

THE COMMUNIST PARTY OF INDIA (M)

v

BHARAT KUMAR AND ORS.

NOVEMBER 12, 1997

[J.S.VERMA CJ., B.N. KIRPAL AND V.N. KHARE, JJ.]

Constitution of India, 1950: Articles 19 and 21.

Bandh—Calling and enforcing 'Bandh' by political parties—Held unconstitutional by Kerala High Court—Appeal before Supreme Court—Held High Court was right in its conclusion that there cannot be any right to call or enforce a 'Bandh' which interferes with the exercise of fundamental freedoms of other citizens—Fundamental Rights of the people as a whole cannot be subservient to the claim of Fundamental Right of an individual or only a section of people—Distinction drawn by High Court between a 'Bandh' and a call for general strike or 'Hartal' is well made out—Held the impugned judgment does not call for any interference.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7728-29 of 1997.

From the Judgment and Order dated 28.7.97 of the Kerala High Court in O.P. Nos. 3040/88, 12343/91 and 7827 of 1997.

Soli J. Sorabjee and Harish Salve, G. Prakash, Ms. Beena Prakash and P.P. Vineeth for the Appellant.

Mathai M. Piakeday and P.I. Jose, (A. Raghunath) for Krishnamurthy Swami for the Respondent No. 1-9.

K.M.K. Nair and Bijan Ghosh for State of Kerala.

The following Order of the Court was delivered :

Leave granted.

We have heard Mr. Harish Salve and Mr. Soli J. Sorabjee, learned counsel for the appellant and Mr. Mathai M. Paidey, learned counsel for the respondents.

A On a perusal of the impugned judgement 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 or “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 subservient 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 loss 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 with 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.

The appeals are dismissed accordingly. No costs.

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T.N.A.

Appeals dismissed.