

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s)18879/2007  
(Dy.No.28455/2007)  
(From the order dated 28/09/2007 in MP No.1/2007 in WP 31435/2007 of  
the High Court of Judicature at Madras)

ALL INDIA ANNA DRAVIDA MUNNETRA KAZHAGAM

Petitioner(s)

VERSUS

THE CHIEF SECRETARY, GOVT. OF TAMIL NADU & ORS.

Respondent(s)

(With prayer for interim relief)

Date: 30/09/2007 This Petition was called on for hearing today  
at 10.30 a.m.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL  
HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner(s) Mr. S. Gurukrishna Kumar, Adv.  
Mr. Subramonium Prasad, Adv.  
Mr. N. Jothi, Adv.  
Mr. L.P. Shamughasundaram, Adv.

For Respondent(s) Mr. Altaf Ahmad, Sr. Adv.  
Nos.1-2: Mr. V.G. Pragasam, Adv.  
Mr. S. Joseph Aristotle, Adv.  
Mr. S. Prabu Ramasubramanian, Adv.  
Mr. T. Harish Kumar, Adv.

For Respondent No.3: Mr. A.K. Ganguli, Sr. Adv.  
Mr. V. Krishnamurthy, Sr. Adv.  
Mr. P.R. Kovilan, Adv.  
Mr. Naresh Kumar, Adv.

UPON hearing counsel the Court made the following

ORDER

Heard Shri Gurukrishna Kumar, learned counsel appearing  
for the petitioner, Shri Altaf Ahmad, learned counsel appearing on  
behalf of

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Respondent Nos.1 and 2, who stated that he represents the Government of Tamil Nadu as well, and Shri A.K. Ganguli, learned counsel appearing on behalf of Dravida Munnetra Kazhagam, party Respondent No.3.

The present petitioner filed a writ petition, bearing No.31435 of 2007, before Madras High Court on 26th September, 2007, making a prayer therein for a declaration that the call given for a Bandh and holding of a Bandh in the State of Tamil Nadu either on 1 st October, 2007 or on any other date by Respondent Nos.3 to 7, which are political parties, namely, Dravida Munnetra Kazhagam, Indian National Congress, Communist Party of India (Marxist), Communist Party of India and Pattali Makkal Katchi, were violative of Articles 19 and 21 besides Directive Principles of State Policy and the fundamental duties enshrined under the Constitution of India. Interim prayer was made in the writ petition for restraining Respondent Nos.3 to 7 from proceeding with the call for Bandh in the State of Tamil Nadu given by them for 1st October, 2007 or on any other date in terms of resolution passed in the

meeting held on 24th September, 2007.

The said writ petition was placed for hearing before a Division Bench of the Madras High Court presided over by the learned Chief Justice of that court on 27th September, 2007. On that day, undisputedly, a copy of the writ petition together with interim petition was served upon the learned Advocate General of the State of Tamil Nadu, who appeared in court, and submitted that the call given by the aforesaid political parties was for

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strike/hartal and not Bandh. It was further submitted that, according to the judgement of this Court, in the case of Communist Party of India (M) vs. Bharat Kumar & Ors. [(1998 (1) S.C.C. 201) = AIR 1998 SC 184], what is prohibited is call for Bandh and its enforcement and not strike/Hartal. He then submitted that there was distinction between call for Bandh and call for Hartal/strike. According to the learned Advocate General, as the call was not given for Bandh but strike/hartal, the judgement rendered by this Court in Communist Party of India (M) (supra) shall have no application; as such, writ petition was fit to be dismissed.

Before the High Court, it appears that a copy of Resolution dated 24th September, 2007, passed in the meeting of the aforesaid political parties, which was perhaps in Tamil, was produced and that was officially translated. The relevant portion of the translated version, as quoted by the High court in its order, runs thus:

"...in order to make understand the fact that the support of the people is only to implement the Sethu Samudram Project expeditiously to the Central Government, it is resolved to conduct total cessation of work and closure of shop on the 1st of October and to conduct a general meeting of the leaders of all parties on the 30th day of September, at Chennai."

Before the High Court, it was pointed out on behalf of the petitioner that the Director of Examination (Education Department) had postponed the supplementary examination, which was to be conducted from 1st October, 2007 to 4th October, 2007, and the Law University had also postponed the

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counselling which was scheduled for 4th October, 2007, in view of the Bandh call given by the political parties. It was further pointed out that the position would be peculiar as the Chief Minister himself, being the leader of political party [respondent No.3], had chaired the meeting and taken the decision and, therefore, the call given was for a State-wide Bandh.

After taking into consideration decision of this Court, referred to above, the High Court, prima facie, recorded a finding that the call given by the aforesaid political parties was for Bandh and not strike/Hartal, as claimed by them. After recording this finding, High Court admitted the writ petition, issued Rule returnable by 24th October, 2007, and directed the case to be placed on that date at 2.30 p.m. While admitting the writ petition, the Court gave following directions:

"We issue the following directions to the first respondent (Chief Secretary to Government), second respondent (Director General of Police), all the District Collectors and other officers of the State:-

- (i) To ensure that no political party, organization, association, group or individual, can by organizing 'bandh'/hartal' or by force or intimidation, stop or interfere with the road and rail traffic or free movement of the citizens in the State of Tamilnadu on the day of 'bandh', i.e., 01.10.2007.
- (ii) to ensure that the public transport in the State including the Civil Aviation run smoothly on the day of the 'bandh', i.e., 1.10.2007

- (iii) 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 Tamilnadu.
- (iv) Chief Secretary to the Government shall issue a Press Note to the Print Media and also the Electronic Media on 29/30.9.2007 informing about the preparation made by the Police to deal with the 'bandh' and to make people secured."

It appears that, in the meantime, either when hearing of the case was going on or thereafter on 27th September, 2007, the Chief Secretary, State of Tamil Nadu, gave certain directions, which were noted by the High Court with approval in Paragraph (v) of the impugned order, which reads thus:

- (v) The above directions would be in addition to the instructions already issued by the Chief Secretary to the Government in Telefax, Public (S.C.) Department, in Message No.SR.II/50641/2007 dated 27.9.2007, which reads as follows:

'1. Essential services like Telephone and Telecommunication, water supply, milk distribution, power supply, fire services, newspapers, hospitals, shall be ensured to function and protection given.

2. Provide adequate protection to vital installations such as power stations/grids, sub-stations, important Government buildings, telecommunication and bridges, oil installations, railway bridges, etc.

3. Arrange open like patrol with immediate effect.

4. Arrange for regular supply of milk and other essentials.

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5. Provide adequate protection to the High Court and other courts.

6. Action to be taken against anti-social elements and persons indulging in acts of violence and vandalism.

7. A visible police presence shall be maintained throughout the city.

8. A visible bandobust outside Railway stations, bus depots, main roads, main junctions, hospitals, courts, schools and colleges will be maintained.

9. Necessary protection to market and business places shall be given.

10. All police control rooms will be fully activated to follow up incident to take proper stern and timely action.

11. Ensure that the 'Hartal' passes off peacefully.

12. Collectors may requisition and spare other department vehicles if required by the District Superintendent of Police.

Any incident of law and order and other matters of significance should be informed to Chief Secretary's Control

room Telephone Nos.26571388 and 26570372, followed by FAX - 25677128. Bi-hourly report commencing from 0600 hours on 01.10.2007 about the 'Hartal' should be given to Chief Secretary's Control Room even if there is no incident. First Report should commence from 0600 hours on 01.10.2007."

The said order was passed by the High Court on 28<sup>th</sup> September, 2007, Friday, and as the petitioner was aggrieved by the aforesaid interim order, it filed the present special leave petition before this Court on the next day, i.e., 29<sup>th</sup> September, 2007. Keeping in mind urgency of the

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matter, it was decided to constitute Bench on a non-working day and hear the case in court on 30<sup>th</sup> September, 2007, at 10.30 a.m. and that is how this case has been placed before us today.

It appears that the issue involved in this case was raised before the High Court of Kerala and a Full Bench of that court in the case of Bharat Kumar K. Palicha & Anr. vs. State of Kerala & Ors. (A.I.R. 1997 Kerala 291) declared that giving of call for Bandh and its enforcement by any association, organization or political party were illegal and unconstitutional. Relevant portion of judgement of the High Court is contained in Paragraphs 7, 12, 13, 17 and 18 which runs thus:

"7. Before proceeding to consider the constitutional issues sought to be projected before us, we think that it is necessary to understand what is a "bundh". "Bundh" is a Hindi word meaning "closed" or "locked". The expression therefore conveys an idea that everything is to be blocked or closed. Therefore, when the organisers of a bundh call for a bundh, they clearly express their intention that they expect all activities to come to a standstill on the day of the bundh. A call for a bundh is obviously distinct and different from the call for a general strike or the call for a hartal. The intention of the callers of the bundh is to ensure that no activity either public or private is carried on on that day. It is also clear from their further statements, sometimes made, that the newspapers, hospitals and the milk supply is excluded from the bundh. This clarification obviously implies that otherwise the intention is that those services are also to be affected. If the intention is to prevent the milk supply, prevent the distribution of newspapers, prevent people going to the hospitals for treatment, prevent the people from travelling and to generally prevent them

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from attending to their work either in service of the State or in their own interest, that obviously means that it amounts to a negation of the rights of the citizens to enjoy their natural rights, their fundamental freedoms and the exercise of their fundamental rights. It is no doubt true that while calling for a bundh it is not also announced that any citizen not participating in the bundh will be physically prevented or attacked. But experience has shown that when any attempt is made either to ply vehicles on the day of the bundh or to attend to one's own work, or to open one's shop to carry on trade, it has resulted in the person concerned being threatened with consequences if he took out his vehicle, if he went for his work or if he kept his shop open. The leaders of the political parties who call for the bundh cannot escape by saying that they are not directly telling the citizens not to do these things under threat but if some of the participants in the bundh indulge in such activities, they cannot be held responsible. Obviously, they can with reasonable intelligence foresee the consequences of their action in calling for the bundh. Nor can they pretend that the consequences that arise

out of the calling for a bundh, is too remote or does not have reasonable proximity to the call they have made. Learned counsel appearing for the political parties contended that this Court cannot take note of what actually happens when a bundh is called, but this Court can only go by the call for the bundh itself which does not involve the call for violence or forceful prevention of people from going about their avocation. We do not think that we would be justified in adopting such an ostrich like policy. We cannot ignore the reality of what is involved when a bundh is called.

12. It is true that there is no legislative definition of the expression 'Bundh' and such a definition could not be tested in the crucible of the constitutionality. But does the absence of a definition deprive the citizen of a right to approach this court to seek relief against

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the Bundh if he is able to establish before the court that his fundamental rights are curtailed or destroyed by calling of and the holding of a Bundh? When Article 19(1) of the Constitution guarantees to a citizen the fundamental rights referred to therein and when Article 21 confers a right on any person - not necessary a citizen - not to be deprived of his life or personal liberty except according to procedure established by law, would it be proper for the court to throw up its hand in despair on the ground that in the absence of any law curtailing such rights, it cannot test the constitutionality of the action? We think not. When properly understood, the calling of a Bundh entails the restriction of the free movement of the citizen and his right to carry on his avocation and if the legislature does not make any law either prohibiting or curtailing it or regulating it, we think that it is the duty of the court to step in to protect the rights of the citizen so as to ensure that the freedoms available to him are not curtailed by any person or any political organization. The way in this respect to the courts has been shown by the Supreme Court in *Bundhua Mukti Morcha vs. Union of India*, AIR 1984 SC 802.

13. It is argued on behalf of the respondents that a Bundh could be peaceful or violent and even if the court were to act, it could act only to curtail violent Bundhs and not peaceful Bundhs. It is contended that the court cannot presume or generalise that the calling of a Bundh always entails actual violence or the threat of violence for not participating in or acquiescing in the Bundh. The decision in *Kameshwar Prasad vs. State of Bihar*, AIR 1962 SC 1166 is referred to in that context. This theoretical aspect expounded by counsel for the respondents does not appeal to us especially since as understood in our country and certainly in our State, the calling for a Bundh is clearly different from a call for a general strike or a hartal. We have already noticed that a

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call for a Bundh holds out a warning to the citizen that if he were to go out for his work or to open his shop he would be prevented and his attempt to take his vehicle on to the road will also be dealt with. It is true that theoretically it is for the State to control any possible violence or to ensure that a Bundh is not accompanied by violence. But in our present set up, the reluctance and some times the political subservience of the law - enforcing agencies and the absence of political will exhibited by those in power at the relevant time, has really led to a situation where there is no effective attempt made by the law enforcing agencies either to prevent violence or to ensure that those citizens who do not

want to participate in the Bundh are given the opportunity to exercise their right to work, their right to trade or their right to study. We cannot also ignore the increasing frequency in the calling, holding and enforcing of the Bundhs in the State and the destruction of public and private property. In the face of this reality, we think that when we consider the impact of a Bundh on the freedom of a citizen, we are not merely theorising but are only taking note of what happens around us when a Bundh is called and a citizen attempts either to defy it or seeks to ignore it. We are not in a position to agree with counsel for the respondents that there are no sufficient allegations either in O.P. 7551 of 94 or in O.P. 12469 of 95 which would enable us to come to such a conclusion. In fact, the uncontroverted allegations in O.P. 12469 of 95 are specific and are also supported by some newspaper clippings which though could not be relied on as primary material, could be taken note of as supporting material for the allegations in the original petition.

17.No political party or organization can claim that it is entitled to paralyze the industry and commerce in the entire State

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or Nation and is entitled to prevent the citizens not in sympathy with its view-point, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the Nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it. The claim for relief by the petitioner in these original petitions will have to be considered in this background.

18.The contention that no relief can be granted against the political parties in these proceedings under Article 226 of the Constitution cannot be accepted in its entirety. As indicated already, this court has ample jurisdiction to grant a declaratory relief to the petitioners in the presence of the political party respondents. This is all the more so sincere the case of the petitioners is based on their fundamental rights guaranteed by the Constitution. The State has not taken any steps to control or regulate the Bundhs. The stand adopted by the Advocate General is that the court cannot compel the State or the legislature to issue orders or make law in that regard. As we find that organised bodies or association or registered political parties by their act or calling and holding Bundhs, trample upon the rights of the citizens of the country protected by the Constitution, we are of the view that this court has sufficient jurisdiction to declare that the calling of a Bundh and holding of it, is unconstitutional especially since, it is not undoubted, that the holding of Bundhs are not in the interest of the Nation, but tend to retard the progress of the Nation by leading to National loss of production. We cannot also ignore the destruction of public and private property when a Bundh is enforced by the political parties or other organizations. We are inclined to the view that the political parties and the organizations which call for such Bundhs and enforce them are really liable to compensate the Government, the public and

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the private citizen for the loss suffered by them for such destruction. The State cannot shirk its responsibility of taking steps to recoup and of recouping the loss from the

sponsor and organisers of such Bundhs. We think, that these aspects justify our intervention under Article 226 of the Constitution.

In view of our discussion above, we allow these Original Petitions to the extent of declaring that the calling for a Bundh by any association, organization or political party and enforcing of that call by it, is illegal and unconstitutional. We direct the State and its officials including the law enforcement agencies, to do all that is necessary to give effect to this declaration.

The Original Petitions are allowed to the above extent. We make no order as to costs. Order accordingly."

Against the said judgment, the matter was brought to this Court in the case of Communist Party of India (M) (supra) and, while granting leave, this Court in Paragraph 3 approved the law laid down by the Kerala High Court. This Court observed that the reasoning given by the High Court, particularly in Paragraphs 12, 13 and 17 for the ultimate conclusion and directions in Paragraph 18, was correct and Their Lordships were in agreement with the same. It was further observed that the High Court had drawn a very appropriate distinction between the Bandh on the one hand and strike/hartal on the other. Specifically, it was stated in the judgment that Their Lordships were in agreement with the view taken by the High Court. The aforesaid Paragraph 3 runs thus:

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"On a perusal of the impugned judgment of the High court, referring to which learned counsel for the appellant pointed out certain portions, particularly in Paras 13 and 18 including the operative part in support of their submissions, we find that the judgment does not call for any interference. We are satisfied that the distinction drawn by the High Court between a 'Bandh' and a call for general strike 'Hartal' is well made out with reference to the effect of a 'Bandh' on the fundamental rights of other citizens. There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservience to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a 'Bandh' which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national cause in many ways. We may also add that the reasoning given by the High Court, particularly those in paragraphs 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct which we are in agreement. We may also observe that the High Court has drawn a very appropriate distinction between a 'Bandh' on the one hand and a call for general strike or 'Hartal' on the other. We are in agreement with the view taken by the High Court. "

From a bare perusal of the aforesaid decision, it would be clear that neither anybody can give a call for Bandh nor the same can be enforced. The High Court, in the present case, has recorded a, prima facie, finding that, in the present case, the call was given for Bandh and not strike/hartal.

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Ordinarily, High Court as well as this Court refrains from passing an interim order the effect of which would be granting the main relief. But in cases where a party approaches court without loss of time, there are no laches on its part, it is not possible to give notices to all the necessary parties and hear them because of paucity of time and in

case interim order is not passed in a case like the present one, which, prima facie, in the opinion of court is concluded by judgement of this court, the main case would become infructuous, different considerations would arise and appropriate interim order should be passed. In the present case, apart from the State of Tamil Nadu, out of the political parties, namely, Dravida Munnetra Kazhagam, Indian National Congress, Communist Party of India (Marxist), Communist Party of India and Pattali Makkal Katchi, only Dravida Munnetra Kazhagam has appeared before us, whom we have heard at length.

After taking into consideration the entire matter, prima facie, we are also of the view that the call given by the aforesaid political parties is a call for Bandh and not strike/Hartal. Accordingly, we have no option but to issue notices to the non-appearing respondents and pass interim order.

Issue notice.

Until further orders, Respondent Nos.3 to 7 are restrained from proceeding with the call for Bandh in the State of Tamil Nadu on 1st October, 2007 pursuant to resolution dated 24th September, 2007 or any other day.

[ T.I. Rajput ]  
A.R.-cum-P.S.

[ Om Prakash ]  
Court Master