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Through Video Conference

WPA (P) 23 of 2020

Ajay Kumar De

Vs.

The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee,
Mr. A. Mukherjee,
Mr. Pintu Karar,
Mr. S. Dey

... For the Petitioner.

Mr. Kishore Dutta, learned Advocate General,
Mr. Sayan Sinha

... For the State.

Mr. Y. J. Dastoor, learned ASG,
Mr. Bipul Kundalia

..... For Union of India.

1. This writ petition is instituted as a Public Interest Litigation pointing out different challenges what would be faced by the people at large during the Gangasagar Mela this year amidst the COVID pandemic.

2. When the matter was listed on 07-01-2021 for consideration, following the order dated 06-01-2021 for such listing, the following order was minuted.

" We have read the order minuted on 06.01.2021. The learned Advocate General has orally delineated before us the plethora of steps taken for crowd management, for provision of medical facilities, for regulating the movement of vehicles, etc. He

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has also expressed the possibility of the crowd dwindling from what it was last year on account of the pandemic situation.

Be that as it may, life is more important in every sense, in comparison to religious practice, beliefs and faith. We are of the view that the State has to assure this Court, that the persons in control of the medical department, particularly those who are well informed in the science of medicine, including preventive medicine, have delineated modes of excluding the spreading of the infection in these pandemic times. Even from the layman's point of view, when congregations take dips in flowing water or stagnant water, in the form of ponds, rivers or other water bodies, oral droplets and nasal droplets of any person who is carrying the infection in this pandemic period, can easily percolate into that water body and thereby create chances of infection through those droplets transmitted virus. It also appears to us that 'social distancing' will remain a mirage when such congregations happen. This will be counter productive to the preventive exercise that is due to the people at large. Even in terms of Disaster Management Act, the primary essential focus ought to be fundamentally on preventive disaster management.

We have alerted the State Government through the learned Advocate General in the aforesaid aspect and have requested him to respond by 2.00 PM today, necessarily with an affidavit of a Senior Medical Officer of Health at the helm of the State Medical Administration as to the aspect of preventive management, particularly, through the waterborne transit or even airborne transit of virus through oral droplets or nasal droplets when large gatherings congregate

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either in the water or on its banks or otherwise.

This order having been dictated in open Court, the learned Advocate General and the learned Additional Solicitor General, who is also present, will make further submissions as may be found appropriate at 2.00 PM. "

3. Thereafter, the matter was taken up at 02-00 P.M. on 07-01-2021. The learned Advocate General then made submissions touching various aspects of concern. Learned counsel for the petitioner relied on the Gangasagar Mela Act, 1976 (hereinafter referred to as "the Act"). Submissions were also noticed from the learned Additional Solicitor General.

4. Resultantly, an order was minuted in that post-lunch hearing, which reads as follows.

"1. Read the order minuted by us this morning.

2. Pursuant to that, further submissions are made by learned Advocate General on the basis of instructions from the State Government. Hearing him on various aspects, which are matters of concern for the State Government and also noticing that the State Government would like advisories to be issued by the Central Government in this regard, learned counsel for the petitioner has brought to our notice the Ganga Sagar Mela Act, 1976, which is a State Act, made by West Bengal.

3. Though we expected that by this time, there would have been some material before us on behalf of the State Government with inputs from medical experts of the State Government as to preventive

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management of the pandemic situation and public health management, such material is yet to come.

4. Be that as it may, we see that issues relating to health, safety and welfare were matters of concern for the State of West Bengal in relation to Ganga Sagar Mela even earlier. That is the purpose for which the Ganga Sagar Mela Act was brought in 1976. We also see from the legislative history that the said State Act was preceded by an Ordinance for the same purpose. The Act itself says that it is brought with a view to safeguarding the health, safety and welfare of the pilgrims attending the Ganga Sagar Mela. Going by that legislation, Ganga Sagar Mela means the fair held at the Sagar islands in the district of South 24-Parganas on the occasion of Pous Sankranti every year and the State legislature found that it is expedient in the public interest "to provide for the taking of measures with a view to safeguarding health, safety and welfare of the pilgrims attending the Ganga Sagar Mela." That Act empowers the State Government to issue a notification declaring the whole or any portion of the Sagar Islands as "notified area" for the purpose of that Act. The situation sought to be controlled through that legislation and notification is one which provides for taking of measures to safeguard the health, safety and welfare of the pilgrims who are likely to be endangered at the Ganga Sagar Mela at Sagar Islands. If one would turn to Section 4 of that Act, it would be seen that there is power to impose a fee upon every pilgrim visiting the Ganga Sagar Mela. We note that provision only to notice that even the proviso to that section shows that there may be children under the age of 12 years, sadhus, sannyasis, beggars and persons

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including members of organizations who may become participants or be present in connection with the Ganga Sagar Mela.

5. We notice all the aforesaid factors at this point of time because the issues involved in this pandemic situation are not similar to the issues that were there in 1976, but of a larger magnitude. A grimmer situation should necessarily prompt the State to make more rigorous provisions having in mind the duties of the State. It is in consonance with the fundamental right to life guaranteed under Article 21 of the Constitution. The pandemic situation which has visited us now is not something on which there could be any roll back through human intervention, without protective measures being in place.

6. In the aforesaid view of the matter, it will be upto the State Government to come out with clear suggestions as to how the Mela could be regulated, controlled or if necessary, even dropped for the current year taking into consideration the balancing of the larger primary right to life on the fulcrum of the Constitution weighing over and above the other rights which would run only subservient to the wholesome existence of the human race in this part of the land.

7. We, therefore, direct the State Government to have a report in the form of an affidavit placed on record through a Medical Officer at the highest level in the State Government service, clearly delineating the modalities of the preventive management of the situation if Ganga Sagar Mela is permitted to be held this year. The measures indicated should take care of congestion on the banks, in the water bodies, in the roads

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and other available places including the places where public are provided eateries, toilets and other facilities. The imposition of restrictions and enforcement of social distancing norms as well as use of mask and due sanitization in terms of COVID management protocols ought to be clearly spelt out on behalf of the State Government in such report in the form of affidavit. The decision of the State Government in that regard shall be placed before us without fail when this matter will appear tomorrow (08-01-2021) at 02-00 P.M.

8. We may also indicate, on the submission made on behalf of learned Advocate General, that learned Additional Solicitor General would also make submissions as may be found necessary.

5. Following the aforesaid, Mr. Ajoy Kumar Chakraborty, Director of Health Services, Department of Health and Family Welfare, Government of West Bengal, has placed a report in the form of an affidavit, making reference to the earlier judicial orders which are noted above and delineating the various arrangements that have been made; are being made and are in the contemplation of the appropriate authorities to be made in furtherance of larger public interest. We may quote paragraphs 5 to 15 of that report of the Director of Health Services (for short "DHS") as under.

"5. Pursuant to the said direction of the Hon'ble Division Bench of this Hon'ble Court dated 7th January, 2021, I beg to file the instant report in the form of an affidavit to place on record the preventive and public health management to be undertaken by

the State of West Bengal through the District Magistrate (South 24 Parganas) during the Gangasagar Mela in the Covid-19 situation on and from 08.01.2021 to 17.01.2021, for the health, safety and welfare of the pilgrims and the citizenry at and around the Ganga Sagar Mela premises, which are as follows:-

- (a) It shall be ensured that all persons and pilgrims, including sadhus, sanyasis and citizens coming from other states to the Ganga Sagar Mela ground and its immediate precincts mandatorily use face masks, maintain physical distancing and use sanitizers.
- (b) It shall be ensured that (sic) all persons connected with the control and management of the Ganga Sagar Mela namely Government Officials, Police Personnel, Medical Personnel, Volunteers and all other aiding State machinery use face masks, maintain physical distancing and use sanitizers.
- (c) Sufficient amount and quantity of face masks and hand sanitizers would be made available for distribution to those not having masks and sanitizers.
- (d) Health Care volunteers would be deployed at strategic points to spread awareness amongst the pilgrims and others for maintaining Covid-19 Protocol and for distributing masks and sanitizers.
- (e) E-Snan (e-bathing) through door step delivery of packaged holy water would be made to those who intend to have so and arrangements are also being made for online broadcasting (e-darshan) of Ganga Sagar Mela.
- (f) Pilgrims and others reaching the Ganga Sagar Mela would be encouraged through the public address system to opt for E-Snan instead of having a dip in the

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holy water. E-snan packaged holy water would be distributed from kiosks to be set up for such purpose.

- (g) All supporting facilities namely, Toilets, Rest Rooms, Pilgrim sheds, eateries would be kept clean through the different agencies of the State under the overall co-ordination of the District Magistrate (South 24 Parganas).
- (h) To ensure that wherever (*sic*) there is congregation of large number of pilgrims at places, government employees and volunteers would ensure that the pilgrims keep moving through the dedicated barricaded channels and vacate the mela ground and the river bank without delay.

6. The following Health care facilities would be provided in and around Ganga SagarMela Ground:-

a) Medical Screening Camps having thermal checking facilities at all the major entry points including railway stations Howrah and Sealdah, 13 Rapid Antigen Testing Centres, 5 RTPCR testing facilities, 8 Safe Homes (615 beds), 11 Quarantine Centres (645 beds), 5 SARI isolation centres (116 beds), 7 Covid Hospitals (600 beds) and 6 wellness centres (203 beds) have been set up for the pilgrims. More than 2500 health officials and health workers will be deployed for handling the situation.

(b) Massive IEC campaign through print & electronic media, hoarding, leaflets, miking (in 8 major languages) etc. are being done to spread awareness among pilgrims about COVID protocol. Dedicated COVID control rooms, toll free number, enforcement of masks (including mask

distribution), use of sanitizers and social distancing, contact tracing arrangements have been done. All the public places, buses, vessels and barges will be sanitized before boarding and de-boarding. COVID insurance cover to Health workers deployed has been done. 100 ambulances, 3 water & two air ambulances and green corridor arrangements for emergency evacuation have been made for speedy response. Quick Response Teams having doctors & nurses also deployed at five major points.

7. The following Crowd Control measures would be provided in and around Ganga SagarMela Ground:-

About 50 KM metal & temporary barricading has been done for regulating crowd. Real time tracking of pilgrims will be done for which 1050 CCTV cameras have been installed at all important locations. Twenty Drone based tracking and GPS / RFID guided Intelligent Crowd Monitoring will be done through an Integrated Control Room. About 2100 Civil Defence volunteers & 6000 NGO volunteers will be deployed in addition to huge contingent of police personnel for crowd management. Sufficient pilgrim sheds have been constructed keeping social distancing factor in mind.

8. The following Transportation measures would be provided in and around Ganga SagarMela Ground:-

About 2250 WBTC and 500 private buses, five barges, 32 vessels and 100 wooden launches will be deployed for transportation of pilgrims. Additional trains have been arranged from Howrah, Sealdah and Namkhana. 10 buffer zones have been constructed along NH-117 & MDR for regulating passenger vehicles. Diversion of

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vehicles @ 4:1 to Lot-8 & Namkhana will be done to reduce concentration of pilgrims at one location. Pilgrims @ 50% capacity of vehicles/vessels will only be loaded. Manpower will be deployed in every vehicle and vessel to oversee social distancing. About 20-hour navigation will be done on Muriganga river so that pilgrim movement across the river is smooth without any much gathering at jetty points. About 75 Jalasathi will be deployed at jetty points to assist pilgrims.

9. The following Police arrangements would be provided in and around Ganga SagarMela Ground:-

Proper Traffic Management Plan has been prepared by Kolkata & district police. In and around Ganga Sagar about 9000 police personnel are being deployed which includes 3 ADGs, IG, 4 DIGs, 6 SPs, 15 Addl. SPs, 90 DSPs, 116 Inspectors, 822 subordinate officers, nearly 2700 constables, 3000 Civic Volunteers and 2500 Temporary Home Guards. Police is also deploying CCTVs and drones to monitor the crowd. 300 JalPraharis to be deployed in the form of Constables and Civic volunteers at each Vessel and Barge for pilgrim safety and control. Dedicated pilgrim movement control teams at important locations like Kachuberia, Harwood bus stand, K1 bus stand etc. will also be deployed.

10. The following arrangements regarding communication would be provided in and around Ganga SagarMela Ground:-

24x7 mobile & internet connectivity, WiFi calling / Free Calling Zones / Booths, High Frequency Man Packs, HAM Radio, Satellite Phones etc. will be in

place for emergency communication.

11. The following additional arrangements additional arrangements are also being made: e-darshan -Online broadcasting of GangasagarMela 2021, Pilgrims Transport Management System (PTMS), digital strips for missing personnel, mobile app for general information, COVID Watch software etc. will be available for facilitating the visiting pilgrims.

12. It is humbly submitted that while Government of West Bengal is making elaborate arrangements for a safe Mela, it expects that pilgrims will be less in number this time in view of the pandemic situation. It expects the pilgrims to abide by all the norms of hygiene (masks, sanitizer, physical distancing etc).

13. It is humbly submitted that since the Government of India has not issued any specific guidelines for the conduct of GangaSagarMela or similar religious congregation, Government of West Bengal is making all endeavours to organize a safe Ganga SagarMela and is trying to make the best possible arrangements in the given circumstances.

14. It is further submitted that the above steps proposed to be taken by the Government of West Bengal are in sync with and in compliance with section 3 of the Ganga SagarMela Act, 1976.

15. It is submitted that the Government of West Bengal is not inclined to impose any fee upon the pilgrims under section 4 of the Ganga SagarMela Act, 1976. "

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6. While we are primarily satisfied with the administrative arrangement and the policing arrangements for crowd management and for dissemination of information as to the protective steps to be taken by the visiting pilgrims in the wake of the COVID pandemic, we have susceptible apprehension about the modality in which the effectuation of the measures stated in the report of the DHS could be achieved. We say this because the report of the DHS does not provide any specific negative response to the apprehension expressed in the earlier judicial order about the possibility of contamination spreading amidst people in close proximity within the water bodies as well. That being so, learned Additional Solicitor General has pointed out that it is noteworthy that the report of the DHS speaks of about 13 Rapid Antigen Testing Centres, 5 RTPCR Testing Facilities apart from the thermal checking facilities at all entry points including the railway stations Howrah and Sealdah. We have noted this aspect at this point of time to underscore the need to completely utilize the facility of thermal checking through the medical screening camps including the entry points at Howrah and Sealdah Railway Stations. The Rapid Antigen Testing Centres, the RTPCR facilities and other facilities mentioned in paragraph 6(a) of the report of the DHS would be properly utilized.

7. However, the fundamental issue is as to the entry of the pilgrims into the waters. We see from the report of the DHS that the State is facilitating the e-snan (e-bathing) through

doorstep delivery of packaged holy water which would be made available, apart from arrangement for online broadcasting (e-darshan) of Gangasagar Mela.

8. The administration will ensure that there is wide spread publicity over microphone and otherwise, informing the pilgrims that it is for their own good that they should stay away from the Ganges water. Having in mind the safety of their health, the State has made arrangement for e-snan and they should opt for that. It cannot be overemphasized that a dip in the water may contaminate the water if the person concerned has infection within him/her and it does not matter how long that person stays in the water. A dip for a second may be enough to cause the damage that is apprehended.

9. The publicity referred to above should start immediately and from today itself so that the people who are proposing to attend the Gangasagar Mela may dissuade themselves from entering into the water. What is important is that the administration should keep all persons concerned informed about the danger to which they may expose themselves if they enter the water.

10. All the protective and precautionary measures referred to above and in the report of the DHS should also be implemented at all places in and around Kolkata and anywhere else in the State of West Bengal where people are congregating en route to the Gangasagar.

It is seen that large congregations have already started in the city of Kolkata and there are large gatherings on the banks of river Ganges. Appropriate safety measures must be taken by the administration in that regard also.

11. Whatever has been stated in the report of the State Government filed through the DHS should be scrupulously adhered to and we record the statements made in such report as an undertaking given to the Court by the State Government. Needless to say, such undertaking would bind all wings of the State Government including the police. After all, we are dealing with an issue touching the health and lives of people at large and no effort can be spared to ensure the safety of the people.

12. We note with appreciation the stand of the State Government that no fees would be imposed on the pilgrims under Section 4 of the Gangasagar Mela Act, 1976. However, the State may consider, in larger public interest, to give such incentive as it may decide, to pilgrims who opt for e-snan rather than actual physical dip in the water.

13. We have no hesitation in saying that during the festival period in October/November, 2020, that is, during Durga Puja, Kali Puja and Chhath Puja, the State administration managed and controlled the situation admirably thereby perhaps averting a possible disaster in the form of spiking up of COVID-19 cases. We have no doubt that in so far as the Gangasagar Mela is concerned, the State

machinery shall also rise to the occasion and ensure that the festival is conducted in such a manner that there is no spread of the disease.

14. This matter will be listed again on **January 13, 2021 at 2 P.M.** On that date the State Government through the Chief Secretary, shall file a further report in the form of affidavit regarding all arrangements made till then. This will enable the Court to assess the situation as on that date and decide whether or not the Gangasagar Mela should be permitted to be held this year keeping in mind the pandemic situation and the paramount interest of public health at large.

Ordered as above.

(Thottathil B. Radhakrishnan, C.J.)

(Arijit Banerjee, J.)