BLOGS

Important Judgement for CLAT PG 2024: Amit Sahni v. Commissioner of Police

Indrasish Majumder · 10 Feb 2023

Date : September 7, 2020

Bench: Justice Sanjay Kishan Kaul, Justice Aniruddha Bose, and Justice Krishna Murari

Facts of the Case

In December 2019, the Indian Parliament passed the Citizenship (Amendment) Act, 2019, which led to protests in different parts of the country. The Shaheen Bagh protest in Delhi is one of them. After a writ was filed against the Shaheen Bagh protest, the High Court directed the respondent authorities to take the necessary steps but gave no specific order or direction, and the situation remained the same.

Thereafter, advocate Amit Sahni (the Appellant) filed the present appeal in the Supreme Court against the order of the High Court, arguing for the removal of the protest site. The applicants contended that they had an absolute right to protest both in respect of number and space under Articles 19(1)(a) and 19(1)(b) of the Constitution of India.

Issues dealt with in the Case

- Whether there is an absolute right of peaceful protest under Articles 19(1)(a) and 19(1)(b) of the Constitution of India?

Judgement

The Supreme Court observed that the public ways and public spaces cannot be occupied indefinitely, the rationale being that although Article 19 enables every citizen to assemble peacefully and protest against the actions or inactions of the state, the right comes with certain

obligations and duties.

The Hon'ble Court referred to the case of Mazdoor Kisan Shakti Sangathan v. Union of India (2018) 17 SCC 324, in which it was ruled that "each fundamental right, be it of an individual or of a class, does not exist in isolation and has to be balanced with every other contrasting right." In this case, an attempt was made to reach a solution where the rights of protestors were balanced with those of commuters.

The Supreme Court held that there was no hesitation in concluding that such occupation of public ways, whether at the site in question or anywhere else, for protests is not acceptable and the administration ought to take action to keep the areas clear of encroachments or obstructions. It also said that protests need to be in "designated places" without any indication of the method of designation or what kinds of spaces can be designated.

It said that it has no doubt that it is the responsibility of the respondent authorities to take suitable action, but that such suitable action should produce results. In what manner the administration should act is their responsibility, and they should not hide behind Court orders or seek support therefrom for carrying out their administrative functions. The Justices were of the opinion that if democracy and dissent were to go hand in hand, the State had to respect and encourage the constitutional rights of the people. Similarly, the people had to oblige the reasonable restrictions placed on their rights by the State, pertaining to the sovereignty and integrity of India, and public order.

Dismissal of Review Petition

The 3 judge bench that gave the judgement also examined the review petition challenging the Shaheen Bagh judgement. It reiterated its stand that while spontaneous protests could be allowed, prolonged protests would under no circumstance be allowed in public spaces.

Brief Take on the Judgement

The judgement was pronounced much after the protests at Shaheen Bagh had ended; however, it does have persuasive value. It was also criticized for being ambiguous and restrictive on the right of protestors to protest/ assemble peacefully.

You can find the judgement here: https://indiankanoon.org/doc/145656971/