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05.11.2020
Ct. No.16
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Through Video Conference)

WPA 9184 of 2020

Ms. Anasua Bhattacharya
Vs.
State of West Bengal & Ors.
with

WPA 9209 of 2020

Ajay Kumar De
Vs.
Government of West Bengal & Ors.

Mr. Rachit Lakhmani
Mr. Indrajeet Dey
Mr. Kushal Das
Mr. Ranodip Dutta
... For the petitioner in WPA 9184 of 2020

Mr. Bikash Ranjan Bhattacharjee
Mr. Sabyasachi Chatterjee
Mr. Pintu Kumar Kar
Ms. Ankani Biswas @ Ankan Biswas
Mr. Akashdeep Mukherjee
Mr. Sandipan Das
... For the petitioner in WPA 9209 of 2020

Mr. Kishore Datta, Ld. AG
Mr. Abhrotosh Majumdar, Ld. AAG
Mr. T.M. Siddiqui
Mr. Sayan Sinha
... For the State

Mr. N.C. Bihani
Ms. P. Banerjee Bihani
... For the respondent no.4

Mr. Joy Saha
Mr. Yash Vardhan Deora
Ms. Easha Manchanda
... For the intervenor

These two matters, filed in public interest, pertain to the upcoming celebrations. In the second of the matters,

prayers have been made pertaining to Kali Puja right upto Christmas.

There is an application by an unregistered body that can be loosely called the local firecrackers' association. It is a body of persons engaged in the manufacture of or trading in firecrackers.

The State has issued verbal advisories pertaining to firecrackers during the Kali Puja and Diwali celebrations. Certain guidelines have been framed regarding Kali Puja pandals. An appeal appears to have been made on behalf of the State for all kinds of firecrackers not to be used this year in view of the pandemic and the virus that attacks the respiratory system. It is evident that there has been an endeavour on the part of the State to protect the air quality so that the respiratory problems that arise as a result of the infection are not aggravated because of the noxious fumes brought about by the use of firecrackers.

For a start, the State Government and the State police need to be commended for the admirable conduct of the Durga Puja, despite the late directions issued by the Court. By and large – there were some ugly exceptions – the Durga Puja celebrations all over the State, including in the city, were in accordance with the directions issued by the Court and both the police and the administration made serious attempts to ensure that the Covid protocol was maintained and hygiene was not compromised. Indeed, the

usual crowding at puja pandals during the Durga Puja was, more or less, absent.

Whether as a result of the measures taken or otherwise, there does not appear to have been a spike in Covid cases, till at least a week after Durga Puja. It is, thus, hoped that if similar directions are issued for the conduct of Kali Puja next week, it may enure to the benefit of the citizens of the State.

The State submits that the matter pertaining to firecrackers is pending before the National Green Tribunal and orders have been reserved. The State suggests that in the light of such specialised body having taken up the matter pertaining to firecrackers all over the country, such aspect may be left to the Tribunal and not gone into in the present proceedings. As far as puja pandals are concerned, the State says that it has required all four sides of pandals to be left open by the Kali Puja organisers and, in such a scenario, the strict directions as issued in respect of the Durga Puja may not be necessary.

Since the present matters cover even the Jagadhatri Puja and Kartick Puja and the Chhat Puja celebrations, the State says that the directions to be issued now may be confined to Kali Puja and the matters pertaining to Kali Puja pandals since there is sufficient time available before Jagadhatri Puja and even Chhat Puja. As far as Chhat Puja is concerned, the State says that an order of the NGT pertaining to Rabindra Sarobar has been

challenged in Supreme Court. As to how processions should be allowed for Chhat Puja celebrations, the State seeks time to indicate its stand.

Matters pertaining to Chhat Puja are, thus, kept for consideration on November 10, 2020.

In addition to the Kali Puja, Jagadhatri Puja and Kartick Puja pandals, the petitioners refer to the congregations on the day of Kali Puja at temples all over the State. The petitioners seek appropriate directions for the maintenance of Covid protocol in temples and for crowding not to be allowed within close spaces.

It appears from the notifications issued from time to time by the Central Government that relaxations have been made for open air congregations, though the wearing of face-masks or the use of face-shields has been made mandatory. Stricter protocols are required for gatherings indoors.

As far as Kali Puja, Jagadhatri Puja and Kartick Puja pandals are concerned, the same directions as issued for Durga Puja would apply. However, since public Kali pujas are many more than Durga pujas and some of the pandals are much smaller, the guidelines issued for Durga Puja pandals are somewhat modified:-

- (i) All pandals will continue to be No-Entry Zones, including an area of five-metre beyond the pandals on all the open sides. Only *dhakis* will be

permitted to occupy the space beyond the pandals and within the five-metre zone thereafter. Except for *dhakis*, the five-metre zone has to be kept completely free at all times.

(ii) For the smaller pandals, where the covered area excluding the dais is upto 150 square metre, only 10 persons may be in such covered area at any given point of time. For pandals with a covered area between 150 square metre and 300 square metre excluding the dais, the number of persons at any point of time may be 15. For bigger pandals, in excess of 300 square metre in area excluding the dais, a maximum of 45 persons can be within the pandals at any given point of time.

(iii) Sanitisers must be available at the puja pandals and wearing of masks will be mandatory within and around the pandal area. The distancing norm has to be maintained at all times both within the pandals and in an around the pandals.

(iv) Immersions should be low-key affairs and processions for such purpose will not be permitted. The use of bands and lights at the time of immersion will also remain prohibited. It will be open to the local police to provide for staggered timings so that the immersion ghats are not overcrowded.

As far as the firecrackers are concerned, notwithstanding the pendency of the matter before the NGT, in view of the appeal issued by the State and the unique problem brought about by the pandemic, the State should ensure that there is no use or display or bursting of firecrackers at all during the Kali Puja and Diwali celebrations. For this purpose, only wax or oil-based *diyas* would have to suffice, for the greater good of the citizens and in the larger public interest. This direction as to firecrackers will be effective all over the State and will cover not only the Kali Puja and Diwali celebrations, but also the Chhat Puja, Jagadhatri Puja and Guru Nanak's birthday celebrations thereafter.

The police should maintain a strict vigil to ensure that there is no sale or purchase of firecrackers of any form in the State between now and the end of the month. The police should make every effort to confiscate firecrackers and any kind of like material which have the potential to pollute the air. Immediate appropriate measures must be taken by the police against those seeking to act in contravention of these directions. The State will ensure that no firecrackers of any kind are brought into the State, except for immediate transit to another State.

The compendious word "firecrackers" is used in this order to include all types of sparklers and the like, whether or not the use or burning thereof involves any sound or light being generated.

The local administration in Hooghly, particularly at Chandannagar, should ensure that these directions are made known to the Jagadhatri Puja organisers well in advance so that appropriate steps can be taken. Similarly, in those pockets where Kartick Puja is held in a big way, the local administration should take appropriate steps well in advance. In Uttarpara, Barasat and other areas where Kali Puja is held in a big way, the local police and administration should make the citizens and the organisers of public pujas aware of these directions immediately.

As far as the application by the firecrackers' association is concerned, it will be for the State to consider whether appropriate compensation or other measures can be taken. For the greater good, a small number of persons involved in the firecracker business may have to suffer losses. The overwhelming public interest cannot be compromised.

As far as the temples in the State are concerned, the local police should ensure that Covid protocol is maintained, including the distancing norms. The local administration and police will ensure that there is no overcrowding within the temple precincts or outside. This will apply particularly to the Dakshineswar Kali temple, the Kalighat temple, the Tarapith temple, the Kalyaneswari temple in Rupnarayanpur and other Kali and Shakti and other temples all over the State, till the lockdown is completely lifted.

For the other aspects, particularly, the Chhat Puja and the kind of processions that may be allowed for Chhat Puja celebrations, the matter will appear on November 10, 2020. Since Christmas is some distance away, no directions in such regard are issued at the moment.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Sanjib Banerjee, J.)

(Arijit Banerjee, J.)