IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2009

CORAM

THE HONOURABLE MR JUSTICE K.CHANDRU

O.A.NOS.395 TO 397 OF 2009
IN
C.S.NO.356 OF 2009

Dow Chemical International Pvt. Ltd.
Represented by Ms.Ramolla Karnani
Company Secretary, Legal Head and
Constituted Attorney of the Applicant
having its office at
Tamarai Tech Park
S.P. Plot No.16-19 & 20-A
Jawaharlal Nehru Road,
Guindy,
Chennai-600 032. .. Applicant in
all these petitions

Vs.

1.Nithyanandam
S/o.Mr.R.Jayaraman,
representative of
The International Campaign for
Justice in Bhopal
and/or Member of Third, Fourth and
Fifth respondents
residing at No.42A, 1st Floor,
5th Avenue,
Besant Nagar, Chennai-600 090.

2.The International Campaign for Justice
in Bhopal,
A-543, Housing Board Colony,
Aishbag, Bhopal 462 001.

3.Bhopal Group for Information & Action,
A-543, Housing Board Colony,
Aishbag, Bhopal,
Madhya Pradesh-462 001.

4.Bhopal Gas Peedit Mahila Stationery
Karmachari Sangh,
A-543, Housing Board Colony,
Aishbag, Bhopal,
Madhya Pradesh-462 001.
5.Bhopal Gas Peedit Mahila Purush
Sangharsh Morcha,
A-543, Housing Board Colony,
Aishbag, Bhopal,
Madhya Pradesh-462 001.
6.Greenpeace International
having its office at
Greenpeace India situated at
Greenpeace,
J-15, Saket,
New Delhi-110 017.
7.Ashok Matches & Timber Industries
Pvt. Ltd.,
Bhoopathy Buildings, 17 A,
Virudhunagar Road,
Sivakasi-626 123. .. Respondents in all these petitions

O.A.No.395 of 2009 : This application is filed seeking for an interim injunction restraining the respondents 1 to 6 jointly and/or severally for themselves and all other bodies and/or associations, and/or persons and/or unions and/or organizations whether incorporated and/or unincorporated whether registered and/or unregistered and connected with the said respondents whether directly or indirectly, from mobbing/attaking/picketing and/or holding any demonstration outside the applicant's office and in no event within the radius of 100 mts. from the applicant's office situated at Tamarai Tech Park, S.P. Plot No.16-19 & 20A, Jawaharlal Nehru Road, Guindy, Chennai-600 032 and from in any manner raising slogans, placards, banners, printing and distributing and/or disseminating howsoever any literature or content defaming and vilifying the applicant and tarnishing its image and reputation, pending disposal of the suit.

O.A.No.396 of 2009: This application is filed seeking for an order of interim injunction restraining the respondents 1 to 6 jointly and/or severally for themselves and all other bodies and/or associations, and/or persons and/or unions and/or organizations whether incorporated and/or unincorporated whether registered and/or unregistered and connected with the said respondents whether directly or

indirectly, from in any manner obstructing, blocking and/or harassing and/or preventing the free ingress and egress of the employees, staff and officers and/or visitors of the applicant to the office premises situated at Tamarai Tech Park, S.P. Plot No.16-19 & 20A, Jawaharlal Nehru Road, Guindy, Chennai-600 032 and from preventing in any manner the smooth operation of the applicant's activities, pending disposal of the suit.

O.A.No.397 of 2009 : This application is filed seeking for an order of interim injunction restraining the respondents 1 to 6 either by themselves or through any other from in any manner disrupting and/or interfering with the operations or the business activities of the applicant at the applicant's office premises situated at Tamarai Tech Park, S.P. Plot No.16-19 & 20A, Jawaharlal Nehru Road, Guindy, Chennai-600 032, pending disposal of the suit.

For Applicant : Mr.R.Muthukumarasamy, SC
for Mr.R.Senthilkumar

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ORDER

The night of second December, 1984, was a black letter day for the Indian people when toxic gas emanated from the Union Carbide India Limited (UCIL) (owned by a multi national company viz. Union Carbide Corporation (UCC), with whom the plaintiff Company got merged itself during February, 2001) killed as many as 3000 people. Over 200,000 people got severe injuries. The case for its tort liability filed against the said company though reached its finality, the victims of the holocaust are yet to be completely rehabilitated. Speaking about the Bhopal litigation,

Dr.Upendra Baxi in his book in **"Inconvenient Forum and Convenient Catastrophe : The Bhopal case"** (N.M. Tripathi Pvt. Ltd., Bombay 1986), noted as follows:

> "The Bhopal litigation is unparalleled in the abundance of its ironies. And the cruelest and the most saddening of all these is provided by the fact that all these Herculean endeavours are for the 200,000 odd Bhopal victims who are being further revictimized in the process." (Page.2)

2.Justice V.R.Krishna Iyer made the following poignant comment in his book in **"A Constitutional Miscellany"** (Eastern Book Company, Lucknow, 1986):

> "The ghastly assassination of Indira Gandhi and the ghastlier gassassination of Bhopal's innocents were two treacherous tragedies of terror and horror too macabre for Indians to suffer in succession. The latter,- I call it 'Bhoposhima', being a chemical mini-Hiroshima,-inflicted by a multi-national corporation based in the United States, sprayed savage death on the sombre city as its denizens lay dead asleep in freezing slums; and when they suffocatingly awoke at past midnight, there arose a scene of woe the like of which, in the world's industrial chronicle, no eye had seen, no heart conceived and no human tongue could adequately tell. (Page 211)
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> .....
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> Hiroshima shocked the whole world then, but why does 'Bhoposhima' not shock and shame even the Third World now? Have India and the developing countries sold their sensitivity to the MNCs of the West? Have our jural bureaucracy and official technocracy defeated to the US? Are our Popes of Science easy purchase for Corporate Power? How does our law sleep and science keep silence when such a calamitous emergency of colossal magnitude is crying for action? What compensation for

the 3,000 dead and the tens of thousands of people who are the living dead? What remedies for the many maladies of asphyxiation and disorders afflicting lung, heart, eye, nerves, mental and other limbs and faculties, especially when the victims are below the legal visibility line? This chemical warfare cannot go unpunished; and shall not recur. What is equally important is the jurisprudence of social justice whereby remedies for the poor could be quickly secured. How do we prevent such profiteering polluters and predators? We cannot succumb to fatalism or eat the opium of industrial 'development' by Western plunderers involving human casualties as an inevitable evil. Futurism must be made of sterner stuff and a new Quit India Movement must remove offending MNCs.

> The fault, dear Brutus, is not
> in our stars, but in ourselves,
> that we are underlings.

Let me remind you, before I deal with the law now in disarray, that the gas produced by Carbide (India) is intolerably more potent than Hitler had ever dreamt of using against the Jews.

Are Indians guinea pigs for U.S. corporate giants? How free are we Indians in shaping our destiny? How free is our economy, our medicine, our law, our sciences, our politics and professions? If Freedom is what Freedom does, is the freedom of the rich to flee Bhopal and of the poor to perish in the streets symbolic? Is this our Equality, Democracy and Socialist Polity? Indian liberation from MNC imperialism, and economic progress in peaceful coexistence with ecologic preservation, are the essence of enlightened patriotic development. 'Do or die' is the call when environmental survival and life's safety are at stake. *Bhoposhima* is not an event of the past but a portent for the future. Such is the social dialectic of India (Public) Unlimited versus American India Incorporated.

This larger canvas is the proper setting

> for the lesser controversy on the forensic failure at this critical hour. The rule of law is paper tiger if the rule of life is but roadside cadaver. Law which society moulds, if our Freedom is free, must run close to Life, if our lives have rupee value. All jurisprudence is the science and art of social defense, not borrowed finery from Westminster and Washington. Until you hold this truth-Satyagraha, in the current context-we are back to British India before the midnight hour of August 1947; and January 26 is but a promise of unreality. <u>This is the constitutional fundamental which must drive us to ignite Swadeshi genius, not import dangerous industrialism</u>." (Pages 216 to 218)

3.Awakened by such calls from eminent jurists very many organisations including the respondents herein have began a campaign against the plaintiff with the slogan "Dow Quit India". (see page 131 Typed set). As part of this campaign certain public interest groups campaigning for getting justice to Bhopal Gas victims started a series of protests against the plaintiff company from the year 2001, 2002 as evidenced from the suits filed before the Bombay High Court. A protest was also held before the office of the plaintiff at Chennai on 10.2.2009. The Times of India (Chennai Edition) in its issue dated 11.2.2009 reported the incident which may be reproduced: (See page 148 Typed set).

> **"Protest against Dow Chemicals:**
> More than 80 men, women and children from Bhopal who were in the city to protest against Dow Chemicals were picked up by the police and placed under arrest for a few hours. The protesters had staged a 'die-in' protest in front of the company office in Guindy and

> wished to meet a company representative to hand over a petition containing their demands. Dow officials, however, refused to meet the protesters. Following a complaint filed by the company, the protesters were arrested by the police."

The plaintiff company lodged a police complaint and the results are not disclosed. But they waited for two months to file the present suit on 24.4.2009. It is necessary to deal with the brief history of the suit.

4.The plaintiff filed the suit against the respondents for various reliefs, including for a decree for a sum of Rs.10,00,000/- together with interest on account of loss of business suffered by them. Another Rs.10,00,000/- together with interest for defamation and loss of reputation suffered by them. The other prayer is for a permanent injunction, restraining the respondents from holding any demonstration outside of the plaintiff's office and in no event within the radius of 100 mts. from the plaintiff's office situated at Jawaharlal Nehru Road, Guindy. They also prayed for a further injunction, restraining the respondents from obstructing, blocking and preventing the free ingress and egress of the employees in their office and also for a permanent injunction, restraining the defendants from disrupting their operations or the business activities at the said premises. The relief for temporary

injunction were also made as set out above.

5.The relief in the suits were restricted to six defendants alone and the seventh defendant is arrayed as a defendant being the owner of the property, from which the plaintiff have got a lease for conducting their business. Though in the body of the plaint, the defendants were described with their addresses, there is no reference as to whether the defendants 2 to 6 were registered societies or body of individuals. In fact, the plaintiff/applicant is not sure about the nature of such organizations. Excepting for the first defendant, who is a named individual, the other defendants 2 to 6 have been shown in the names of those organizations. No application was taken out under Order 1 Rule 8 to sue them in a representative capacity.

6.When the matter came up before this court on 23.4.2009, this Court granted an ad interim injunction against respondents 1 to 6 from preventing free ingress and egress of the employees of the applicant company into their premises not only in occupation of the applicant, but also in the occupation of the other tenants in the same premises. They were also restrained from mobbing and attacking the employees, officials and the visitors to the premises of the applicant. They were also restrained from wielding any threat or intimidating the applicant from

carrying on his business. The injunction was restrained only upto 15.06.2009 and notice was ordered to the respondents.

7.It is claimed by the applicant that they took out notices by registered post on 23.4.2009 and have filed a proof of service, excepting for the sixth respondent. When the matter came up before this court on 16.6.2009, this Court was not satisfied with the request for extending the order of injunction sought for by the applicant and directed the applicant to make submission to justify their request for extension of the interim order. The matter once again came up before this court on 17.06.2009. That day, Mr.R.Muthukumaraswamy, learned Senior counsel appearing for the applicant took further time to file an additional affidavit. The matter came to be posted on 23.06.2009. On 29.06.2009, the applicant filed an additional affidavit, dated 23.06.2009 and also made submissions.

8.In these applications, it is not necessary to go into the question as to whether the applicant is entitled for any compensation for loss of business and for damages for defamation and for loss of reputation. The temporary injunction was sought for on the basis of the prayer for

relief of permanent injunction sought for in the main plaint.

9.It is seen from the affidavit filed in support of the original applications that on 10.2.2009, a protest was conducted by persons allegedly representing respondents 1 to 6 by assembling before the premises at 11.00 a.m. They were holding inflammatory and defamatory placards and raised aggressive and abusive slogans. Some of the activities laid down covered with shrouds. After forming a human chain, they were blocking access to and from the premises. It is also claimed that the entire road was blocked and traffic was disrupted. When representative of the respondents wanted to meet the officials of the applicant, they had agreed to meet them, but without any camera or electronic items. Hence the meeting did not take place. Thereafter, the police help was sought. It is also alleged that the protesters did not have any approval from the police and they were asking them to Quit India. This made the applicant to lodge a police complaint and a F.I.R. was lodged with the St. Thomas Mount Police Station with F.I.R. No.86 of 2009 on 10.02.2009. A copy of the FIR was also filed in the typed set.

10.About incidents, which had allegedly taken place after 10.02.2009, the application is silent. It was only

after taking further time by the learned Senior Counsel, an additional affidavit, dated 23.06.2009 was filed. Even in the additional affidavit, there is no reference to the action taken by the police pursuant to the FIR against the protesters. It was only on the basis of some threatening calls (No details given) and due to an e-mail sent to the Company, the suit was filed on 22.4.2009 before this court.

11.The averments contained in the additional affidavit, dated 23.06.2009 does not advance the case of the applicant. During the demonstrations held on 10.02.2009, for any criminal activities indulged by the respondents/their representatives, it is for the police to investigate and to proceed against them. In terms of Order 39 Rule 1 of C.P.C., the plaintiff must establish a prima facie case as well as there must be balance of convenience for grant of an interim order.

12.With reference to the alleged defamation and loss of reputation and loss of business, it is the subject matter of the main suit. About the continuing activities of demonstration either by the respondents or by any of their representatives, there are no allegations in the form of pleadings. In the entire typed set (filed with the suit) running into 150 pages, there is no allegation that the plaintiff's business was continued to be disrupted by the

respondents. On the contrary, the entire exercise was only to highlight the protest demonstration that was held on 10.02.2009 by various representatives. Even the publication allegedly brought out in support of the demonstration (filed at pages 131 and 132), it merely describes the activities of the plaintiff company and the danger posed to the Indian people. It exhorts the people about the need for not allowing them to continue their business in India. With these averments, can the order of interim injunction be extended is the question before this Court.

13.The learned Senior Counsel for the applicant submitted that the Supreme Court in **Railway Board, New Delhi and another Vs. Niranjan Singh** reported in **AIR 1969 SC 966,** has held that there is no fundamental right in holding a meeting in the premises of the employer. He placed reliance upon the following passage found in paragraph 12 of the said judgment, which may be extracted below:

> "12.It was not disputed that the Northern Railway is the owner of the premises in question. The fact that the Indian Railways are State Undertakings done not affect their right to enjoy their properties in the same manner as any private individual may do subject only to such restrictions as the law or the usage may place on them. Hence unless it is shown that either under law or because of some usage the railway servants have a right to hold their meetings in railway premises, we see no basis for

> objecting to the direction given by the General Manager. There is no fundamental right for anyone to hold meetings in government premises. If it is otherwise there is bound to be chaos in our offices. The fact that those who work in a public office can go there does not confer on them the right of holding a meeting at that office even if it be the most convenient place to do so."

14.The learned Senior Counsel also placed reliance upon the judgment of the Madhya Pradesh High Court in **Dr.P.G.Najpande Vs. State of Madhya Pradesh and others** reported in **AIR 2008 MADHYA PRADESH 55**, to state that in the name of demonstration or protestation, the life in a civilized society cannot be paralyzed. He placed reliance upon the following passage found in paragraph 11 of the said judgment, which is as follows:

> "11.It should be borne in mind that in the name of demonstration or protestation, the life in a civilized society cannot be paralyzed, in the name of legitimate exercise of ones right to protest the fundamental right of others cannot be scuttled. In a democratic polity the fundamental right of each citizen is sacrosanct. The collective cannot destroy the same. No one, however big he may be should foster a misgiving that he can create a tremor in the fundamental rights of others and tremble the spine of the members of the society at large by forming a group or a political party. The splendor of right to move the glory to live with dignity by carrying out a lawful profession or calling cannot be abridged in the name of mass protest or mass demonstration. The collective protest cannot be allowed to take the shape of collective passion to project a fractured mind thereby creating a dent in the concept of 'Rule of

> law' and bringing in a concavity in the constitutional philosophy which sings the song of highly cherished fundamental rights of millions of people. Be it noted the rights of others cannot be crucified at the fanciful pedestal of a group or a party and by no stretch of imagination it can be guillotined in a cavalier fashion from any pupil. The law of this country does not so countenance."

15.The Senior Counsel also placed reliance of the Full Bench judgment of the Kerala High Court in **Bharat Kumar K.Palicha and another Vs. State of Kerala and others** reported in **AIR 1997 Ker 291 (FB).** The Kerala Full Bench gave several directions with reference to Bundh organized by political parties and trade unions. One of the directions found in paragraph 17 of the said judgment reads as follows:

> "17.No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoint, 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 petitioners in these original petitions will have to be considered in this background."

16.When one of the aggrieved party filed an appeal to the Supreme Court, the matter came to be dealt with by the Supreme Court. The decision of the Supreme Court was

reported in **Communist Party of India (M) Vs. Bharat Kumar and others** reported in **(1998) 1 SCC 201.** In that case, the Supreme Court approved the directions given by the Kerala High Court, including the one found in paragraph 17 extracted above. To reiterate the same, the following passage found in paragraph 3 of the Supreme Court judgment may be extracted below:

> "3. ...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."

17.Therefore, the learned Senior Counsel submitted that though the averments in the applications and the plaint may be silent, evidence can be let in on those issues in the suit and hence an injunction should be continued. But, the learned Senior counsel could not substantiate as to how an order of injunction can prevent either the threatening e-mails or the threatening phone calls. Besides that, there is no such averment either in the plaint or in the original applications. It is not even the prayer in these applications.

18.Even with reference to the allegation that the ingress and egress have been continuously obstructed, there

is no averment to that effect. The applicant had mentioned only about the incident, dated 10.02.2009. It was a days' event and the protesters were also removed by the police as per the press report extracted elsewhere. Even as per the averment made in the affidavit, a criminal case was registered against the respondents.

19.It is necessary to deal with the submissions made by the learned Senior Counsel on this factual backdrop. In fact, the judgment of the Kerala Full Bench, which was approved by the Supreme Court, came to be considered in a recent judgment by the Supreme Court in **All India Anna Dravida Munnetra Kazhagam Vs. Chief Secretary, Government of Tamil Nadu and others** reported in **(2009) 5 SCC 452**. In that judgment, the Supreme Court, while passing an interim order, summarized the decision in Communist Party of India (Marxist) case (cited supra). In paragraphs 17 and 20 of the judgment, it was observed as follows:

> "17.From a bare perusal of the aforesaid decision in Communist Party of India (M), it would be clear that neither can anybody give a call for bandh nor can the same 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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> .....
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> 20.After taking into consideration the entire matter, prima facie, we are also of the view that the call given by the aforesaid political parties <u>is a call for bandh and not strike/hartal</u>. Accordingly, we have no option

> but to issue notices to the non-appearing respondents and pass interim order."
>
> (Emphasis added)

20.Therefore, it must be seen that the judgment of the Kerala Full Bench and its subsequent approval in the CPI(M)'s case does not help the case of the applicant. There was no call for bundh. The Supreme Court itself had stated that if it was a case of strike or hartal, the court might not have extended its arm to prevent such an action as it was held to be a democratic right of an organization.

21.In the same way, the judgment of the Supreme Court in Niranjan Singh's case (cited supra), has no relevance as in hat case, the Supreme Court had considered whether the railway employees have right under Article 19(1)(a) to conduct demonstrations inside the premises owned by the Railways. It is in this context, the Supreme Court held that merely because the public are allowed to go to the railway offices/premises that will no be an automatic right to hold a meeting inside the office premises. Similarly, Dr.P.G.Najpande's case (cited supra) was also a case of an organization calling for "Chakkajam" (stop the wheels). Therefore, in that context, the Madhya Pradesh High Court followed the CPI(M) case and the Kerala Full Bench case.

22.It must be noted that the people of India empowered

with a constitutional right provided in the Constitution of India, are entitled to make grievance on any issue. Their mouths cannot be gagged either by the Government using its police power or the Courts by the grant of preventive injunctions. Before the issuance of a prior restraint on a citizen's right to free expression guaranteed under Article 19(1)(a) or their right to hold peaceful assembly under Article 19(1)(b), there must be established a clear case of infringement of the right of an aggrieved person. Otherwise, the courts are bound to protect the rights of parties to express their protest on public issue.

23.Though the learned Senior Counsel took pains to contend that the applicant company is in no way connected with the Union Carbide India Limited, which was responsible for the grave loss of lives, limbs and properties of the Indian citizens living in Bhopal. This Court is not concerned about the true nature of the holding of the UCIL interest by the applicant. The question is whether the people of India have right to protest against a multi national company carrying on business in India. Even if they had wrong perceptions about the nature of the plaintiff's business, whether they can air their views in public by way of pamphleteering, demonstrations and protests subject to curtailment by law in terms of public

order, decency or morality.

24.In this context, it is necessary to refer to certain decisions of the Supreme Court regarding the fundamental rights of Indian citizens to protest. The Supreme Court in **Kameshwar Prasad and others vs. State of Bihar and another** reported in **AIR 1962 SC 1166** dealt with the question of right of demonstration by the Government employees. In that context, paragraph 13 of the said judgment can be extracted below:

> "13.The first question that falls to be considered is whether the right to make a "demonstration" is covered by either or both of the two freedoms guaranteed by Art.19(1)(a) and 19(1)(b). A "demonstration" is defined in the Concise Oxford Dictionary as "an outward exhibition of feeling, as an exhibition of opinion on political or other question especially a public meeting or procession". In Webster it is defined as "a public exhibition by a party, sect or society ..... as by a parade or mass-meeting". Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has however to be recognised that the argument before us is confined to the rule prohibiting demonstration which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Art.19(1)(a) or 19(1)

> (b). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended, the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Art. 19(1)(a) & 19(1)(b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Art.19(1) (a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances."

25.The Bombay City Police Act, which gave arbitrary powers to the Commissioner of Police, Bombay City to regulate processions and public meetings, the said provision came to be challenged. The issue was dealt with by the Supreme Court in **Himat Lal K.Shah Vs. Commissioner of Police, Ahmedabad and another** reported in **(1973) 1 SCC 227,** wherein the Supreme Court in paragraphs 31 and 35 had observed as follows:

> "31.It seems to us that it follows from the above discussion that in India a citizen had, before the Constitution, a right to hold meetings on public streets subject to the control of the appropriate authority regarding the time and place of the meeting and subject to considerations of public order. Therefore, we are unable to hold that the impugned rules are ultra vires Section 33(1) of the Bombay Police Act insofar as they require prior permission for holding meetings.
>
> ....
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> 35.If the right to hold public meetings

> flows from Article 19(1)(b) and Article 19(1)(d) it is obvious that the State cannot impose unreasonable restrictions. It must be kept in mind that Article 19(1)(b), read with Article 13, protects citizens against State action. It has nothing to do with the right to assemble on private streets or property without the consent of the owners or occupiers of the private property."

26.The Supreme Court also in **Ram Bahadur Rai Vs. The State of Bihar and others** reported in **(1975) 3 SCC 710,** dealt with the true meaning of the concept of agitation in the context of a detention order. In paragraph 22 of the said judgment, the different meanings assigned to the term agitation is in the following words:

> "22.The District Magistrate says in his affidavit that the
> "Sanchalan Samiti was formed for conducting the students agitation and, therefore, the contention of the petitioner that this ground has nothing to do with the breach or controvention of any law is erroneous, as the word agitation itself implies violence and threat to public order".
> The High Court relied on the authority of Chamber's Twentieth Century Dictionary in support of its conclusion that to 'agitate' is 'to stir violently'. It is, in our opinion, wrong to treat every agitation as implying violence on apriori considerations. The glorious history of our freedom movement exemplifies that agitations may primarily be intended to be and can be peaceful. In this regard Gandhiji's life work has perhaps be intended no parallel. Nor indeed, in the West, of Dr.Martin Luther. But agitations can also be meant to be violent under an apparently lawful cloak and there is ample power to quell these. As for dictionaries, Webster's Third New International Dictionary (1961 ED., p.42) says that to 'agitate' is 'to stir up'; 'to

> arouse public feeling or influence public opinion (as by constant discussion)'. 'Agitation' is defined to mean 'the persistent and sustained attempt to arouse public feeling or influence public opinion (as by appeals discussions, or demonstrations)'. The Random House Dictionary (1970 Ed., p. 28) says that to 'agitate' is 'to call attention to by speech or writing; discuss; debate'; "to arouse or attempt to arouse public interest, as in some political or social question'. 'Agitation' accordingly means 'persistent urging of a political or social question before the public'. The Shorter Oxford English Dictionary (1964 Ed., Vol.I, p. 36) says that to 'agitate' means 'to perturb, excite or stir up by appeals'; 'To discuss or push forward'. Dictionaries give various shades of meanings and the effort has to be to choose the meaning which is appropriate, in the context. When "the wind agitates the sea" the meaning of the word agitate is 'to move or force into violent, irregular action'. When a crowd is "agitated to a frenzy by impassioned oratory", the meaning of the word is 'to disturb or excite emotionally'. But in regard to social or political questions the normal meaning of the word is 'to arouse or attempt to arouse public interest'. (See The Random House Dictionary, 1970 Ed., p. 28). When "the ladies sigh and agitate their fans" the meaning of the word 'agitate' is simply 'to move to and fro'. But when one is "agitating for the schools and the vote" the meaning is 'to arouse public feeling or influence public opinion (as by constant discussion)'. (See the Webster's Third New International Dictionary, 1961 Ed., p.42)."

27.A cumulative reading of these decisions will clearly show that the citizens of India have fundamental right to protest. Unless a situation is shown where the life and liberty of an aggrieved individual or an organization is threatened from its very existence or their

right to carry on business is curtailed, neither the State Authorities nor the court will rush to prevent such actions through preventive orders or impose prior restrains.

28.Even multi national companies such as the plaintiff are allowed to carry on their business only subject to the laws of this country. They cannot claim any extra legal rights over the Indian people. The very right enshrined under Article 19(1)(g) of the Indian Constitution is available only to a citizen of India and not to others. It is in this context, this court will have to see whether the applicant had established prima facie case and whether the balance of convenience is in favour of the applicant by continuing the order of injunction.

29.As to when an injunction can be granted under Order 39 Rule 1 C.P.C. has been propounded by the Supreme Court in several decisions. One such case by the Supreme Court is in **Dalpat Kumar and another Vs. Prahlad Singh and others** reported in **(1992) 1 SCC 719**. It is necessary to quote the following passage found in paragraphs 4 and 5 of the said judgment, which reads as follows:

> "4.Order 39 Rule 1(c) provides that temporary injunction may be granted where, in any suit, it is proved by the affidavit or otherwise, that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to

restrain such act or make such other order for the purpose of staying and preventing ... or dispossession of the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders. Pursuant to the recommendation of the Law Commission clause © was brought on statute by Section 86(i)(b) of the Amending Act 104 of 1976 with effect from February 1, 1977. Earlier thereto there was no express power except the inherent power under Section 151 CPC to grant ad interim injunction against dispossession. Rule 1 primarily concerned with the preservation of the property in dispute till legal rights are adjudicated. Injunction is a judicial process by which a party is required to do or to refrain from doing any particular act. It is in the nature of preventive relief to a litigant to prevent future possible injury. In other words, the court, on exercise of the power of granting ad interim injunction, is to preserve the subject matter of the suit in the status quo for the time being. It is settled law that the grant of injunction is a discretionary relief. The exercise thereof is subject to the court satisfying that (1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of his being entitled to the relief asked for by the plaintiff/defendant; (2) the court's interference is necessary to protect the party from the species of injury. In other words, irreparable injury or damage would ensue before the legal right would be established at trial; and (3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

5.Therefore, the burden is on the plaintiff by evidence aliunde by affidavit or otherwise that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his

> property or the right is a condition for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established, on evidence at the trial. Only prima facie case is a substantial question raised, bona fide which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the Court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of the granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit."

30.In the Bhopal tragedy compensations case, the forum convenience issue was argued before the District Court at New York. Justice John F.Keenan by his order remitted the matter to the Indian Court. He rejected the Union of

India's argument that the Indian Courts are not best suited for the Tort litigations and saved the Nation's honour. In his order, dated 12.5.1986, he showered lavish praise on the Indian justice delivery system in the following words:

> "Plaintiffs, including the Union of India, have argued that the courts of India are not up to the task of conducting the Bhopal litigation. They assert that the Indian Judiciary has yet to reach full maturity due to the restrains placed upon it by British colonial rulers who shaped the Indian legal system to met their own ends. Plaintiffs allege that the Indian justice system has not yet cast off the burden of colonialism to meet the emerging needs of a democratic people.
>
> ....
>
> The Union of India is a world power in 1986, and its courts have the proven capacity to mete out fair and equal justice. To deprive the Indian judiciary of this opportunity to stand tall before the world and to pass judgment on behalf of its own people would be to revive a history of subservience and subjugation from which India has emerged. India and its people can and must vindicate their claims before the independent and legitimate judiciary created there since the Independence of 1947."

The confidence reposed in the Indian Courts by an American Judge can be reinforced only by the dismissal of these applications.

31.The learned Senior counsel except by reiterating the protest that took place on 10.02.2009, was unable to spot out a single incident from that day onwards till the date of filing of the suit i.e. 22.4.2009 by the

respondents or from their representatives. Merely because the applicant had filed suits before the Bombay High Court against some of the respondents cannot be a ground for this court to entertain the applications for injunction. In fact, excepting for the first respondent, the respondents 2 to 6 did not have any office in the State and they have also not been sued in a representative capacity. In the absence of any pleadings to establish any injury suffered or likely to be suffered by the applicant company, this court is unable to extend its arm to their rescue and to continue the order of injunction. All these applications are misconceived and devoid of merits.

32.Accordingly, all the three Original Applications are dismissed. It is suffice to state that this Court had not gone into the merit of the suit claims which will have to be established on a proper trial. No costs.

09.07.2009

Index : Yes/No

Internet : Yes/No

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K.CHANDRU, J.

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PRE DELIVERY ORDER IN
O.A.NOS.395 TO 397
OF 2009 IN
C.S.NO.356 OF 2009

09.07.2009