

BEFORE
THE HON'BLE MR JUSTICE UMA NATH SINGH, CHIEF JUSTICE
HON'BLE MR JUSTICE T NANDAKUMAR SINGH
& HON'BLE MR JUSTICE S R SEN

27.05.2015

We have heard learned Advocate General, Meghalaya and the Director General of Police, Mr Mehta, and perused the writ petition.

Registrar General of this Court has put up an office note on the basis of press clippings and informations regarding the impact of 'Bandh' on the presence of Court Staff and also on essential services, like hospitals and medical shops etc. As per administrative order of the even date, the Office Report has been directed to be registered as WP(C)No. 127 of 2015.

It appears from the averment of Office note/writ petition that there are 71 indoor patients and 248 OPD patients in various hospitals of Shillong. It also appears that 20% of High Court staff and lawyers practicing in the District Court of West Jaintia Hills District, Jowai, are absent on account of calling of bandh. The District Court, West Jaintia Hills District could not function because of absence of lawyers. The bandh has been called by the organization called "Hynniewtrep National Liberation Council" (for short 'HNLC') which is said to have been banned as unlawful association for a further period of five years by the order dated 25.05.2015 passed by the Unlawful Activities (Prevention) Tribunal, Delhi. It has become a regular feature in the day to day life of Meghalaya, particularly, the City of Shillong to observe bandh even on a

hoax call in the name of this organization said to be operating from the territory of Bangladesh with a limited and dwindling cadre. It is reported that as a result of today's bandh of Meghalaya called by the outfit, 'HNLC' for 48 hours, the even tempo of otherwise peaceful public life has been badly disturbed. Even the medical shops, hotels and conveyance services are not available to the native citizens. Thus, the 'bandh' has violated the fundamental rights of common citizens as guaranteed in Articles 19 and 21 of the Constitution of India.

A Full Bench of Kerala High Court way back in 1998 in the case of **Bharat Kumar K Palicha and another vs. State of Kerala and others, reported in AIR 1997 Kerala 291**, held that such bandhs can be taken notice of by the High Court in exercise of power under Article 226 of the Constitution of India because it violates the fundamental rights of the citizens. The court has also held that the political parties and organizations can be asked to recoup the loss and damages suffered by the citizens of their lives and private properties, and by the Govt. in the case of damage to public properties. The Full Bench judgment of the Kerala High Court was upheld by Hon'ble the Apex Court in the case of **Communist Party of India (M) vs. Bharat Kumar and others, reported in (1998) 1 SCC 201**. Hon'ble the Apex Court, while upholding the judgment passed by the full bench of Kerala High Court, also made a distinction between 'bandh' and 'harthal'. According to the Court, bandh violates the fundamental rights of the people as a whole which cannot be made subservient to the claim of fundamental rights of individual or a section of the people. The Govt. was also asked to take steps to recoup the loss suffered by the citizens from the sponsors and organizers of such bandh.

The Calcutta High Court in the case of **Supradip Roy vs. Mamta Banerjee and others, reported in 1998(2) CALLT 486 (HC)**, has taken a similar view. Paragraphs 26 and 27 of the judgment are reproduced as under :

“26. It has been suggested by the learned Advocates for the parties appearing to day. Including the State Government that the order passed yesterday was not correctly telecast and the same was not correctly reported in the different newspapers. They have also suggested that there should be a direction that the State Government should take step for correct publication of the order passed by me yesterday as also today in different newspapers and in electronic media, so that no confusion is created in the minds of the public.

27. considering the said suggestion of the learned Advocates for the parties, I direct the Doordarshan, Akashbani and the newspapers which published report of yesterday’s order, to telecast, announce and publish, as the case may be, the full text of the orders dated 22nd May, 1998 and 23rd May, 1998-For this purpose, the State Government will make copies of the said order available to them.

As a special case, let plain copies of the orders dated 22nd May, 1998 and 23rd May, 1998 duly countersigned by the Assistant Registrar (Court) be given to the learned Advocates for the appearing parties.”

A Division Bench of Bombay High Court in writ petition (WP(C)No. 2514/2000) has also reiterated the judgment of Hon’ble the Apex Court and the judgment of Full Bench Kerala High Court in the case of **Bharat Kumar and others**.

Again, a Division Bench of Kerala High Court in another judgment in the case of in **Kerala Vyapari Vavasayi Ekopana Samithi, Ottappalam vs. State of Kerala & Ors, reported in AIR 2000 Kerala 389**, has issued directions while holding as under :

“In the light of our conclusions as above, we allow these Original Petitions and grant the following reliefs :-

(i) We declare that the enforcement of a hartal call by force, intimidation, physical or mental and coercion would amount to an unconstitutional act and a party or association or organization that calls for a hartal has no right to enforce it by resorting to force or intimidation.

(ii) We direct the State, Chief Secretary to the State, Director General of Police and all the administrative authorities and police officers in the State to implement strictly the directives issued by the Chief Secretary dt. 6-2-1999 and the directions given by the Director General of Police dt. 4-2-1999 and set out fully in the earlier part of this judgment,

(iii) We issue a writ of mandamus to the Election Commission to entertain complaints, if made, of violation of Section 29A(5) of the Representation of the People Act, 1951 by any of the registered political parties or associations, and after a fair hearing, to take a decision thereon for deregistration or cancellation of registration of that party or organization, if it is warranted by the circumstances of the case.

(iv) We issue a writ of mandamus directing the Election Commission to consider and dispose of in accordance with law, the representation Ext. P9 in O.P. 20641 of 1998, after giving all the affected parties an opportunity of being heard.

(v) We direct the State of Kerala, the Chief Secretary to the Government, the Director General of Police and all other officers of the State to take all necessary steps at all necessary times, to give effect to this judgment.

(vi) We direct the State, District Collectors, all other officers of the State and Corporations owned or controlled by the State to take immediate and prompt action, for recovery of damages in cases where pursuant to a call for hartal, public property or property belonging to the Corporation is damaged or destroyed, from the perpetrators of the acts leading to destruction/damage and those who have issued the call for hartal.

We make no order as to costs”.

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The Bombay High Court again through a Division Bench in **WP(PIL) 2827/2003 (G Deshmukh & Ors. vs. State of Maharashtra and others)** having relied upon the case laws as enunciated hereinabove has held as :

“32. We are of the view that this is high time that the authorities concerned should take a serious note of the consequences and apprehension of risk to life, liberty and property of the citizens in ‘bandh’ or coerced closure enforced by the political parties and organizations. Unless such acts are controlled with iron hand, innocent citizens are bound to suffer, and they shall be continued to be victimized by the parties and organizers who think that they have licence to take law into their hands. We are satisfied that the State authorities failed to deal with the organizers of the ‘bandh’ with a firm hand. It is seen that in the guise of tactful and mature handling of the situation, the police failed to taken stern action against the organizers of Bandh and though some cases have been registered on account of incidents of rail rokos, rasta rokos and violence there is no further progress in the investigation, and all these cases have been kept in cold storage. On this background, we welcome the stand taken by the learned Advocate General that the State must firmly deal with the political authorities or organizations calling such bandhs or hartals in the nature of bandh. In the result we dispose of this petition with the following declarations and directions:-

1) It is declared that the calling for and enforcing Mumbai bandh by the respondent Nos. 4 and 5 on 30th July, 2003 was constitutional and violative of the fundamental rights of the petitioners and other citizens of Mumbai guaranteed under Articles 19 and 21 of the Constitution:

2) The respondent No. 4 and 5 are directed to deposit with the State Government the amount to compensation of Rs. 20 lacs (Rupees Twenty Lacs only) each to the special fund to be created under the name “The 30th July 2003 Bandh Loss Compensation Fund” and this amount be utilized for providing facilities, benefits and additional services to the citizens of Mumbai;

3) It is declared that the enforcement of a ‘bandh’ or a ‘hartal’ would amount to an unconstitutional act, and any political party, organization, association, group or individual giving such call for bandh or hartal to force or intimidation or otherwise;

4) The concerned political party, organization, association, group or individual giving ‘bandh’ call will be served with a notice under section 149 of the Criminal Procedure Code. In the notice, attention will be drawn to the judgments of the Supreme Court and this Court regarding illegality of ‘bandh’. The notice will clearly state that such a political party, organization, association, group or individual will be liable for legal action and compensation for loss of life, injury or for loss of livelihood due to ‘bandh’.

5) We direct the State, District Collectors and all other officers of the State to ensure:

a) that no political party, organization, association, group or individual can, by organizing a 'bandh', or by force or intimidation, stop or interfere with road and rail traffic or the free movement of citizens in city of Mumbai or State.

b) To take all actions, including arrest, detention and prosecution against those who seek to enforce such 'bandh' or 'hartals' by organizing, leading or participating in rail and rasta rokos and assaults on trains, buses, other vehicles and private citizens.

6) The police shall take appropriate action against the person or persons involved in such 'bandh' under provisions of the Indian Penal Code, Criminal Procedure code and Bombay Police Act, and submit action taken report in such cases to the Sessions Judge of the concerned District.

7) The general public shall be informed by issuing press note through print media and also through electronic media informing them about the preparations made by the police to deal with 'bandh' and for making people secured.

8) A visible police presence shall be maintained throughout the city prior to the 'bandh' in preference to other police duties.

9) A visible bandobast outside railway stations, bus depots, main roads, main junctions, hospitals, courts, schools and colleges will be maintained ruing 'bandh'.

10) Wireless mobile patrolling, Beat Marshall Patrolling, fixed point bandobast shall be deployed to curb any on toward incident on 'bandh' day.

11) Necessary protection to market and business places shall be given.

12) There shall be video-recordings so as to identify miscreants and to book them under law.

13) All police control rooms will be fully activated to follow up incident regarding 'bandh'. To take proper, stern and timely action.

14) The police shall complete the investigations in the various offences recorded on the 'bandh' on 30th July 2003, and complete the investigations and file charge-sheets against the accused expeditiously.

15) The Chief Secretary of the Government Director-General of Police and all other officers to take all necessary steps to give effect to the above directions.

On the request made by learned counsel appearing for respondent Nos. 4 and 5, the direction issued against respondent Nos. 4 and 5 for deposit of damages is stayed for a period of eight weeks.

All the concerned to act on copies of this judgment, duly authenticated by the Associate/Private Secretary”.

Thereafter, another Full Bench of the Kerala High Court after discussing all the judgments and also Articles 355 and 356 of the Constitution and Sections 130 and 131 of CrPC has issued specific directions as follows :

“13. Already forced hartals and general strikes were declared to be illegal and unconstitutional by the Division Bench and approved by the Apex Court and they are equated to bandh and bandh like situations. By whatever name it is called, whether general strike, hartal or any other name, nobody can create a bandh like situation or obstruct the fundamental rights of others. The direction issued by the Division Bench and Full Bench as approved by the Supreme Court shall be strictly adhered to. Apart from the directions issued by the Full Bench in Bharat Kumar’s case and Division Bench quoted in paragraph 9 of the Judgment as modified by the Hon’ble Apex Court, we issue the following directions also:

(1) Whenever a hartal or a general strike is called, the Government should take adequate measures to see that normal life of the citizens is not paralysed. That is to be done not by declaring holidays or postponing examinations; but, by giving effective protection to those who are not participating in such hartals or strikes. Government should be able to deal with the situation with strong hands. Considering the past experience, if the Government is feeling that they are unable to give adequate protection, it should request the Centre for deputing Army or paramilitary forces so that there should not be any constitutional breakdown and violation of fundamental rights of the citizens;

(2) The District Administration should be given sufficient direction to avail paramilitary force as provided under Chapter X of the Code of Criminal Procedure to maintain public services if law and order problem arises during the hartal or general strike by unlawful assembly of hartal or strike supporters;

(3) In cases of damage of public property, action should be taken to recover the damages from the persons who actually cause damages and also from the political

parties, organizers and persons who give actual call for such hartals or general strikes. In view of the happenings in the past, they cannot say that they did not visualize such a situation which was created by anti-social elements and directions issued in this regard in paragraph 18 of Bharat Kumar's case which is affirmed by the Supreme Court shall be followed strictly and if no proper action is taken, it should be realized from the defaulting officers and stern action should be taken against such officers;

(4) Effective action should be taken under the Prevention of Damages to Public Property Act, 1984 and circular dated 17th December 2003 [produced as Ext. R-1(d) in W.P. (C) No. 20078 of 2003] shall be implemented strictly;

(5) Those who call for hartals or strikes by whatever reason should make it clear in their call that nobody will be compelled to participate in the hartals or strikes, that traffic will not be obstructed and those who are willing can go for work and that fundamental rights of others to move about will not be affected. They should also instruct their supporters to see that no coercion or force is used for compelling others to participate in the strike or hartal;

(6) With regard to the injuries and damages caused to the private persons and their properties, Government should adequately compensate them immediately as Government has failed to fulfill its constitutional obligation to protect lives and properties of the citizens and the Government should take steps to recover the same from the persons who caused such damages or injuries and also from the persons and political parties or organizations who called for such hartals or general strikes. Criminal cases also should be taken against the offenders as well as the abettors to the offence. Such criminal cases registered should be pursued with enthusiasm and it should not be withdrawn merely on political pressure and investigation should be conducted fairly not with a purpose of filing a subsequent refer report as undetected;

(7) Government should see that an atmosphere is created so that citizens can move about on the roads freely without fear and vehicular traffic is not obstructed and public transport can ply without any hindrance;

(8) Damages caused to the public or private properties etc. and recovery steps initiated should be published by the Government. Circular dated 17th December 2003

issued by the Government regarding recovery of damages should be implemented fully;

(9) Government should also take appropriate action against the District administration and police authorities if effective steps are not taken by them against the persons who use force or who are trying to impose their will on others to deprive the fundamental rights of majority of the citizens in the guise of hartals and general strikes”.

Now, in a latest judgment of Calcutta High Court, in the case of **Mofijul Haque vs. Union of India, reported in (2013) 2 WBLR (Calcutta) 577**, the settled legal position has again been asserted and certain directions have been issued as :

“12. The way in which preparations are being made to keep the entire life and all the activities of various institutions including the essential one not only industrial establishment and others. Prima facie it appears to be a call for bandh under the guise of general strike. Thus it is necessary to ensure that there is no disruption of the essential services. Hence, issuance of requisites directions are necessary:

1) The Chief Secretary of the Government and the Director General of Police and the District Collectors and Officers of the State to ensure that while organizing bandh/strike, no use of force or intimidation is made, no interference with road and rail traffic or free movement of the citizens of the State of West Bengal is made on 20th and 21st February, 2013 for which call has been made.

2) To ensure that the public transport in the State vehicle, the civil aviation can runs smoothly on 20th and 21st February, 2013.

3) To take appropriate action, against the person’s concerned indulging in stoppage or interference with the road and rail traffic or free movement of the citizens in the State of West Bengal.

4) Essential services like telephone and tele communication, water supply, milk distribution, power supply, fire services, newspapers, hospitals including High Court and other Courts shall be ensured to function and protection given;

5) Provide adequate protection to vital installation of importance and arrange for regular supply of milk and other essentials;

6) Adequate protection be provided to the various institutions including High Court and other Courts;

7) Action to be taken against anti social elements and persons indulging in acts of violence and vandalism;

8) Adequate police arrangement be made outside the railway station, bus depots. Main roads, main junctions, Hospitals, Courts, Schools, Colleges etc. and necessary protection to market and business places shall be given.

9) All Police Control Rooms will be fully activated to take proper and timely action;

10) To ensure that no unlawful activity takes place”.

Now, we may also refer to a judgment of Gauhati High Court in the context of “Call of Bandh in the State of Meghalaya” in the case of **Hispreachering Son Shylla & Ors vs. State of Meghalaya & Ors, reported in (2010) 4 GLR 395** wherein the then Hon’ble Chief Justice of Gauhati High Court (now, the Hon’ble Judge of the Supreme Court) has held as :

“ In substance, in both these PILs the petitioner, who are residents of the States of Meghalaya and Assam and public spirited persons, complain about the frequent calls of bandhs, road blockage, etc, by various, political parties and other organizations. In both the petitions the petitioners have given the details of the various bandhs, etc., called in the last few years prior to filing of these petitions.

The issue is no more res-integra and is squarely covered by the decision of the Supreme Court Communist Party of India (M) v. Bharat Kumar and Ors., 1998 1 SCC 301.

In the circumstances both these writ petitions are required to be allowed directing the respondents to strictly implement the law declared by the Supreme Court in the above mentioned judgment by taking all necessary steps for preventing infringement of the various fundamental rights of the citizens on account

of the various calls of bandhs etc given from time to time by various political or other organizations.”

The legal position that emerges from the aforesaid discussion can thus be summarized as : (i) since calls of bandh infringe the fundamental rights of the citizens, inter alia, under Articles 19 and 21 of the Constitution, the organizers and sponsors calling bandh shall be held liable under the law to recoup and make good the loss and damages; (ii) Even the State Government can be asked to pay damages to citizens, if it fails to stop bandh, strike and hartal etc; (iii) The essential services shall always remain available in all eventualities, and (iv) In case of necessity, the District Administration can be authorized to call Para military force to deal with the situation.

We are also informed that the statements issued by the outfit HNLC banned by the Tribunal as unlawful assembly are given undue publicity and coverage, both in print and electronic media which creates fear in the mind of common citizens. Shri Mehta, Director General of Police thus makes a request to restrain the media from publishing any such statements issued by/or in the name of this organization, HNLC or any other organization which may have the effect of disturbing the even tempo of public life in the State of Meghalaya having a long international border with Bangladesh.

In view of the present obtaining scenario, consequent upon call of bandh in the State of Meghalaya, the prayer of the Director General of Police Shri Mehta deserves consideration. Hence, we direct that the statements of HNLC or any organization which may disturb the even tempo of day-to-day public life and cause violation of Fundamental rights of citizens in particular under Article 19 and 21 of the

Constitution of India relating to strike, Bandh, Hartal, Road Blockade and holding of Rallies with unlawful design shall not be issued by any of the print and electronic media. In case of violation of this order, the Court may not only proceed under the Contempt of Courts Act, but it is also directed that the State Government shall register criminal cases under appropriate provisions of the law. It may not be out of place to direct the Secretary/Director of Information and Publicity of Government of Meghalaya, to ensure wide publicity of this order in print and electronic media so that the common citizens are encouraged to return to their normal life and get a strength of courage to pursue their regular avocation without any element of fear. We also direct that the State Government shall authorize the local administration to take the assistance of Para-Military Forces which are positioned in Shillong in sufficient strength for holding Flag March to dispel the fear from the mind of common citizens, and also for use depending upon the of law and order situation in the city of Shillong as well as across the State of Meghalaya.

We also direct the State Government of Meghalaya and the CEO/In-charge of Municipal Corporation, Shillong, to issue notice to all such shops and business establishments, in particular, the medical shops and hotels and also to taxi owners, as to why their licences not be cancelled for staying away from their lawful avocation and for keeping their establishments closed despite repeated Press Release/Communique of assurance issued by the State Government that they shall be provided adequate protection on their place of occupation/business. Further, all the Central and State Government organizations situated in the State of Meghalaya are also issued notice

with direction to file affidavits regarding the position of attendance of staff today or thereafter, namely, the date of call of bandh given by the outfit HNLC.

List the matter on 10.6.2015.

JUDGE

JUDGE

CHIEF JUSTICE

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