

**A.K.JAYASANKARAN NAMBIAR, J.
&
MOHAMMED NIAS C.P., J.**

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

Dated this the 29th day of September, 2022

ORDER

A.K. Jayasankaran Nambiar, J.

In our last order dated 23.09.2022, we had impleaded the following persons (1) Popular Front of India, represented by State General Secretary and (2) Sri.A. Abdul Sathar, State General Secretary, Popular Front of India, Kerala State Committee as additional respondents in these writ petitions, and issued notice to them, taking note of their illegal act of calling for a flash hartal in the State without complying with the requirement of giving seven days public notice for the same. The said action being in violation of our earlier interim order dated 7.1.2019, we had also separately initiated *suo motu* contempt proceedings against them.

2. While the violent acts against people and property were being carried out even as we were considering the above writ petitions on 23.09.2022, we directed the State Administration through the interim order passed on that day to take immediate

action to prevent the violent attacks that were being unleashed on an unsuspecting public, and to take steps to safeguard public and private property against vandalism and destruction at the hands of the hartal supporters, and to file a report before us before the next date of posting.

3. Today, when the matter was taken up for orders, a report was placed before us by the Government Pleader wherein details of the steps taken by the State Government to prevent untoward acts of violence as also the extent of destruction caused to public property have been enumerated. The relevant extract of the report reads as follows:

“13. Strict and unbiased legal action was initiated in all instances of violations reported during Harthals and legal provisions under Indian Penal Code, Kerala Public Ways (Restrictions of Assemblies and Possessions) Act 2011, Prevention of Damage to Public Properties Act 1984 and Prevention of Damage to Private Properties Act 2019 etc. were invoked appropriately.

14. It is further submitted that the directions issued by the Hon'ble Supreme Court on Destruction of Public and Private Properties, as well as the directions and guidelines issued by the various High Courts were strictly followed in its letter and spirit to ensure normal life of the public during Hartal.

15. It is respectfully submitted that police has made 687 preventive arrests in the State of Kerala to avoid any untoward

incidents related to the Harthal call by PFI.

16. It is also submitted that after being taken such preventive measures, the Additional Respondent Party had indulged in violent incidents such as blocking public pathways, preventing vehicular traffic, attacking vehicles, pedestrians, shops and other establishments and throwing bombs at few places. The harthal sympathizers also obstructed Police by applying force with an intention to deter them from carrying out their official duty.

17. It is submitted that the loss to the public property was mainly borne by the Kerala State Transport Corporation. The PFI workers attacked the KSRTC buses at several places and smashed the wind screen. KSRTC was suffered an estimated loss to the tune of 25 lakhs approximately. Stoppage of the schedule was also caused loss to the Kerala State Road Transport Corporation and hence the loss incurred to the KSRTC will be much higher. In few incidents the Drivers/Passengers of the ill fated bus also sustained injuries. For the destruction of Public Properties a total of 63 cases were registered and 48 arrests were already made. More arrest will be made in the coming days. The damage to the Public Road couldn't be calculated, since the reports from the experts are not received.

18. Private vehicles and private establishments are also suffered from the wrath of the Harthal sympathizers. A total number of 50 cases were registered in the State and a loss to the tune of Rs.12,31,800/- was estimated approximately. 60 accused persons were arrested on the day of harthal itself.

19. The blockage of public path was also witnessed in some parts of the State and a total number of 118 cases were registered in this connection and 1054 accused persons were arrested.

20. Apart from the above, few incident of attack against Police personnel were also reported during the harthal day. In Eravipuram Police Station, Kollam City a motor cycle born PFI activist had attacked and made a murderous attempt on Police Personals on duty. In this connection a case in Crime No.1268/2022 U/s 294(b), 506, 333 & 307 IPC was registered and the case is being investigated.

21. Almost all the accused in the incidents that took place on the day of PFI Harthal were identified and many of them were already arrested and the remaining will be arrested soon. Till 26.09.2022, 417 FIR were registered in connection with the incidents during Harthal, 1992 persons were arrested and 687 preventive arrest were made.”

4. A similar report, together with supporting documents, has also been filed on behalf of the KSRTC along with their application for impleadment/direction, wherein the details of loss suffered by the Corporation is shown as follows:

Sl.No.	Description	Amount
1	Cost of damage (repair charges)	9,71,115
2	Loss of schedules on 23/09/2022 due to cancellation of trips	3,95,82,969
3	Loss of schedules during the repair of the buses	86,53,830
4	Total loss of work force due to cancellation of schedules	14,13,468
Total		5,06,213,82

5. We are of the firm view that the 12th and 13th respondents are wholly and directly responsible for the injuries inflicted on the

members of our citizenry by their supporters, as also for the damage/destruction caused to public/private property by the said persons. We are justified in drawing this conclusion based on the judgments of the Supreme Court in ***Re: Destruction of Public and Private Properties v. State of Andhra Pradesh - [2009 (2) KHC 374]; Tehseen S Poonawalla v. Union of India - [2018 KHC 6513] and Kodungallur Film Society and Another v. Union of India and Others - [2018 (5) KHC 297]***. The tenor of our earlier order of 2019 was unambiguous when it stated that calls for flash hartals would be viewed as illegal and unconstitutional acts, irrespective of the person, political party or association of persons which called for the same, and that those who violated the said order would be liable for the consequences that flowed from their illegal acts.

6. It is of some concern that notwithstanding our declaration that the very calling of a flash hartal was an illegal and unconstitutional act, the State Administration did virtually nothing to prevent the hartal organizers from going ahead with their illegal demonstrations and incidental road blockages on 23.09.2022. The media reports also reveal that the police force played only a passive

role in dealing with the situation till we pronounced our order dated 23.09.2022, and began taking effective steps only thereafter. An effective compliance with our earlier order dated 7.1.2019 would have necessitated the State administration to ensure that no public procession, gathering or demonstration took place in the State if the same was in connection with a call for a flash hartal.

7. We once again re-iterate that our declaration and directions in the order dated 7.1.2019 were solely in connection with flash hartals and not in relation to general strikes or demonstrations that do not call for the participation of the general public or intend to disrupt the free movement of people and vehicles, or to peaceful hartals/demonstrations conducted after due public notice. While the very call for a flash hartal is illegal and unconstitutional, as it is not preceded by adequate public notice, the holding of peaceful demonstrations of the nature described above is one that can be justified as traceable to the fundamental rights of the demonstrators under Article 19 (1)(a). It must be borne in mind, however, that even the latter right is not an absolute one and, on every occasion where a demonstration takes place, a balancing exercise has to be carried out between the rights of the

demonstrators under Article 19 (1)(a) and those of the general public under Article 21 and if the said rights come into conflict with each other, the former must give way to the latter (*See: Mazdoor Kisan Shakthi Sangathan v. Union of India - AIR 2018 SC 3476*)).

8. Citizens of the State cannot be made to live in fear solely because they do not have the organized might of the persons or political parties at whose instance such violent acts are perpetrated. Our constitution guarantees to each individual in society certain fundamental rights, and the said rights are to be respected and guaranteed not only by the State as a governing body but also by fellow citizens who must view such respect for others' rights as part of their fundamental duties under the constitution. It might be apposite to emphasise at this juncture that Article 51-A (e) in Part IV-A of our Constitution, obliges every citizen to promote harmony and spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women, while Article 51-A (i) obliges every citizen to safeguard public property and to abjure violence. A citizen of our country

cannot therefore, either individually or collectively, ignore the above constitutional mandate. It is the rule of law, and not the rule of men or mobs that legitimises governance under our democratic Constitution.

9. The additional 12th and 13th respondents herein cannot feign ignorance of the above constitutional obligations more so when they claim to be representing members of a pluralistic society. Their action of inciting their supporters and goading them into the violent acts that were witnessed across the State on 23.09.2022 cannot be legally countenanced. They must be held responsible and made accountable for their illegal actions. We therefore deem it appropriate to issue the following directions:

- The additional 12th and 13th respondents shall, within two weeks from today deposit an amount of Rs.5.20 crores with the Additional Chief Secretary, Home Department, towards the damages estimated by the State Government as well as the KSRTC as arising from the destruction/damage caused to public/private property in the State.
- If the said amount is not deposited by the additional 12th and 13th respondents within the above period of two weeks, the State Government, through the Additional Chief Secretary, Home Department shall take immediate steps, *inter alia* by invoking the provisions of the

Revenue Recovery Act, to proceed against the assets/properties of the additional 12th respondent organization, as well as the personal assets of its office bearers including the Secretary, the additional 13th respondent herein, for realisation of the aforesaid deposit amount.

- The amounts so realized shall be purely provisional, and shall be duly accounted for and held by the State Government in a separate and dedicated account, for disbursal to those claimants who are identified by the Claims Commissioner as entitled to such amounts. The respondents shall also be liable to such further amounts as are found to be payable to the claimants in the adjudication proceedings before the Claims Commissioner.

- The State Government shall also ensure that in all the cases filed before the various Magistrates/Sessions Courts in the State in connection with offences committed during the flash hartal called on 23.09.2022, the 13th respondent herein is arrayed as an additional accused.

- The Magistrates/Sessions courts in the State, while considering the bail applications of those persons against whom cases have been registered by the Police in connection with the flash hartal that was called on 23.09.2022, shall ensure that payment of any amount quantified towards damage/destruction of property by any of the accused, is insisted from the accused concerned as a condition for the grant of bail to him.

- The State Government shall take immediate steps to ensure that secretarial assistance, including office space/infrastructure, is provided

to Sri.P.D.Sarangadharan, the Claims Commissioner identified by this Court, so that the office of the Claims Commissioner is rendered fully functional within three weeks from today and the claims instituted in connection with the hartal that was called on 23.09.2022 can be adjudicated without delay.

Post these matters on 17.10.2022 for the State Government to report on the action taken pursuant to the above directions.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
MOHAMMED NIAS C.P.
JUDGE

prp