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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(VIA VIDEO CONFERENCE)

WPA 7912 of 2020

Sourav Dutta
Vs.
The State of West Bengal & Ors.

Mr. Bikash Ranjan Bhattarjee, Sr. Adv.
Mr. Samim Ahammed
Mr. Arka Maiti
Ms. Saloni Bhattacharjee
... For the petitioners

Mr. Kishore Datta, Ld. AG
Mr. Sayan Sinha
... For the State

Mr. Alok Kumar Ghosh
Mr. Subhrangsu Panda
... For the KMC

The matter pertains to the grant extended by the State Government to organisers of Durga Puja all over the State. An amount of Rs.50,000/- each has been made available to 34,000 sets of organisers of Durga Puja in the State, including 3,000 within the jurisdiction of Kolkata Police.

The total cost to the exchequer is to the tune of Rs.170 crore and, according to the State, the disbursement was commenced after the publication of a notification of October 1, 2020 issued by the Home and Hill Affairs Department of the State.

The writ petitioner, claiming to be a public spirited individual, has questioned the propriety of such grant on

divers counts. It is contended on behalf of the petitioner that the provision for the grant was not included in the budget and, as such, it has to be seen as a grant under Article 282 of the Constitution. The relevant provision is placed and it is submitted that it is only in an emergency situation that such provision may be resorted to and the grant must be for some public activity or purpose. The fundamental premise on which the Government decision is attacked is that it runs counter to the basic feature of secularism as enshrined in the Constitution. Judgments have been brought on behalf of the petitioner to assert that public money cannot be frittered away even by elected representatives or persons in constitutional posts.

The petitioner has placed the announcement apparently made by the Hon'ble Chief Minister on or about September 24, 2020. Passages from the Hon'ble Chief Minister's speech have been extracted in the petition. The petitioner draws attention to the fact that the Hon'ble Chief Minister had indicated that since revenue from advertisements and contribution from other quarters may be hard to come by for the organisers of Durga Puja in the present Covid times, the State Government had decided to extend assistance to the pujas for the purpose of the conduct of the festival. The petitioner emphasises that it may be against the constitutional ethos to finance the pujas for the purpose of undertaking religious activities, especially when such benefit is not conferred on others.

The State, however, says that the grant has been made pursuant to due budgetary allocation therefor and strictly on the basis of the notification of October 1, 2020. In the budget papers for the financial year 2020-21, there is a head of expenses on account of police in the State. One of the sub-headings refers to the grant to puja organisers and it is apparent that a sum of Rs.40 crore was allocated for such purpose.

The State asserts that if the legislature deemed it fit to make a budgetary allocation for grant to puja organisers, any objection thereto ought to have been raised in the House itself and may not be carried to the Court at the time of disbursement. Judgments have been brought by the State to contend that a tax-payer may not have a right to question the propriety of any public expenditure if such expenditure is pursuant to any legislative mandate.

The notification of October 1, 2020 needs to be noticed in some detail. The two recitals indicate the purpose for the grant and read as follows:-

“Whereas Community Policing is an important part of Police activity for strengthening the bond between the Police Authorities and the citizens, the West Bengal Police and the Kolkata Police involve local Clubs and Organizations in the districts as well as in Kolkata, for various activities round the year, like assisting the Police through Volunteers in ‘Safe Drive Save Life’ campaigns, maintaining sanitation and public safety in managing crowd during community festivals; and whereas it is also necessary to promote, increase and facilitate the involvement of women in assisting community policing activities; and whereas it is advisable to do the above mentioned community development work through local institutions like

Clubs and Puja Committees including similar organizations led by women.

Whereas in the present Covid pandemic situation ensuring physical distancing, keeping sufficient provision of masks and hand sanitizers for people in general and visitors in particular, are obligatory in and around all the Durga Puja pandals, and to assist the Police and the general administration in maintaining all other health related protocols, engagement of sufficient Volunteers are required in compliance of general guideline of Durga Puja, 2020 issued by the Chief Secretary vide Memo No. 319-CS/2020 dated 28.09.2020 and whereas it is felt necessary to increase the amount of assistance in view of the additional arrangement to be made in the form of procurement of masks, hand sanitizers, face shields etc. for use in and around the Puja pandals.”

The third paragraph of the notification authorises the designated personnel to draw the amount and make the disbursements for the purposes as indicated in paragraph 1 of the notification, which has been referred to as the recital in this order. The last sentence of the third paragraph of the notification is of some significance:-

“Submission of Utilization Certificate is a must.”

Though the budgetary allocation was to the extent of Rs.40 crore, it is possible that more can be spent under such head, subject to revised estimates being presented in the Assembly and the same being passed. However, the avowed purpose for increase in the quantum beyond what was contemplated in the budget papers is evident from the second recital, quoted above.

Prima facie, there is some substance in the State's submission that once the grant has been made on the basis of a budgetary allocation therefor, the Court should

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be slow to interfere in the matter. It is also, prima facie, accepted that since Durga Puja may be the biggest festival in the State, irrespective of such festival being connected with a religious occasion, the festivities can be the spring-board for promoting socially relevant programmes and there may not be any religious flavour to such secular programmes being pursued. The primary purpose in this case is, as indicated in the first recital, to strengthen the bond between the police authorities and the citizens and facilitating the involvement of women in assisting community policing activities. To such extent, the matter may not call for immediate interference, without a more in-depth deliberation and consideration.

At the same time, it appears that the increase of the “amount of assistance”, as referred to in the second recital, is only in view of the pandemic and the need, in such context, to procure “masks, hand sanitizers, face shields etc. for use in and around the Puja pandals.”

There is no doubt that utilization certificates have been called for. The State also submits that along with the cheques handed over to the puja organisers, copies of the notification of October 1, 2020 have also been made available. If such is the case, there is no doubt that the puja organisers will be mindful and extremely cautious in dealing with the funds since such funds are exclusively for the purpose of the two heads indicated in the first paragraph which is described as the recital in this order.

The funds are not meant for the augmentation of resources to conduct puja activities or for any musical soiree or for entertainment of the puja organisers or others; they are strictly meant for public purpose to further strengthen the bond between the police and the citizens and involvement of women in assisting community policing on one hand and for the purpose of procurement of the specified items on the other.

In a sense, the Court is substantially relieved as there appears, *prima facie*, to be some public purpose as the State has contended.

However, since some confusion may have arisen, particularly in the light of the initial announcement that was made on September 24, 2020 vis-a-vis the contents of the notification of October 1, 2020, templates should be prepared indicating the two purposes in the following manner:-

“1. The money disbursed should be used approximately to the tune of 25 per cent for the purpose of programmes that strengthen the bond between police authorities and the citizens and for facilitating the involvement of women in assisting community policing activities.

“2. The rest of the money made available should be utilised strictly for the purpose of procurement of

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masks, hand sanitizers, face shields etc. for use in and around the puja pandals.

“3. All expenses should be backed by appropriate bills and vouchers to substantiate the utilization certificates that must be submitted in terms of the notification of October 1, 2020. The utilization certificates, along with all documents in support thereof, must be submitted to the Sub-Divisional Officers in the districts and to the designated officers within the jurisdiction of the Kolkata Police by November 10, 2020.”

Leaflets and handbills or notices incorporating the words indicated in the immediate preceding paragraph should immediately be prepared by the police authorities for circulation to all the puja organisers who have received the disbursements. Such exercise should be completed by October 22, 2020. The personnel who have made the disbursements should ensure that such leaflets and notices are circulated and report compliance to the Director-General of the State Police within a week after Laxmi Puja. The Director-General should affirm an affidavit confirming such compliance by November 17, 2020.

It is made clear that the office-bearers of the organisers of the various pujas will remain personally responsible for ensuring that such funds made available to them for the public purposes, as indicated above, are used only for such purposes and no other.

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The utilisation certificates along with the bills and vouchers in support thereof should be submitted to the relevant Sub-Divisional Officer or officers of equivalent rank within the Kolkata Police jurisdiction as may immediately be designated by the State Home Secretary. Such officers must go through the accounts with a toothcomb before forwarding the same to the office of the Auditor and Comptroller-General, through the Director-General of State police, for the due audit thereof in accordance with law.

This should suffice for the moment. The larger questions including the very propriety of making such grant will be considered once and for all immediately after the puja vacation so that the repetitive exercise is not undertaken every September or October.

The State's affidavit in opposition to the petition be filed within a week after the puja vacation; reply thereto, if any, may be filed within a week thereafter.

The matter will appear two weeks after the puja vacation.

(Sanjib Banerjee, J.)

(Arijit Banerjee, J.)