

A.K.JAYASANKARAN NAMBIAR, J.

&

MOHAMMED NIAS C.P., J.

W.P.(C).Nos.222 & 244 OF 2019

Dated this the 23rd day of September, 2022

ORDER

A.K. Jayasankaran Nambiar, J.

The following persons are *suo motu* impleaded as additional respondents in these writ petitions, taking note of the illegal call for hartal made by them on 22.9.2022 for scheduling the hartal on the next date i.e., 23.9.2022.

1. Popular Front of India,
represented by State General Secretary.
2. Sri.A. Abdul Sathar,
State General Secretary
Popular Front of India,
Kerala State Committee

2. In our order dated 7.1.2019, we took note of the peculiar circumstances in the State of Kerala where calls for hartal, which ordinarily would not be viewed as illegal, have over the years come to carry an implied suggestion that the general public if they did not

co-operate with those calling the hartal, might face threats of violence or actual violence. In that context, we had observed as follows at paragraph 7 of the order dated 7.1.2019:

“

7. We feel that directions have to be issued to ensure that a call for a hartal/general strike does not have the effect of affecting the fundamental rights of those who do not align with the cause of those calling for the hartal/general strike. Such directions which are necessitated on account of the State's experience with hartals/strikes in the last few years must also ensure that sufficient time is given to the State/District administration to put in place safeguard measures to avoid any harm to those who choose not to support a call for hartal/general strike. Taking cue from the provisions under the Industrial Law of this country, we feel that as an interim measure, and pending disposal of these writ petitions, a balance can be struck between the fundamental right of a person, including a political party, to call for a peaceful hartal or general strike, and the fundamental rights of those who choose not to align with the said persons. Our law contemplates that when there is a conflict of fundamental rights, the law must lean in favour of the paramount collective interest (See: Mazdoor Kisan Shakthi Sangathan v. Union of India - AIR 2018 SC 3476). In the instant cases, the rights of the majority of private citizens, including students and daily wage workers to pursue their academic pursuits or earn their livelihood, would definitely outweigh the fundamental right of persons calling for the strike/hartal. We therefore direct that any person, including any political party or other Association of persons, that proposes to call for a general strike or hartal, shall give 7 clear days' public notice of its intention to do so. The said period of seven clear days will, in our view, enable citizens who are opposed to the call for hartal/strike to approach this Court with their apprehensions as regards such call, and this Court can then examine the legality of such call for hartal/strike. The said notice period would also, in our view, enable the State/District administration to take such measures as are necessary to safeguard the interests of the people of this State, in the event of any hartal/strike being permitted to be conducted in a lawful manner. We make it clear that hartals/strikes called without adhering to the above procedure, would be deemed illegal/unconstitutional, and while the same would entail adverse consequences to the person/party calling for the hartal, the said person/party would also be liable, on the principles of strict liability, for any loss/damage caused to citizens and government pursuant to the call for hartal/general strike.

.....”

3. Despite the aforementioned order, which made it clear that flash hartals, namely those hartals/strikes called without adhering to the procedure of giving seven days clear public notice, would be deemed illegal/unconstitutional entailing adverse consequences to the persons/party calling for the hartal, apart from visiting the person/party with liabilities for any loss, damage caused to the citizens and Government pursuant to the call for hartals/general strike, we note that a call for a flash hartal has been made yesterday by the Popular Front of India.

4. The action of the aforementioned persons in calling for the hartal without following the procedure contemplated in our earlier order, *prima facie*, amounts to contempt of the directions of this Court in the order aforementioned. While we are *suo motu* initiating separate action for contempt of this Courts order, dated 7.1.2019, we issue the following directions in the wake of the situation that has now arisen, where an illegal call for hartal has been made by the aforesaid persons, to the prejudice and inconvenience of the general public:

- (1) The police establishment in the State shall ensure that adequate measures are put in place to prevent any

damage/destruction to public/private property of Government/citizens who do not support the call for hartal. In particular, the police shall also take steps to monitor any such activity by the supporters of the illegal hartal and shall place before this Court a report giving details of such instances and the extent of damage, if any, caused to public/private property. The said details would be necessary for this Court to take remedial action to recover such losses from the perpetrators of the illegality.

(2) The police establishment shall also keep in mind the provisions of the relevant Penal Laws, including the provisions of the Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019 as also the provisions of Section 188 of the Indian Penal Code while registering cases against those found to be flouting the law. Adequate police protection shall also be granted to all public utility services that apprehend violence, at the hands of those supporting the illegal hartal. We take note of the submission of the learned Director General of Prosecution Sri.T.A.Shaji that Circulars/instructions to the above effect have already been issued by the State Police Chief last evening.

(3) We note with some concern, that in the Media reports about the flash hartal today, there is a mere mention of the call for a flash hartal, without mentioning the details of the interim order passed by this Court, which has the effect of rendering such calls for hartal without seven days public notice, as illegal. We, therefore, deem it necessary to once

again request the Media to ensure that whenever such illegal flash hartals are called for, and it is apparent that the said hartal called is in violation of the orders passed by this Court, the public be duly informed of the said fact. This, in our view, would suffice to a large extent, in allaying the apprehensions of the general public as regards the legality of the call for hartal and also dissuade providers of public utility services from heeding to such calls for illegal hartals in future.

Post these writ petitions on 29.9.2022 for the report of the State Government.

**Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
MOHAMMED NIAS C.P.
JUDGE**

prp