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WPA(P)/583/2022  
GURMUKH JETHWANI  
VS  
STATE OF WEST BENGAL AND ORS.

Mr. Debdeep Sinha  
..for the Petitioner.

Mr. Anirban Ray,  
Mr. Nilotpal Chatterjee,  
Mr. Debraj Sahu  
..for the State.

Ms. Sucharita Biswas,  
Mr. D. Gupta  
..for the Respondent No.2.

Mr. Uttiya Ray,  
Mr. Ashutosh Pal,  
Mr. Arnab Mandal  
..for the Respondent No.3.

Mr. N.C. Bihani,  
Ms. P.B. Bihani,  
Mr. Soumyajit Ghosh,  
Mr. Soumya Mukherjee  
..for the WBPCB.

Mr. Jaydip Kar,  
Mr. S. Ghosh  
..for the Respondent No.6.

The petitioner claiming himself to be a public spirited person has approached the Court by way of this public interest petition seeking a direction to the respondent no.2 i.e. Visva Bharati University as also the State to hold the Poush Mela in 2022 in Visva Bharati ground on and from 23<sup>rd</sup> December, 2022.

The plea of the petitioner is that annual Poush Mela was started in the year 1894 and thereafter it was

held every year except on three occasions during the Bengal Famine of 1943, Direct Action Day of 1946 and Covid-19 Pandemic, 2020. According to the petitioner, the key characteristic of the Mela includes live performances of Bengali folk music, such as baul, kirtan and kobigan etc. and it is a colourful rural carnival. The grievance of the petitioner is against the decision of respondent University not to hold the Mela in the University ground.

Submission of learned counsel for the petitioner is that the Mela was held for last several years in the University campus, therefore, there is no justification on the part of the University in not holding the Mela this year in the University campus. He submits that holding of the Mela on any other ground will not serve the purpose as it is the tradition to hold the Mela in the University campus.

Learned counsel for the University has referred to certain orders of the NGT and has submitted that the pollution and nuisance is created during the Mela on account of which the fine has also been imposed on the University and that the criminal cases were registered. Hence, a conscious decision has been taken by the University supported by reasons not to hold the Mela in the University ground.

Learned counsel for the State has offered that the

State is ready to provide another ground in the vicinity for holding the Mela.

Ld Senior Counsel for Respondent No.6 has supported the plea.

We have heard the learned counsel for the parties and perused the record.

The petitioner has prayed for a Writ of Mandamus seeking a direction to the University to hold the Mela in the University ground. No legal right has been pointed out on the basis of which such a Mandamus can be issued. No rule, regulation or statutory provision has been pointed out in support of the plea that Mela should be held on the University ground inside the campus.

The affidavit-in-opposition filed by the University clearly discloses the reason for taking a decision not to hold the Mela in the University campus which are as under:

“i. The West Bengal Pollution Control Board gave a series of directives on 23.12.2019 (which in fact reached Visva-Bharati when the Mela 2019 had already started. The directives included prohibitions on use of thermocol and plastic, ban on use of black generator sets, installation of fire extinguishers in all stalls (more than 1200 in numbers), arrangement of sufficient number of public toilets and / or bio-toilets, ban on use of DJ sound systems, ban on entry of commercial vehicles, winding up of Mela and restoration of the mela ground to its original condition within the time stipulated by the Hon’ble Tribunal.

ii. Even though Pous Mela 2019 was officially organized by the Santiniketan Trust with whole some support from the Visva-Bharati authority,

suddenly on 31.12.2019, a show cause notice (under the Air Prevention & Control of Pollution Act, 1981, and the Environment Protection Act 1986) was slapped on the Registrar of Visva-Bharati directing her to explain why Environmental Compensation (EC) of Rs. 10.00 lakhs could not be imposed on Visva-Bharati for failure to comply or to implement the action plan “discussed” in the meeting dated 18.12.2019 chaired by the Chief Secretary. In the said notice it was alleged that a) A number of food stall were observed to use coal fired oven within the Mela Prangan, b) There were insufficient public toilets and bio-toilets within the Mela Prangan and the same were not properly cleaned or maintained for proper sanitation and cleanliness. Conditions of ladies’ toilets were very poor. There was insufficient water in the toilet. Even, there was no container to carry water into the toilets from outside c) No firefighting arrangement (fire extinguisher) was available individually in all stalls.

iii. Even though the district administration and state police was officially responsible for removing the stalls after completion of the 04 (four) days mela and the District Magistrate / Superintendent of Police, Birbhum were specifically instructed by the Hon’ble NGT to arrange / ensure winding up of the mela and clearing the ground within 48 hrs. of the closure of mela, police were not active at all and not visible on ground when the winding up and dismantling of the stalls were undertaken on 28.12.2019 and 29.12.2019 by the private security personel deployed by Visva-Bharati with the financial help provided by the Ministry of HRD (now MOE). There was a massive opposition from a section of stall owners, the Byabsayi Samiti / Sangha. Police was completely inactive.

iv. The Vice Chancellor, Registrar in charge, Accounts Officer and other official and staff of Visva-Bharati faced at least two criminal proceedings under Sections 461, 323, 379, 418, 506, 34, 354B of the IPC on false and fabricated charges of looting, snatching, theft, physical abuse and even outraging the modesty of women for undertaking the work of clearing the mela ground after official closure of the mela. These criminal proceedings are still continuing and police has repeatedly called our senior officials to the Santiniketan Police Station / Bolpur Women Police Station in the name of investigation and

taking statements. Our senior Officials / faculty members felt very humiliated and insulted to face such proceedings.

v. Once Mela was finally dismantled, the stall owners kept the mela ground, which is the heart of the campus in a mess with, not only rubbish, but also with human excreta. The Vice Chancellor and his team cleaned the mess for several days at a stretch but it was insufficient and hence, the University had to deploy outsourced personnel to do the rest of the cleaning for which Visva-Bharati had to spend considerable amount of money. Since the mela ground was left filthy with rubbish and human excreta those who live adjacent to the ground and attend offices / academic departments adjacent to the ground faced extreme difficulty due to the foul smell.”

This respondent University has disclosed cogent reasons for not permitting Mela on University ground.

That apart, learned counsel for the University has also drawn the attention of this Court to the order of the NGT dated 1<sup>st</sup> November, 2017 passed in Original Application No.16/2016/EZ in the case of *Subhas Datta v. Visva Bharati University & Ors.* wherein the University had given following undertaking:

“10. Visva-Bharati undertakes as follows:

- a) To co-operate with the District Administration as regards the safety, security, and protection of environment and closure of the Mela.
- b) The Visva-Bharati will demarcate the Mela ground and barricade the same so that the Mela ground will be a separate self-contained unit from the University and the locality.
- c) The University along-with the Santiniketan Trust and Bolpur Municipality will jointly bear the responsibility for cleaning, health and sanitation.

- d) There will be no bursting of crackers. Fireworks will be soundless and its display shall not last for more than 30 minutes and the same shall be carried out in an open space away from the main mela ground.
- e) The cultural events will be restricted to folk and classical music and dance drama.
- f) Food stalls shall be set up in a hygienic manner, in a enclosed area where there will be adequate provisions for dust control, waste removal, clean drinking water and toilet facility.”

Learned counsel for the University has also pointed out that if there is any breach of undertaking given by the University authorities before the NGT, then the University authorities will be held responsible for the same which is also one of the reasons for not permitting the Mela in the University premises.

Learned counsel for the University has also produced the show cause notice dated 07.01.2020 which was issued by the West Bengal Pollution Control Board proposing to impose the fine of Rs.10 lakhs for failure to comply with decision and to implement the action.

Learned counsel for the University has also drawn the attention of this Court to the subsequent order of the NGT dated 19.08.2020 passed in the case of Subhas Datta (supra) wherein the University had conveyed its decision not to hold the Poush Mela in the concerned

year, on the basis of which the NGT had reached to the conclusion that the menace of pollution caused during the Poush Mela did not survive any further.

Thus we are satisfied that decision of the University not to hold Mela in the University ground is duly supported by the reasons. That apart, undisputedly the ground belongs to the University and no legal right exists in favour of the petitioner to hold the Mela in the University ground. It is for the University authorities to take a decision to hold or not to hold the Mela and they cannot be compelled by the writ of mandamus. Thus, we find that prayer for Mandamus as sought by the petitioner in the writ petition cannot be granted.

In the facts of the case, we leave it open to the University authorities to reconsider the entire issue and if deemed proper, to grant the permission to hold the Mela in the University ground on certain appropriate conditions.

Since the State authorities have also come forward with the offer to provide an alternate ground for the purpose of holding the Mela, therefore persons/organisations responsible for holding the Mela can approach the concerned State authority for this purpose.

The petition is accordingly disposed of.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)



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