

Rupinder Singh Sodhi and Another

Vs

Union of India and Others

Writ Petitions Nos. 8816 and 8817 of 1982,

(CJI Y. V. Chandrachud, A. P. Sen JJ)

18.11.1982

ORDER

1. By these writ petitions, the petitioners, some of whom are practicing lawyers and some Members of Parliament, ask for an appropriate writ directing the State of Haryana and the State of Uttar Pradesh to remove all obstructions on the highways and to allow unhindered and unintercepted the use of highways, railways and airways without making any discrimination against the Akali Sikhs on the ground of religion. Stated briefly, the case of the petitioners is that in the recent past, a movement was set afoot in the State of Punjab consequent upon certain demands made by the members of the Akali Party and as a result of that movement, large scale arrests of Sikhs were effected, bordering on harassment and prosecution. It would appear that a declaration was made by certain Akalis leaders that a Morcha would be taken to Delhi on November 19, 1982 which coincides with the inauguration of the Asiad games, the border States, particularly Haryana and Uttar Pradesh, appear to have taken certain measures to intercept the movement of Akalis across the border on to Delhi, with a view to ensuring that the proposed Morcha is not staged in the manner feared and the Asiad not disrupted.

2. Mr. Hardev Singh who appears on behalf of the petitioners argues that highways are dedicated to the public and are meant for their use for passing and repassing. Therefore, he argues, no obstruction can be placed thereon which will impede the free flow of traffic, any such obstruction being per se unlawful. Having given our anxious consideration to the submissions made by Mr. Hardev Singh, we agree that no one is entitled to barricade a highway so as to prevent members of the public from using it while they are on their lawful business in the pursuit of normal avocations of life. But the police, whose duty it is to enforce law and order in the wake of threatened mass agitations which are reasonably likely to lead to breach of public peace, are entitled in the discharge of that duty to impose reasonable restraints on the physical movement of members of the public in order to the protection of public property and the avoidance of needless inconvenience to other citizens in their lawful pursuits. But all such restraints on personal liberty, if at all, have to be commensurate with the object which furnishes their justification. They must be minimal and cannot exceed the constraints of the particular situation, either in nature or in duration. Above all, they cannot be used as engines of oppression, prosecution, harassment or the like. The sanctity of person and of privacy has to be maintained at all costs and that cannot ever be violated under the guise of maintenance of law and order.

3. We feel uneasy and concerned to hear that policemen of certain States have violated the norms of decency in their dealing with the situation arising out of the Akali-Asiad tangle. We assume for lack of better evidence that the grievance made by the petitioners before us is more the offspring of a natural feeling of resentment at being stopped and searched than of any substantial invasion of their

personal freedom. If and when there is proof of latter, Courts may have to stop the excesses. But the rule of law requires that no person shall be subjected to harsh, uncivilised or discriminatory treatment even when the objective is the securing of the paramount exigencies of law and order. Therefore, no Sikh can be allowed to be so treated if our Constitution has to have any meaning and effect.

4. We believe it not to be true that any Chief Minister has made a public declaration that police officers who will treat the Akali Sikhs harshly will be dealt with lightly. It is incredible that any highly placed person in his senses can possibly make such a statement, with the kind of pressure of public opinion and the press which, fortunately, we have in our country today.

5. There does not appear to be any executive order in existence, in writing at any rate, authorising the police to barricade any highway or to subject every Sikh in motion to physical restraint. But in an appropriate case, a presumption may well be drawn as to the existence of such an order if it is found that the police are generally acting systematically according to a set and uniform pattern or are otherwise engaged in a large scale operation of any similar or sinister kind. For want of acceptable evidence, we hesitate to draw that presumption in this case and will leave the matter where it lies for the time being. Redress may, if so advised, be sought in individual cases by those aggrieved by the alleged acts of excesses.

6. This Order will dispose of these writ petitions.

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