

Restrictions imposed On *Dahi Handis*

- Prashant Narang

A two judge-bench in the Bombay High Court in the case of *Mrs. Swati Sayaji Patil v State of Maharashtra and Ors. CRPIL. 56-14, PIL. 95-13, PILL. 97-14 & NML. 456-14* held that children below the age of 18 would not be permitted to take part in *Dahi Handi* festival and passed a series of directions for the government, organizers and municipal authorities. On August 14, 2014 the Supreme Court in Petition(s) for Special Leave to Appeal (Crl.) CRLMP No(s). 16421/2014 issued an order holding the operation of para 4, 5, 7 and 8 of the Bombay High Court order.

Facts

Petitioners sought an appropriate writ or order directing the respondent – State of Maharashtra to prevent minors from taking part in *Dahi Handi* as several *Govindas* (performers) fall and sustain permanent injuries. The State of Maharashtra had issued a circular containing direction after inquiry in case no. 205/2013-14 under Section 13(1) and 14 of the Maharashtra Commission for Protection of Child Rights Act, 2005.

Judgment

The Bench noted that since the age of children has been increased from 16 to 18 years under the Juvenile Justice (Care and Protection of Children) Act 2000 and also Protection of Children from Sexual Offences Act 2012, any child below the age of 18 should be protected and prohibited from taking part in *Dahi Handi*.

The public prosecutor compared the UK law, i.e. Children's Dangerous Performances Act, 1879 prohibiting use of children in public exhibition or performance with S.143B of Maharashtra Police Act restricting two dangerous practices - self-burial and self-sealing. Accordingly, the Bench requested the State to amend the said section to include *Dahi Handi* specifically regulating height of pyramid and use of children.

The Bench goes further directing the State to make a suitable legislation in respect of Bombay Public Trust Act, 1950 or the Societies Registration Act, 1840. The Bench also directed the charity commissioner to issue directions under Section 41C mandating permission of the charity commissioner for collection of monies other than Public trust collecting monies for religious and charitable purposes. The Bench further directs the State Government: to issue circular directing that height of *Dahi Handi* is not more than 20 ft; to ensure that *Dahi Handi* Organisers provide helmet, safety belts to *Govindas* and also cushion layers at the venue of the performance; to determine the size of the cushions in terms of the thickness of the earth; and, to constitute a local monitoring committee consisting of (a) in-charge of the police station; (b) ward officer of the corporation; (c) the local elected representative or any other respected person. There are many more directions for organizers, State government and the municipal corporation.

Analysis

The order records submissions from the petitioners and suggestions by Public Prosecutor but none by other relevant stakeholders especially the organizers. There is no indication in the order whether organisers were impleaded as parties to the hearing and were duly heard. The order is clearly in breach of principles of natural justice.

Secondly, this law-making exercise is an encroachment into the domains of the executive and legislature. Moreover, the regulations imposed in the form of judicial directions will result in various kinds of costs, i.e. compliance, enforcement and penalty costs for all stakeholders – State Government, Local Municipal Authority and the organizers. Regulation is indeed more corruptible than tort law for such regulation is very likely to create license-permit raj resulting in consensual bribery.

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