IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION No.52731 OF 2019 (GM-RES)
C/W
WRIT PETITION No.52718 OF 2019 (GM-RES)
WRIT PETITION No.52738 OF 2019 (GM-RES)
WRIT PETITION No.52768 OF 2019 (GM-RES)

Dated:13-02-2020

SOWMYA R. REDDY vs. STATE OF KARNATAKA and Others

JUDGMENT

ABHAY S. OKA, CHIEF JUSTICE

OVERVIEW

The Apex Court has repeatedly held that under clauses (a) and (b) of Article 19 of the Constitution of India, a fundamental right has been conferred on the citizens to protest and demonstrate against the alleged wrong done by the public functionaries in a peaceful manner. Both these provisions confer a right on the citizens to assemble peacefully and protest against the decisions of the Government and other authorities. It is the fundamental right conferred on the citizens to express a voice of dissent. It is irrelevant whether the dissent is right or wrong. When such a valuable

fundamental right which an essential part of democracy is said to be taken away by a prohibitory order issued under Section 144 of the Code of Criminal Procedure, 1973 (for short, "the said Code"), it is the duty of the Constitutional Court to test the legality and validity of such an order which prevents the citizens from protesting.

2. The challenge in these writ petitions under Article 226 of the Constitution of India is to the order made by the District Magistrate, Bengaluru City, who is also the Commissioner of Police of the City, on 18th December, 2019. By the said order, in a purported exercise of power under Section 144 of the said Code, the District Magistrate proceeded to impose various prohibitions within Bengaluru City limits from 19th December, 2019 starting from 6.00 a.m. till the midnight of 21st December, 2019. The order prohibited assembly of a group of five or more persons, organizing any public processions or protests, *Raasta Roko*, public meetings, carrying of weapons, etc. A direction was also issued that all permissions grantedfor conducting any protest shall stand cancelled during the said period.

3. Incidentally, there is also a challenge to the cancellation of permissions which were granted under the Regulation of Public Processions and Assemblies

(Bengaluru City) Order, 2009 (for short, "the said Regulation Order"). When the petitions were moved on 20th December, 2019, various issues were raised regarding the legality and validity of the order dated 18th December, 2019 (for short, "the impugned order"). The Division Bench while considering the prayer for interim relief, noted that the impugned order will come to an end on the next day. Therefore, certain other directions were issued regarding dealing with fresh applications which may be made for organizing protests under the provisions of the said Regulation Order. In the same order, it is noted that though the impugned order will come to an end on the next day, as the impugned order amounts to deprivation of the fundamental rights of the citizens, the Court will have to go into the legality and validityof the impugned order.

4. It is undisputed that number of permissions were granted to hold protests against the Citizenship (Amendment) Act, 2019 (for short, "CAA") under the provisions of the said Regulation Order and by the impugned order, all the permissions were cancelled. The case made out by the petitioners is that apart from the fact that the impugned order stands vitiated due to illegality, it has violated the fundamental right of the citizens guaranteed under clauses (a) and (b) of Article 19 of the Constitution of India of holding peaceful

protests. That is the reason why though the order has worked itself out, this Court will have to go into the legality and validity of the said order, as it had the effect of canceling the permissions granted to hold peaceful protests thereby infringing the fundamental right guaranteed under clauses (a) and (b) of Article 19 of the Constitution of India of holding peaceful protests.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

5. The learned senior counsel appearing for the petitioner in W.P. No.52731/2019 and other petitions has made detailed submissions. Firstly, inviting our attention to Section 144 of the Code, and in particular sub-section (1) thereof, he submitted that the formation of an opinion which is a condition precedent for passing an order under sub-section (1) of Section 144 of the said Code is not at all reflected from the impugned order. The learned senior counsel mainly placed reliance on two decisions of the Apex Court. Firstly, he relied upon a decision of the Apex court in the case of *RAMLILA MAIDAN INCIDENT, RE1* and secondly, he relied upon a very recent decision of the Apex court rendered on 9th January, 2020 in the case of *ANURADHA BHASIN .v. UNION OF INDIA AND OTHERS* and connected petitions, which summarizes the law on the point.

6. The learned senior counsel has taken us through various paragraphs of both the decisions and urged that the law is not crystallized. Firstly, he submitted that the recourse to drastic action under sub-section (1) of Section 144 of the Code can be taken only after the authority is satisfied that there are no alternative methods to prevent the mischief sought to be prevented. Secondly, he submitted that the opinion which is required to be formed by the District Magistrate under sub-Section (1) of Section 144 of the said Code must be arrived at after making a careful inquiry by the Magistrate about the need to exercise the extraordinary power conferred under sub-section (1) of Section 144 of the said Code. He submitted that it is mandatory to set out material facts in the order which must indicate the reasons for the Magistrate to issue such an order under sub-section (1) of Section 144 of the said Code. He further submitted that the Doctrine of Proportionality will equally apply to orders under sub-section (1) of Section 144 of the said Code, as held by the Apex Court. He submitted that it is well settled that this Court in writ jurisdiction under Article 226 of the Constitution of India has a power of judicial review over such orders and therefore, it is all

the more necessary that the authority which passed the order, must state all the material facts so that judicial scrutiny is possible. He urged that the impugned order is a blanket order which extends to the entire city of Bengaluru. Therefore, requirement of the authority satisfying itself that about the existence of material to form an opinion for immediate imposition of the restrictions is relatively higher. He submitted that the order is so drastic that it has the effect of canceling all the permissions granted earlier to hold protests after making a detailed enquiry on the applications as required by clauses (4) to (7) of the said Regulation Order. He relied upon the well known decision in the case of *RAMLILA MAIDAN* (supra) and submitted that though the satisfaction of the authority in such decisions is always subjective, but the subjective satisfaction has to be arrived at objectively by taking into consideration the relevant factors as specified under sub-section (1) of Section 144 of the said Code.

7. The learned senior counsel has thereafter taken us through the impugned order. He submitted that the impugned order merely reproduces what was stated by the Deputy Commissioners of Police in the city in their letters addressed to the Commissioner of Police who is

the District Magistrate. He pointed out that apart from the fact that formation of an opinion as required under sub-section (1) of Section 144 of the said Code is not reflected from the impugned order, no material facts have been stated, no reasons have been stated and the District Magistrate seems to have merely acceded to the requests made by the Deputy Commissioners of Police to pass an order under sub-section (1) of Section 144 of the said Code. He submitted that some of the Deputy Commissioners of Police who addressed letters to the to invoke Section 144 of the said Code, had themselves granted permissions under the said Regulation Order for holding peaceful protests during the period between 19th December, 2019 to 21st December, 2019, and the said fact was not brought to the notice of the District Magistrate before the impugned order was passed.

8. Inviting our attention to various clauses of the said Regulation Order, he would submit that a detailed scrutiny of the applications is required to be made before a permission is granted to hold protests. Several factors which are listed in clause (7) of the said Regulation Order are required to be considered. Even there is a provision to record the statement of a

person who applies for licence or permission. His submission in short, is that apart from the fact that the impugned order does not reflect formation of an opinion, material facts and the reasons for passing the same, it shows non-application of mind and therefore, the order stands vitiated.

9. We may note that he has tendered certain documents showing permissions granted subsequently by the various authorities under the said Regulation Order imposing certain conditions. However, in these petitions, we cannot go into the legality and validity of the said orders as the orders are not the subject matter of challenge. Lastly, the learned senior counsel appearing for the petitioner relied upon the well known decision rendered by the Constitution Bench of the Apex Court in the case of *MOHINDER SINGH GILL .v. CENTRAL ELECTION COMMISSIONER, NEW DELHI AND OTHERS* and what is held in the said decision and in particular, in paragraph 8 thereof. He submitted that apart from the fact that the District Magistrate who has passed the impugned order, has not filed the statement of objections, the reasons to support the validity of the order cannot be supplied by the evidence or by pleading additional grounds.

SUBMISSIONS OF THE LEARNED ADVOCATE GENERAL

10. The learned Advocate General has also made very detailed submissions. Firstly, he pointed out that the action of the District Magistrate has to be judged in the light of the fact that he was dealing with an extremely urgent situation which could have affected the law and order. Relying upon what is stated in paragraph 84 of the decision of the Apex Court in the case of *RAMLILA MAIDAN* (supra), he submitted that in matters like this, some freedom and leverage has to be provided to the authorities making such decisions, as such decisions are required to be taken in the case of an emergency when there is an imminent danger. Secondly, he submitted that this Court is concernedonly with the decision making process and not the correctness of the decision itself. While doing so, this Court has to examine whether there was any material before the District Magistrate and in view of the well settled legal position, this Court cannot go into the question of adequacy of the material.

11. The learned Advocate General has also taken us through the impugned order and what is held by the Apex Court in the case of *ANURADHA BHASIN* (supra). He invited our attention to what is held in paragraph 108 of the said decision. He submitted that all the jurisdictional Deputy Commissioners of Police in the

City of Bengaluru submitted letters/reports which are annexed to the statement of objections in which they have pointed out the existence of a situation warranting exercise of power under sub-section (1) of Section 144 of the said Code. When the Deputy Commissioners of Police who are working in the field had reported their apprehensions, the District Magistrate was justified in believing the version of the said police officers. Therefore, in the facts of the case, the District Magistrate was not required to make any further inquiry. He submitted that the word inquiry has to be construed in the light of the facts of the case and in this case, there were reports by the jurisdictional Deputy Commissioners of Police and after looking at the reports, the District Magistrate had to believe the correctness of the said reports. He submitted that what is set out in the said reports/letters by the Deputy Commissioners of Police, are material facts which are found in the impugned order. He submitted that a distinction has to be made between "material facts" and "material particulars." He relied upon the decisions of the Apex Court in the case of *MAHENDRA PAL .v. RAM DASS MALANGER AND OTHERS* in this behalf. He submitted that the facts

which are essential to disclose the complete cause of action are "material facts" and the details constitute "material particulars." Inviting our attention to the impugned order, he submitted that as reflected from the letters addressed by the Deputy Commissioners of Police, the material facts which were revealed. On 19th and 20th December, 2019, several political organizations and parties had called for *All India Bandh* in protest against CAA and therefore, in the event, any protests or processions were held, there was every possibility that some anti-social elementscould have taken law into their own hands in the name of the protests causing inconvenience to the citizens. He submitted that the material facts are therefore set out in the impugned order which constitute the reasons. He urged that the District Magistrate accepted what is stated in the reports submitted by the Deputy Commissioners of Police, which contain the materialfacts and formed an opinion that in view of such material facts, it was necessary to pass an order under sub-section (1) of Section 144 of the Code. He reiterated that this Court cannot go into the adequacyof material facts. He also urged that in a given fact situation, by passing an order under sub-section (1) of Section 144 of the said Code, there is nothing wrong

if permissions already granted to hold protests, are nullified.

12. The learned Advocate General invited our attention to a classic decision of the Apex Court in the case of *MAZDOOR KISAN SHAKTI SANGHATAN .v. UNION OF INDIA AND ANOTHER*[5]*.* He pointed out that the fact that a large number of requests for holding demonstrations were made is also a relevant factor. He submitted that imminent danger test cannot be applied and the test to be applied is of apprehension of danger. He also submitted that this is not a case of absence of material and in fact, even the Director General and Inspector General of Police by a communication dated 18th December, 2019 has expressed the view that considering the fact that *Bandh* was called for, if the protests are held, it will lead to communal tension. He submitted that as held by the Apex Court, the issue is whether the District Magistrate was satisfied regarding the existence of an apprehension of creation of law and order situation due to organization of protests as well as *Bandh* on the same days. He submitted that there is nothing wrong about the passing of the prohibitory order to the entire geographical area of the city of Mangaluru. He submitted that as held by the Apex Court in the case of *ANURADHA BHASIN* (supra), different standards will have to be applied for law and order, public order and

the threat to the security of the State. He submitted that a different approach is required to be adopted to deal with different situations and therefore, it is impossible to find fault with the approach adopted by the District Magistrate who was Commissioner of Police.

SUBMISSIONS OF THE APPLICANT IN INTERVENTION APPLICATION

13. An intervention application, being I.A. No.1/2020 has been filed by a party in person. He submitted that though this Court may go into the technical issue of the validity of the impugned order, the other side of the story should also be considered by this Court. He submitted that there was a lot of harassment caused to members of the public due to the situation which prevailed on 19th and 20th December, 2019. He submitted that it is the duty of the State to act to prevent the law and order situation from being created and to minimize the inconvenience to the citizens. He submitted that the impugned order will have to be judged in the light of what exactly happened on 19th and 20th December, 2019 and the manner in which the protests were conducted. He submitted that he is willing to produce the photographs showing how inconvenience was caused to the members of the public.

CONSIDERATION OF SUBMISSIONS

14. We have given careful considerations to the submissions made across the Bar. We must note here that as observed earlier, the impugned order affected the fundamental right of the citizens to make peaceful protests. In paragraph 48 of the decision of the Apex Court in the case of MAZDOOR KISAN SHAKTI SANGATHAN (supra), the Apex Court held thus:

> *" 48. We may state at the outset that none of the parties have joined issue insofar as law on the subject is concerned.* ***Undoubtedly, holding peaceful demonstrations by the citizenry in order to air its grievances and to ensure that these grievances are heard in the relevant quarters, is its fundamental right. This right is specifically enshrined under Articles 19(1) (a) and 19(1) (b) of the Constitution of India. Article 19(1) (a) confers a very valuable right on the citizens, namely, right of free speech. Likewise, Article 19(1) (b) gives the right to assemble peacefully and without arms. Together, both these rights ensure that the people of this country have the right to assemble peacefully and protest against any of the actions or the decisions taken by the Government or other governmental authorities which are not to the liking. Legitimate dissent is a distinguishable feature of any democracy.*** *Question is not as to whether the issue raised by the protestors is right or wrong or it is justified or unjustified. The fundamental aspect is the right which is conferred upon the affected people in a democracy to voice their grievances. Dissenters may be in minority. They have a right to express their views. A particular cause which, in the first instance, may appear to be insignificant or irrelevant may gain momentum and acceptability when it is duly voiced and debated. That is the reason that this Court has always protected the valuable right of peaceful and orderly demonstrations and protests."*
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> (emphasis added)

However, the said right has to be balanced considering

the public interests as held in the same decision. But, when there is an order made under sub-section (1) of Section 144 of the said Code preventing of holding of protests and nullifying the permissions already granted to hold the protests, the issue is of the violation of the fundamental rights guaranteed under clauses (a) and (b) of Article 19 of the Constitution of India to hold peaceful protests. Therefore, when the Court does the exercise of testing the legality of such preventive orders, it is not a matter of mere technicality, but it is a matter of substance. The violation of fundamental right of holding peaceful protests which is a basic feature of democracy cannot be taken lightly by a Writ Court.

15. There cannot be any second opinion about the fact that the State is responsible for maintaining the law and order situation. The State is the custodian of the interest of the citizens in the sense, that the State is responsible for protecting them. Therefore, if a fact situation exists and the power under sub-section (1) of Section 144 of the said Code is properly and lawfully exercised, the District Magistrate will be well within his powers to prevent the activities of holding protests and demonstrations. The fundamental rights under sub- clauses

(a) and (b) of clause (1) of Article 19 of the Constitution of India are always subject to reasonable restrictions. But we must remember that the State is also the custodian of fundamental rights of citizens and therefore, it must do everything to uphold the fundamental rights by taking recourse to imposing minimum possible restrictions.

16. Now we proceed to test the legality and validity of the impugned order. So far as the issue of legality and validity is concerned, this Court is concerned only with the decision making process and not the correctness of the decision. Now we come to the impugned order. The impugned order refers to eight reports/letters in its introductory part which were addressed by the Deputy Commissioners of Police of different divisions in the city of Bengaluru to the Commissioner of Police who is also the District Magistrate under the provisions of the said Code. Copies of the said letters are produced by the State along with the statement of objections. We have carefully perused the said letters which are more or less in identical terms which record that to oppose CAA, political and other organizations may conduct protests during which anti-social elements may cause damage to the public property and hence, to maintain the law and order and to save public property, it is requested to pass an order under Section 144 of thesaid Code. Only in

one or two letters, there are some additional statements made, such as in the letter at page 33 addressed by the Deputy Commissioner of Police, Central Division, where he has stated that based on credible information received, there are chances that communal harmony may be disturbed**.** The letter of the Deputy Commissioner of Police, Whitefield Division refers to calling for *Bharath Bandh* on the 19th and 20th December, 2019. It is also mentioned that Whitefield area is sensitive. Otherwise the said letters are in identical terms.

17. It will be appropriate if the English translation of the impugned order annexed to the petitions, the correctness of which is not disputed, is reproduced. It reads thus:

> "***Proposal:***
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> *With reference to the reports of the Deputy Commissioners of Police of divisions within the Bengaluru City Police Commissionerate, to prevent any incidents affecting public peace and order from any protest/strikes/procession/ events opposing the recent Citizenship Amendment Act passed by the Central Government and the National Register of Citizens, Section 144 CrPC is requested to be imposed. In the above-mentioned reports, following points have been mentioned.*
>
> *The Central Government recently passed the Citizenship Amendment Act and the National Register of Citizens. Opposing these Acts, several political organisations, student organizations and other organisations have been issuing provocative statements through social media. Encouraged by these statements, sudden protests are being conducted in public spaces within Bengaluru City Limitswithout obtaining any prior permission. Apart from that, there is information that, on 19.12.2019 and 20.12.2019, several political parties,*

organizations have called for an All India Bandh regarding the aforementioned Acts being successfully passed by Lok Sabha and Rajya Sabha.

Bengaluru City Police Commissionerate limits being a sensitive area, in the event that any protest/strike/procession/event relating to the aforesaid subjects is conducted, there is a possibility of it turning into a severe nature, and that it may cause inconvenience to the movement of the public in the city and affect the public order. And that prohibiting individuals and groups who take law into their own hands in the name of protests will be helpful in maintaining law and order, and in order to facilitate citizens in Bengaluru city to exercise their constitutional rights, and to prevent any damage to public property, it is requested that from 19.12.2019, 6 am to 21.12.2019, 12 am, undertaking steps under Sec 144 of Criminal Procedure Code would be necessary.

Therefore, from 19.12.2019, 6 am to 21.12.2019, 12 am, to prevent any incidents which could affect the public peace, welfare and maintenance of law and order within the limits of Bengaluru City Police Commissionerate, it has been considered fit to impose the restrictions under Sec 144 CrPC within Bengaluru City Police Commissionerate*.*

Order no. SB/Gu.Va/Prohibition/50/2019
Date: 18.12.2019

In this regard, exercising powers vested in me under Section 144 of the Criminal Procedure Code for Bengaluru City Police Commissionerate division limits, I, Bhaskar Rao, IPS, Commissioner of Police, Bengaluru City, relying on the points along with the reasons stated above, order the imposition of the following prohibitions within Bengaluru City Limits from 19.12.2019, 6 am to 21.12.2019, 12 am

1. Assembly of groups of 5 or more people,

2. Organizing any form of celebration, public procession, protest, jaatha, strikes, raasta rokko, public/political meeting, ceremonies,

3. Carrying of weapons, rod, sticks, swords, bricks, baton/mace, stones, knives, guns, lathi or any dangerous weapons or any objects which can cause physical harm,

4. Bursting of any explosive objects, stones, any instrument or launching missiles or carrying or storing of any equipment,

5. Exhibiting any person or their corpse or figure or portraits,

6. Prohibition of exhibition or transmission of anything attacking decency or morality or anything obstructing the public order or anything compromising or ignoring the security of the state or any public declaration inciting crime, signing of songs, playing music, making furious speeches, and making of pictures, symbols, posters or making of any other items,

7. **During this period, all permissions granted for any protests stand cancelled**."

(emphasis added)

Thus, there are four paragraphs above the operative part of the impugned order. The first paragraph refers to the reports of the Deputy Commissioners of Police of the different divisions of the city. The first paragraph notes that in the reports, certain points have been mentioned which have been incorporated in the subsequent two paragraphs.

18. The next two paragraphs record what is mentioned by the Deputy Commissioners of Police in their reports/letters. Though an attempt was made by the learned Advocate General to contend that the second and third paragraphs also contain the opinion of the District Magistrate, however, the first paragraph makes it quite clear that what is reproduced in the following two paragraphs are the contents of the letters/reports received from the Deputy Commissioners of Police. The contents of the second

and third paragraphs are nothing but reproduction of what appears in the reports of the Deputy Commissioners of Police. In the last part of the third paragraph, even the request of the Deputy Commissioners of Police to take steps under Section 144 of the said Code is noted. In the last paragraph, just abovethe operative part, the Commissioner/District Magistrate has not stated any material facts. Sub-Section (1) of Section 144 of the said Code provides that:

> *"**144. Power to issue order in urgent cases of nuisance or apprehended danger**.—(1) **In cases where, in the opinion of a District Magistrate, a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable**, **such Magistrate may, by a written order stating the material facts of the case** and served in the manner provided by Section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray."*
>
> *(emphasis added)*

The District Magistrate, in the impugned order, has also not recorded formation of any opinion as contemplated under sub-section (1) of Section 144 of the said Code. He has merely stated that to prevent incidents which could affect the public peace, welfare and maintenance of law and order, it has been

considered fit to impose the restrictions under Section 144 of the said Code. He has not stated material facts in support. In the operative part, he has stated "relying on the points along with the reasons stated above". Except for reproducing what is stated by the Deputy Commissioners of Police in their reports, we do not find any reasons recorded by the District Magistrate on his own, in any of the four paragraphs above the operative part. The District Magistrate has not even stated that on inquiry, he found the contents of the reports of the Deputy Commissioners to be correct.

19. It is in the light of this factual aspect, now we must refer to the law laid down by the Apex Court firstly in the case of *RAMLILA MAIDAN (supra)*. The Apex Court has referred to its earlier decisions in the case of *BABULAL PARATE .v. STATE OF MAHARASHTRA and MADHU LIMAYE .v. SUBDIVISIONAL MAGISTRATE, MONGHYR & OTHERS*. In the case of *MADHU LIMAYE*, the correctness of the view in the case of *BABULAL* was considered. Paragraph 56 of the decision in the case of *RAMLILA MAIDAN* reads thus:

"56. ***Moreover, an order under Section 144 CrPC***

> ***being an order which has a direct consequence of placing a restriction on the right to freedom of speech and expression and right to assemble peaceably, should be an order in writing and based upon material facts of the case.*** *This would be the requirement of law for more than one reason. Firstly, it is an order placing a restriction upon the fundamental rights of a citizen and, thus, may adversely affect the interests of the parties, and secondly, under the provisions of CrPC, such an order is revisable and is subject to judicial review.* ***Therefore, it will be appropriate that it must be an order in writing, referring to the facts and stating the reasons for imposition of such restriction.*** *In Praveen Bhai Thogadia, this Court took the view that the Court, while dealing with such orders, does not act like an appellate authority over the decision of the official concerned. It would interfere only where the order is patently illegal and without jurisdiction or with ulterior motive and on extraneous consideration of political victimisation by those in power. Normally, interference should be the exception and not the rule."*
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> (emphasis added)

20. The Apex Court, therefore, in clear terms held that such a prohibitory order should be in writing and must refer to the facts. It must state the reasons for imposition of such restrictions. In paragraph 84, which is relied upon by the learned Advocate General, the Apex Court held thus:

> *"84. The affidavits filed on behalf of the police and the Ministry of Home Affairs are at some variance. The variance is not of the nature that could persuade this Court to hold that these affidavits are false or entirely incorrect. This Court cannot lose sight of a very material fact that maintenance of law and order in a city like Delhi is not an easy task. Some important and significant decisions which may invite certain criticism, have to be taken by the competent authorities for valid reasons and within the framework of law.* ***The satisfaction of the authority in such decisions may be subjective, but even this subjective satisfaction has to be arrived at objectively and by taking into consideration the relevant factors as are contemplated under the provisions of Section 144 CrPC. Some freedom or leverage has to be provided to the authority making such decisions. The courts are***

normally reluctant to interfere in exercise of such power unless the decision-making process is ex facie arbitrary or is not in conformity with the parameters stated under Section 144 CrPC itself."

(emphasis added)

21. Thus, the satisfaction which is required to be recorded under sub-section (1) of Section 144 of the said Code can be subjective, but the same has to be arrived at objectively by taking into consideration the relevant factors as are contemplated under Section 144 of the said Code.

22. The entire law on the subject has been summarized in the recent decision of the Apex Court in the case of *ANURADHA BHASIN* (supra). In paragraph 70, it has been held that normally the least restrictive measures should be resorted to by the State. It is further held that even the Doctrine of Proportionality has to be applied to an order under sub-section (1) of Section 144 of the said Code. Thirdly, it is held that power can be exercised only in urgent situations and in cases of apprehended danger. Paragraph 108 is most material. Clauses (a) and (b) of paragraph 108 readthus:

"108. The aforesaid safeguards in Section 144, Cr.P.C. are discussed below and deserve close scrutiny.

(a) ***Prior Inquiry before issuing Order****: Before issuing an order under Section 144, Cr.P.C., the District Magistrate (for any authorised Magistrate) must be of the opinion that:*

i. There is a sufficient ground for proceeding

under this provision i.e. the order is likely to prevent obstruction, annoyance or injury to any person lawfully employed or danger to human life, health or safety or disturbance to the public tranquility; and

ii. Immediate prevention or speedy remedy is desirable.

***The phrase "opinion" suggests that it must be arrived at after a careful inquiry by the Magistrate about the need to exercise the extraordinary power conferred under this provision**.*

(b) ***Content of the Order**: Once a Magistrate arrives at an opinion, he may issue a written order either prohibiting a person from doing something or a mandatory order requiring a person to take action with respect to property in his possession or under his management. But the order cannot be a blanket order.* ***It must set out the "material facts" of the case. The "material facts" must indicate the reasons which weighed with the Magistrate to issue an order under Section 144, Cr.P.C**."*

23. Thus, as held in clause (a) of paragraph 108, there has to be formation of an opinion by the District Magistrate as specifically observed in sub-section (1) of Section 144 of the said Code. Formation of opinion must be that immediate prevention is required. What is more important is that the Apex Court held that the use of the word "opinion" suggests that it must be arrived at after a careful inquiry. The Apex Court held that "careful inquiry" is contemplated as the District Magistrate is about to exercise extraordinary power conferred under Section 144 of the said Code. Coming to the aspect of "careful inquiry," it must be statedhere that the statement of objections filed by the State Government is not affirmed by the District Magistrate who passed the impugned order, but it is

affirmed by an Assistant Commissioner of Police who has no personal knowledge whether any "careful inquiry" was held by the District Magistrate who passed the order. A perusal of the impugned order shows it is only a reproduction of what is stated in the reports submitted by the Deputy Commissioners of Police. There is not even a remote indication that any further inquiry was made by the District Magistrate. The learned Advocate General submitted that no inquiry was called for as the District Magistrate who was the Commissioner of Police, had to believe the version of the officers working in the field. It is also an admitted position that some of the Deputy Commissioners of Police had themselves granted permissions to hold protests during the period the three days (19th to 21st December 2019) under the provisions of the said Order and the said material fact was not mentioned in their reports submitted to the Commissioner of Police. The stand of the State Government is that no inquiry was necessary. That implies that no inquiry was held by the District Magistrate. The District Magistrate was under an obligation to make his own inquiry before arriving at the subjective satisfaction. It is not even the case of the State that the District Magistrate held even any telephonic discussion with the Deputy Commissioners who had submitted the reports about the source of their information. This is not a case where even some inquiry was made by the District Magistrate to arrive at subjective

satisfaction about the necessity of passing the impugned order. The stand of the State is that the reports were submitted by the Deputy Commissionersof Police working in the field. But still an inquiry was called for, as held by the Apex Court. The reason iswhat is relevant is the subjective satisfaction of the District Magistrate and formation of opinion by him. As stated earlier, there is not even a remote indication in the impugned order that there was any kind of inquiry made on the basis of the reports submitted by the Deputy Commissioners of Police, by the District Magistrate himself. As stated earlier, there is no affidavit filed by the District Magistrate. It is virtually an admitted position that some of the Deputy Commissioners had already granted permissions to hold the protests on the very days (19th to 21st December 2019) after making due inquiry as per the said Regulation Order. But, the said fact was not disclosed in the reports. Secondly, except for setting out what the Deputy Commissioners of Police have stated in the reports, no facts have been set out in the impugned order. The material facts as held by the Apex Court must indicate the reasons weighed with the District Magistrate to issue the order.

24. The Apex Court, in the case of *RAMLILA MAIDAN (supra)*, has held that reasons have to be recorded for passing an order under Section 144 of the said Code. It is true that the requirement of recording reasons cannot be stretched beyond a limit as it is not an

exercise of judicial or a quasi-judicial power. But in this case there is a complete absence of reasons in the impugned order. So there is no question of going into the question whether the reasons were adequate orinadequate. If the impugned order under Section 144 would have indicated that on making an inquiry, the Commissioner of Police was satisfied about the correctness of the apprehensions mentioned in the reports of the Deputy Commissioners of Police, it would have been another matter.

25. The learned Advocate General also pointed out the communication issued by the Director General and Inspector General of Police which records the necessity of passing an order under Section 144 of the said Code. Firstly, there is no reference to the said opinion expressed by the superior police officer in the impugned order. Secondly, the Director General and Inspector General of Police is the topmost police officer in the State to whom the Commissioner of Police is subordinate. When the Commissioner of Police exercises the power under sub-section (1) of Section 144 of the said Code, he does not act as a police officer, but he acts as a District Magistrate and therefore, he cannot simply rely upon the opinion expressed by the police officer who may be incidentally

his superior officer in the police machinery. In fact he cannot get influenced by the opinion of his superior Officer in police hierarchy while passing an order under Section 144. The effect of the order under sub-section (1) of Section 144 of the said Code is to take away the fundamental rights of the citizens and therefore, subjective satisfaction of the District Magistrate and formation of an opinion as required by sub-section (1) of Section 144 of the said Code are condition precedent for the exercise of power under Section 144 of the said Code. So is the requirement of recording at least brief reasons.

26. The Apex Court in its decision in the case of *ANURADHA BHASIN* (supra) has repeatedly emphasized the need to record the reasons. In paragraph 129, the Apex court observed thus:

> *"129. We **may note that orders passed under Section 144, Cr.P.C. have direct consequences upon the fundamental rights of the public in general. Such a power, if used in a casual and cavalier manner, would result in severe illegality. This** power should be used responsibly, only as a measure to preserve law and order. **The order is open to judicial review, so that any person aggrieved by such an action can always approach the appropriate forum and challenge the same. But, the aforesaid means of judicial review will stand crippled if the order itself is unreasoned or un-notified.** This Court, in the case of **Babulal Parate** (supra), also stressed upon the requirement of having the order in writing, wherein it is clearly indicated that opinion formed by the Magistrate was based upon the material facts of the case. This Court held as under:*

> *"9. Sub-section (1) confers powers not on the executive but on certain Magistrates…* ***Under sub-section (1) the Magistrate himself has to form an opinion that there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable. Again the sub-section requires the Magistrate to make an order in writing and state therein the material facts by reason of which he is making the order thereunder.*** *The sub-section further enumerates the particular activities with regard to which the Magistrate is entitled to place restraints."*
>
> (emphasis added)

27. Even in paragraph 132, the Apex Court observed that the existence of power of judicial review is undeniable and therefore, the law requires the District Magistrate to state the material facts for invoking this Power. In paragraph 129, the Apex Court held that, if the order itself is unreasoned or un-notified, the power of judicial review which is a basic feature of the Constitution will be crippled. Even in the conclusion drawn in paragraph 140, the Apex Court held that the power under Section 144 of the said Code should be exercised in a reasonable manner and must be based upon material facts indicative of application of mind which enables judicial scrutiny of the orders. Unfortunately, in the present case, there is no indication whatsoever of any application ofindependent mind by the District Magistrate.

28. A perusal of the statement of objections filed by the State Government would show that an Assistant Commissioner of Police has affirmed the objections and has tried to supplement various reasons for supporting the impugned order. Such an attempt to supplement reasons has been deprecated by the Apex Court. In this behalf, we cannot resist the temptation of quoting what is held in paragraph 8 of the decision of the Apex Court in the case of *MOHINDER SINGH GILL* (supra). In paragraph 8, the Apex Court relied upon its earlier well known decision in the case of *GORDHANDAS BHANJI*. The Apex Court held thus:

> *"8. The second equally relevant matter is that* ***when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.*** *Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas bhanji (AIR 1952 SC 16) (at p.18)*
>
> > *"* ***Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do.*** *Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and* ***must be construed objectively with reference to the language used in the order itself.****"*
>
> *(emphasis added)*

29. Therefore, for the reasons which we have recorded above, we have no manner of doubt that the impugned order is ex-facie illegal in the light of the law laid down by the Apex Court in the cases of *ANURADHA BHASIN* (supra) and *RAMLILA MAIDAN* (supra). In fact, on first principles, the impugned order is completely illegal. The illegality cannot be cured or tolerated even after giving necessary latitude. Therefore, we have no option but to hold that the exercise of powers under sub-section (1) of Section 144 of the said Code by passing the impugned order was illegal.

30. While we record the above findings, we must note here that we have not gone into the question whether the State Government had grounds available to pass a valid order under sub-section (1) of Section 144 of the said Code. In fact, we are not concerned with this aspect. Even assuming that the State Government had grounds available to pass a valid order, that is no ground to uphold the impugned order as the impugned order does not and cannot stand the test of judicial scrutiny in the light of well settled parameters which are laid down by the Apex Court which have been aptly summarized in the case of ANURADHA BHASIN (supra).

31. The observations which we have made in this

Judgment and order are confined to the impugned order and this judgment and order shall not be construed to mean that even if a situation arises which warrants exercise of powers under sub-section (1) of Section 144 of the said Code, the State Government is helpless in the matter.

32. The submissions of the applicant in the intervention application have no bearing on the issue of illegality of the impugned order.

33. Hence, for the reasons which are recorded above, we hold that the impugned order dated 18th December, 2019 (Annexure-A in W.P. No.52731/2019) is illegal and cannot stand the test of judicial scrutiny. Only because the order has worked out itself, we are notpassing a formal order of setting aside the same.

Accordingly, we pass the following order:

(i) The petitions are partly allowed by holding that the impugned order is illegal. There will be no order as to costs;

(ii) The pending IA stands disposed of.