



HUMAN RIGHTS DEFENDERS' ALERT - INDIA

NATIONAL SECRETARIAT

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HRDA/NHRC-SM/South/GOA/14/01/2024

January 25, 2024

To
Justice (retd.) Mr. AK Mishra
Chairperson,
National Human Rights Commission,
Manav Adhikar Bhawan,
Block-C, GPO Complex, INA,
New Delhi –110 023
Email: chairnhrc@nic.in

Respected Justice Mishra,

Subject: Requesting to initiate suo moto proceedings in the case of detention of villagers on January 13, 2024 at Mayem village, Bicholim, Goa for protesting against transportation of ore.

We are writing to you in bring to your kind attention that on January 13, 2024 the villagers of Mayem village, Bicholim Goa protested against the transportation of ore through the internal village roads by trucks. Aggrieved by their protest, police personnel under the guidance of deputy collector Rhoan Kaskar detained five protestors.

The village has three schools, the village road is being damaged due to transportation and it is a source of pollution that has affected the entire villagers. The Villagers also approached the Hon'ble High Court of Bombay bench at Goa through a public interest litigation No. 6 of 2024.

According to the High court order dated 17 January 2024,

“11. Almost 17,696.69 MT of mineral ore out of the total quantity of 23,667.620 MT was already transported between 08.01.2024 and 17.01.2024...about 5,970.93 MT of ore remains to be transported and there is no other alternate route to transport this ore to the Jetty.

15. The Ministry of Environment, Forest and Climate Change has issued the OM dated 29.10.2014. This OM incorporates conditions as a part of mitigation

measures to avoid the adverse impact of mining operations on habitations/villages that are surrounded by mining lease areas.

16. Clause 2(i) of the OM dated 29.10.2014 reads as follows: "Transportation of the minerals by road passing through the village shall not be allowed. A "bypass" road should be constructed (say, leaving a gap of at least 200 meters) for the purpose of transportation of the minerals so that the impact of sound, dust and accidents could be mitigated. The PP shall bear the cost towards the widening and strengthening of existing public road network in case the same is proposed to be used for the Project. No road movement should be allowed on existing village road network without appropriately increasing the carrying capacity of such roads."

19...in this case, the DMG and GSPCB have tried to pass the buck to each other and in the bargain, both these authorities, at least prima facie, have gone by the routes submitted by the seventh respondent, i.e. the purchaser of the ore and its transporter without any of them, themselves applying their minds. As noted above, there was no clarity on the roles each of these authorities were required to play in this all-important issue of transportation of ore through villages.

21. ...The seventh Respondent will restrict the trips to only fifty per day and that too, between 10.00 a.m. to 12.00 noon and 2.00 p.m. to 5.00 p.m. ...this schedule will be strictly adhered to until the balance of 5,970.93 MT of ore is transported.

25. Installation of close circuit cameras and additional monitoring stations must be completed as expeditiously as possible and preferably within the next two to three days. This is because until then, the seventh respondent should not continue with the transportation through the Mayem village.

28. Since there is no clarity on the procedures for granting permissions for transportation of ores through villages, and at least prima facie, we get the impression that DMG and GSPCB are passing the buck on each other without each of them assuming any responsibility, we direct that until the next date, no permissions shall be granted for transportation of ore by private parties through villages, without the leave of this Court."

The High court observed that transportation of trucks through the village is causing pollution and there is no clarity of roles and lack of monitoring in issue of transportation of ore through villages. It also ordered Installation of close circuit cameras and additional monitoring stations expeditiously and ordered to stop the transportation till then.

The incident has been reported widely in the media and a link is shared here for your reference - [Need better quality with passing: Igor Stimac | Goa News - Times of India \(indiatimes.com\)](https://www.indiatimes.com/news/india/need-better-quality-with-passing-igor-stimac-go-news-times-of-india-20180711)

Media reference to this incident is shared for your reference - [Don't issue permits to transport ore through villages, HC tells govt | Goa News - Times of India \(indiatimes.com\)](https://www.indiatimes.com/news/india/dont-issue-permits-to-transport-ore-through-villages-hc-tells-govt-go-news-times-of-india-20180711)

The Right to protest is recognized under several international instruments, including:

- I. The International Covenant on Economic, Social and Cultural Rights (Article 8),
- II. Article 5 (a) of the Declaration on Human Rights Defenders 1998 states that “For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, to meet or assemble peacefully”.

The Right to protest is an essential element of the right to participate in any democratic dispensation, and restrictions imposed on this right must be closely scrutinized with respect to their necessity and reasonableness (A/61/312, para. 56)

Human rights defenders play a pivotal role in ensuring that protest and criticism are expressed in a peaceful and constructive manner. States should legitimize and empower human rights defenders in this role and encourage defenders to take full ownership of this role (A/62/225, para. 102).

Supreme court in Mazdoor Kisan Shakthi Sangathan v. UOI 2018 17 SCC 32 held that: -

“54. The right to protest is thus recognised as a fundamental right under the Constitution. This right is crucial in a democracy which rests on the participation of an informed citizenry in governance. This Right is also crucial since its strengths representative democracy by enabling direct participation in public

affairs where individuals and groups are able to express dissent and grievances, expose the flaws in governance and demand accountability from the state authorities as well as powerful entities. This right is crucial in a vibrant democracy like India but more so in the Indian Context to aid in the assertion of the rights of the marginalised and poorly represented minorities.

59.A particular fundamental right cannot exist in isolation in a watertight compartment. One fundamental right of a person may have to coexist in harmony with the exercise of another fundamental right by others and also with reasonable and valid exercise of power by the state in the light of the directive principles of social welfare as a whole. The court's duty is to strike a balance between competing claims of different interests.”

In *Anita Thakur v. State of J&K*, (2016) 15 SCC 525 it was observed the Supreme court that:-

“12...holding peaceful demonstration in order to air their grievances and to see that their voice is heard in the relevant quarters is the right of the people. Such a right can be traced to the fundamental freedom that is guaranteed under Articles 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution. Article 19(1)(a) confers freedom of speech to the citizens of this country and, thus, this provision ensures that the petitioners could raise slogan, albeit in a peaceful and orderly manner, without using offensive language. Article 19(1)(b) confers the right to assemble and, thus, guarantees that all citizens have the right to assemble peacefully and without arms. Right to move freely given under Article 19(1)(d), again, ensures that the petitioners could take out peaceful march. The “right to assemble” is beautifully captured in an eloquent statement that “an unarmed, peaceful protest procession in the land of “salt satyagraha”, fast-unto-death and “do or die” is no jural anathema”. It hardly needs elaboration that a distinguishing feature of any democracy is the space offered for legitimate dissent. One cherished and valuable aspect of political life in India is a tradition to express grievances through direct action or peaceful protest. Organised, non-violent protest marches were a key weapon in the struggle for Independence, and the right to peaceful protest is now recognised as a fundamental right in the Constitution.”

15. Thus, while on the one hand, citizens are guaranteed fundamental right of speech, right to assemble for the purpose of carrying peaceful protest processions and right of free movement, on the other hand, reasonable restrictions on such right can be put by law. Provisions of IPC and CrPC, discussed above, are in the form of statutory provisions giving powers to the State to ensure that such public assemblies, protests, dharnas or marches are peaceful and they do not become “unlawful”. At the same time, while exercising such powers, the authorities are supposed to act within the limits of law and cannot indulge into excesses. How legal powers should be used to disperse an unruly crowd has been succinctly put by the Punjab and Haryana High Court in *Karam Singh v. Hardayal Singh* [*Karam Singh v. Hardayal Singh*, 1979 Cri LJ 1211: 1979 SCC OnLine P&H 180] wherein the High Court held that three prerequisites must be satisfied before a Magistrate can order use of force to disperse a crowd:

First, there should be an unlawful assembly with the object of committing violence or an assembly of five or more persons likely to cause a disturbance of the public peace.

Second, an Executive Magistrate should order the assembly to disperse.

Third, in spite of such orders, the people do not move away.”

The Supreme Court in *Mazdoor Kisan Shakti Sangathan v. Union of India*, (2018) 17 SCC 324 : 2018 SCC OnLine SC 724 at page 366 held that:-

“54. *The right to protest is, thus, recognised as a fundamental right under the Constitution. This right is crucial in a democracy which rests on participation of an informed citizenry in governance. This right is also crucial since it strengthens representative democracy by enabling direct participation in public affairs where individuals and groups are able to express dissent and grievances, expose the flaws in governance and demand accountability from the State authorities as well as powerful entities. This right is crucial in a vibrant democracy like India but more so in the Indian context to aid in the assertion of the rights of the marginalised and poorly represented minorities.”*

Supreme Court in *Ramlila Maidan Incident, In re*, (2012) 5 SCC 1 : (2012) 2 SCC (Civ) 820 : (2012) 2 SCC (Cri) 241 : (2012) 1 SCC (L&S) 810 : 2012 SCC OnLine SC 186 at page 99 held that:-

“245. Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of a democratic system. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquillity, as it may disturb the social order. This delegated power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to subvert them.

We believe that the detention of the villagers is an act of reprisal against their activism.

We urgently appeal to you to exercise Section 12 (a) of the Protection of Human Rights (Amendment) Act, 2019, and take *suo moto* cognizance of this incident and initiate an independent inquiry through NHRC's investigation wing.

We hope and expect that the NHRC will intervene in this case impartially and in a time bound manner.

Yours Sincerely,



(Henri Tiphagne)

National Working Secretary