest. The said permission letter appears to have been issued in exercise of the powers under the Regulation of Public Procession and Assemblies (Bengaluru City) Order, 2009 (for short "the said Regulation Order"). The said Order has been issued in exercise of the powers conferred by clause (o) of sub-section (1) of Section 31 of the Karnataka Police Act, 1963. It is pointed out during the course of hearing that apart from the aforesaid permission granted on 18th December, 2019, to other individuals/groups, similar permissions were granted under the said Order. Inviting our attention to the impugned order dated 18th December, 2019 and in particular, clause (7) thereof, it is pointed out that by one order, all the permissions which are granted earlier under the said Regulation Order stand cancelled.

3. The petitioners have relied upon well settled propositions of law laid down by the Apex Court in its well known decisions, viz., RAM LEELA MAIDAN INCIDENT IN RE, MAZDOOR KISAN SHAKTI SANGHATHAN .v. UNION OF INDIA AND ANOTHER and MADHU LIMAYE .v. SUB-DIVISIONAL MAGISTRATE, MONGHYR AND OTHERS and several other well known decisions. The submission in brief is that the right to demonstrate by holding dharnas and peaceful protests are the basic features of the democratic system. The people in a democratic state have a right to raise their voice against the decisions/actions of the Government and even

to express their resentment over the actions or decisions of the Government on the issues of social or national importance. It follows that the State has to respect and in fact encourage such rights and preventive steps cannot be taken arbitrarily. The said rights which are upheld by the decisions of the Apex Court in the case of RAM LEELA MAIDAN (supra) and MAZDOOR KISAN SHAKTI SANGHATHAN (supra) are the fundamental rights guaranteed under Article 19(a) and (b) of the Constitution of India of the right to freedom of speech and expression and the right to assemble peacefully without possessing arms.

4. The second submission in short is that the exercise of power under Section 144 of Cr.P.C. is completely arbitrary. One of the submissions based on the aforesaid two decisions is that the impugned order dated 18th December, 2019 contains two parts. The first part incorporates a proposal to pass such order, and the second part is the order. It is urged that formation of an opinion by the District Magistrate who is empowered to pass the order under Section 144 of Cr.P.C. must be reflected in the order passed under Section 144 of Cr.P.C. The contention is that the rights available to make peaceful protests which are fundamental rights cannot be taken away by such arbitrary exercise of power under Section 144 of Cr.P.C. Another contention is that under the said Regulation Order, a close scrutiny of the applications is made by inviting views and opinions of the concerned jurisdictional Deputy Commissioner of Police and Station House Officers. Moreover, nine factors which are set out in Regulation 7 of the said Regulation Order are required to be considered. The contention is that such lawfully granted permissions cannot be set at naught by passing a blanket order under Section 144 of Cr.P.C. It is submitted that the impugned order under Section 144 of Cr.P.C amounts to revocation of the permissions granted under the said Regulation Order which cannot be done without following the elementary principles of natural justice.

5. The learned Advocate General submitted that it is true that the State is the custodian of the fundamental rights of the citizens but, at the same time, if the situation warrants, it is the duty of the State to take preventive measures for maintaining law and order. His submission in brief is that the Commissioner of Police, Bengaluru, received several inputs from several quarters on the basis of which he was satisfied that immediate preventive action is necessary. Relying upon certain paragraphs in the case of MADHU LIMAYE (supra), he submitted that there was a possibility of anti-social elements participating in the peaceful protests pursuant to the permissions granted and therefore, such an extreme measure has been taken. He submitted that there was a rally to be held today to support the CAA for which permission was not granted.

6. Referring to one of the annexures in W.P.No.52731/2019, the learned Advocate General submitted that permission has not been granted to hold a rally which is supposed to be held on 22nd December, 2019 to support the CAA.

7. We must note here that in these petitions which are essentially filed to uphold the fundamental rights of the citizens of conducting protests in a peaceful and lawful manner, we are not concerned with the subject of protest. We are concerned with the decision making process adopted by the State Government while passing a drastic order under Section 144 of Cr.P.C., which undoubtedly, curtails the fundamental rights conferred on citizens under Articles 19 (1)(a) and 19 (1)(b) of Constitution of India. This indeed is a preventive measure. The preventive measure has the effect of depriving the citizens of fundamental rights and therefore, we will have to examine the legality of the decision making process, especially when prima facie, we find that formation of an opinion which is required under sub-section (1) of Section 144 of Cr.P.C. is not reflected from the recitals in the order. Considering the serious allegations of violation of the fundamental rights of the citizens to protest peacefully which is an essential part of any democratic system, it is absolutely necessary that these petitions should be taken up for hearing out of turn at the stage of Preliminary Hearing.

8. The issue whether the permissions granted under the said Regulation Order can be revoked by passing an order under Section 144 of Cr.P.C. and that too, without giving a pre-decisional or post-decisional hearing to the organizations to whom permissions have been granted under the said Regulation Order will have to be gone into.

9. Now the question is what interim relief can be granted. One aspect is that the permissions which have been already granted under the said Regulation Order have worked out itself as they were with reference to a specific date and time. Secondly, we must note that the impugned order dated 18th December, 2019 comes to an end at the end of the day tomorrow (21st December 2019).

10. Some apprehension is expressed by the petitioners that the order may be extended. Prima facie, we find that even assuming that the impugned order is based on formation of the opinion as contemplated by sub-section (1) of Section 144 of Cr.P.C., the opinion was that a preventive order is necessary to be passed which will be effective till 21st December, 2019. Therefore, there will have to be a fresh application of mind and formation of opinion if at all there is any necessity to pass a fresh order under Section 144 of Cr.P.C.

11. Therefore, by way of interim relief, it will be appropriate to direct the State Government to consider fresh applications, if made by individuals or organizations under the said Regulation Order, on merits in accordance with law. If such applications are made within three days from tomorrow (21st December, 2019), the same shall be decided within a period of three days from the date on which the applications are made. Considering the fact that there are several inherent safeguards forming a part of the said Regulation Order, the State will consider the application on its own merits, considering the fundamental rights of the citizens upheld by the Apex Court in the case of RAM LEELA MAIDAN (supra).

12. In all these petitions, we issue a formal notice which is waived by the learned High Court Government Pleader. We grant time to the State to file statement of objections till 6th January, 2020.

13. We make it clear that though the impugned order will come to an end tomorrow (21st December 2019), as the impugned order amounts to deprivation of fundamental rights, this Court will go into the legality and validity of the impugned order.

14. These petitions shall be listed on 7th January, 2020 under the caption of 'Orders' on which day, an early date for hearing will be fixed.