

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA**

.....

ORIGINAL APPLICATION No. 16/2016/EZ

SUBHAS DATTA

Vs

VISVA BHARATI UNIVERSITY & ORS

IN THE MATTER OF:

Subhas Datta
S/o Late Baneswar Datta,
25/1, Guitendal Lane,
PO & PS, District-Howrah,
PIN : 711 101, West Bengal

..... Applicant

V e r s u s

1. Visva Bharati University
Through its Registrar,
Shantiniketan-731235
District Birbhum, West Bengal
2. State of West Bengal through
The Chief Secretary,
Nabanna, HRBC Building,
325, Sarat Chatterjee Road,
Howrah-711102
3. Department of Environment,
Government of West Bengal
through the Principal Secretary,
Poura Bhavan, Salt Lake City,
Calcutta-700 106
4. Department of Municipal Affairs
Govt. of West Bengal, through
The Principal Secretary,
Writers' Buildings,
Calcutta-700 001
5. West Bengal Pollution Control Board
Through the Member Secretary,

Paribesh Bhawan, 10-A, Block LA
Sector-III, Salt Lake City,
Calcutta-700 098

6. Shantiniketan Trust through
The Secretary,
P.O. Shantiniketan,
Birbhum-731235
West Bengal

7. Bolpur Municipality,
PO Bolpur,
Birbhum, 731204.
West Bengal

8. Sriniketan Shantiniketan Development Authority,
(SSDA), Pravat Sarani, Bolpur,
Birbhum-731204,
West Bengal

9. Bolpur Station Road Byabasyee Welfare Samity,
Reg. Office : BVolepur Station Road,
PO & PS : Bolpur, Dist. Birbhum,
PIN 731204,
Reg. No. S/2116674
Applicant in MA 1265/2016/EZ

.....Respondents

COUNSEL FOR THE APPLICANT :

In person

COUNSEL FOR RESPONDENTS:

Mr. Subhradip Ray, Advocate, Respondent No. 1

Mr. Bikas Kargupta, Advocate, Respondents No. 2 to 4

Mr. Dipanjan Ghosh, Advocate, Respondents 5

Mrs. Durba Banerjee, Advocate, Respondent No. 6

Mrs. Malabika Roy Dey, Advocate, Respondent No. 7

Mr. Sidhartha Ghosh, Advocate, Respondent No. 8

Mr. Birendra Kumar Singh, Advocate, Respondent No. 9/Intervener

PRESENT:**Hon'ble Mr. Justice S.P.Wangdi, Judicial Member****Hon'ble Prof. (Dr.) P. C. Mishra, Expert Member****Reserved on: 12.10.2017****Date of Judgement: 01.11.2017**

1. Whether the Judgment is allowed to be published on the net? Yes
2. Whether the Judgment is allowed to be published in the NGT Reporter? Yes

J U D G E M E N T**Per Hon'ble Mr. Justice S.P.Wangdi, JM:**

The Applicant has preferred this Original Application having been alarmed by the pollution caused during the Poush Mela, 2015 held in the Visva Bharati University in the month of December.

2. During the course of the proceedings all stake holders of the organisers of the Mela (Fair) were impleaded as Respondents and affidavits called for from them. The affidavits revealed that the primary reason for various pollution being caused to the environment was on account of the fact that the Mela which, as per tradition, was to be held only for three days get extended for more than 12 days as the fair was taken over by the elements alien to the traditional organisers. Such elements indulged in activities which were not contemplated in the object of the Mela envisaged by its founder, Maharshi Debendra Nath Tagore. The uncontrolled commercial activities gave rise to severe air, sound and other pollutions caused by the loud music played on DJs, use

of diesel generators not complying with the prescribed norms, indiscriminate disposal of various plastic items, thermocol, etc.

3. The details of the facts and circumstances involved in this case and various directions issued during the proceedings have been set out in detail in the order dated 20.12.2016 passed in M A No. 1265/2016/EZ arising out of the OA. For the sake of convenience we may reproduce the relevant portions of the order which reads as follows:-

“13.The foundational cause for bringing the OA was the immense pollution caused during the Poush Mela held annually in the Visva Bharati University. It has been stated in the OA that lakhs of foot fall that descended on the University during the Mela held in the year 2015 caused tremendous air pollution. The SPM level had shot up ten times above the safe limit. Hundreds of vendors were seen doing business sitting on the ground exposing themselves and their wares to pollution caused by dust. Children and the elderly faced the same situation as the water sprinkling system was found to be inadequate. Although it is claimed that the University area and its vicinity is a plastic free zone, there was no check and control in the use of plastic/thermocol products during the event. Solid and plastic wastes were found dumped and strewn all over. Solid waste, its management and disposal were found to be in complete neglect. Hundreds of open ovens were being used burning fossil fuel causing severe environmental degradation and making the area vulnerable to fire accidents. Black generators were being used openly in violation of the prohibition under notification issued by the Environment department, Govt. of West Bengal. Heavy noise pollution was being caused by the use of individual public address system by the stall owners for making announcements of their wares resulting in a cacophony of noise. Disposal of waste, both plastic and solid, after the event concluded was not carried out properly but were found left scattered for several days. In many of the sites, wastes had been found burnt polluting the atmosphere in the area. The extant Municipal Solid Waste (Management and Handling) Rules, 2000 and the Plastic Manufacture, Sale and Usages Rules 1999 were brazenly flouted. The

guidelines issued by the Environment Department for holding fairs were not followed.

14. In the aforesaid premises, directions had been sought for against the respondents *inter alia* not to hold and/or allow Poush Mela, 2016 without complying with the guidelines framed by the Environment Department and to direct the respondents to undertake all necessary measures for arresting air/sound pollution during the Mela as well as for direction not to use any items made of plastic which were not as per the specification prescribed in that regard.

15. Since the primary object of the OA was directed at Management of municipal solid and plastic wastes generated in the Visva Bharati University, we were of the view that the Bolpur Municipality should take initiative to deal with the menace in collaboration with the University authorities. However, when it was stated that the Visva Bharati University did not fall within jurisdiction of the Bolpur Municipality, the Respondent No. 7, direction was issued upon the State respondents to consider as to whether that could be done in order to enable Municipality to undertake collection and disposal of municipal waste from the university and also to enforce other municipal regulations for ensuring clean environment in the University.

16. The response of the State Respondents to our suggestion was prompt and, it is a matter of appreciation that the process of bringing the university within the municipal jurisdiction was initiated and is said to be in progress.

17. We were also quite surprised to note from the affidavit filed on behalf of the WBPCB, that neither the Visva Bharati University nor any other authority had obtained authorisation from the Board for setting up waste treatment process and disposal facility in compliance with the extant Municipal Solid Waste (Management & Handling) Rules, 2000 and the Plastic Wastes (Management & Handling) rules, 2011. It was specifically averred that disposal of plastic waste was the responsibility of the local municipal authority as per provisions of Rule 4(b), 6(c) and 6(d) of the Plastic waste (Management & Handling) Rules, 2011. However, we have already observed that it is the case of the Bolpur Municipality that the Visva Bharati University does not fall within their jurisdiction.

18. In the backdrop of the above facts and circumstances, vide order dated 10.5.2016 we had directed the District Magistrate, Birbhum, to

take necessary steps in conjunction with the Bolpur Municipality to ensure effective implementation of the rules within the university premises in consultation with the University authorities and to file a status report.

19. The District Magistrate, Birbhum, in his report stated that a meeting was conducted by him on 1.6.2016 and 28.6.2016 in the presence of the Registrar (Acting), Visva Bharati University, Respondent No.1 and other University officials, the Chairman and Executive Officer of the Bolpur Municipality, Respondent No.7, the Executive officer, SSDA, the respondent No. 8 and the SDO, Bolpur. In The meeting, decisions were taken on the holding of the Poush Mela and on the disposal of waste, bio-medical waste, use of loud speakers, etc.

20. Without going further into the details, it was noted by us that there was convergence of views amongst the parties and no dispute existed on the following :-

- i) There was no effective mechanism for management of solid and plastic waste in the University.
- ii) That the Poush Mela was traditionally being held for three days i.e. on 7th, 8th and 9th of the month of Poush as per BS.
- iii) The University, respondent No. 1, grants permission to the Santiniketan Trust, Respondent No. 6, to organise the Mela.
- iv) The Mela is required to be held and guided by the terms of the Trust Deed executed on March 20,1888 by Maharshi Devendranath Tagore in its letter and spirit.
- v) Although the Mela, as per the tradition, is required to be wound up after the third day, in reality it continues since the recent past for 10 to 12 days coerced by strangers which contributes immensely to accumulation of plastic and solid waste making it impossible for the teachers, staff and students to perform their normal educational activities in the class rooms, laboratories, offices, etc.
- vi) The Santiniketan Trust after being authorised to organise the Mela, obtains permission from the police authorities, fire brigade, district administration, BL & LRO, Bolpur Municipality to run the Mela for three days, but after that which extends to 10 to 12 days it is held without electricity, with no fire or police protection and without any volunteers to oversee discipline.

vii) In the absence of electricity, stall owners runs black generators and use loudspeakers till late in the night.

21. The above, amongst others, are the undeniable facts stated categorically also by the respondent No. 1, Visva Bharati University in their affidavit-in-opposition filed on 8.7.2016.

22. During the course of arguments, it had been admitted by all, particularly, the Applicant, the Visva Bharati University, respondent No. 1 and the Santiniketan Trust, Respondent No. 6, that after the official three days, unscrupulous elements take over the event by force which continues without any control and regulations sometimes beyond 12 days in the manner stated above.

23. It is in these circumstances vide order dated 9.8.2016, we had observed as under :

“ In these circumstances, we are of the considered view that the University should seriously consider as to whether they would permit running of the Poush Mela within its campus in the manner in which it is being run today or would it confine itself to the activities for which it was originally envisaged.”

24. We may also refer to the impugned order dated 4.10.2016, relevant portions of which are reproduced below:

“ On 9th August, 2016, we had taken note of the affidavit filed on behalf of the Respondent No. 8, the District Magistrate, Birbhum district dated 5.7.2016 and the decisions taken in the meeting held on 1.6.2016 and 28.6.2016 with regard to the conduct of “Poush Mela” in the Visva Bharati University.

We had expressed in that order that the responsibility for removal of garbage collected during the Mela being charged upon the University and the Shantiniketan Trust was not to our satisfaction and had accordingly directed that Bolepur Municipality should also be involved in taking responsibility of collection and disposal of garbage that also contained Plastic and Solid Municipal Wastes on payment of requisite fees as per rules. Accordingly, we had directed the State Govt. to consider as to whether the University could be brought under the Municipal Jurisdiction and to that effect an affidavit was called for. This part

of the order had been felt necessary for the long term waste management of the University, its collection and disposal.”

“ The other was the short term aspect connected with the “Poush Mela” with which we are seriously concerned. For the sake of brevity we need not repeat what we have already discussed on this except to observe that the “Poush Mela” ought to be held as per the object for which the Mela had been introduced by the Shantineta Trust following the noble tradition which Visva Bharati University exemplifies. We make it very clear that the Mela should be held only for three days as envisaged originally in the Deed of Trust.

This would mean that the Mela shall be run by the Mela Committee and shall be restricted only to the sale and exhibition of arts, crafts, traditional rural handicrafts, literature, etc., and hold intellectual, academic and literary discourses. In the process, it may be permissible to play classical and traditional music, songs and ballads. It certainly would not be permissible for the Mela Committee to dilute the object of the Mela as it has been done in the recent past. The Mela should be wound up without fail on the 4th day. Rest of the aspects shall be dealt with in accordance with the decisions taken in the joint meeting held under the chairmanship of the district Magistrate, Birbhum on 1st and 28th June, 2016.

The District Magistrate, Birbhum, shall act as observer for conduct of the Mela for all the 3 days and shall ensure that no other element enter the campus after the third day. To ensure this, he shall take assistance from the Superintendent of Police, Birbhum district for deployment of adequate number of police force to ensure smooth winding up of the Mela on the fourth day. The Superintendent of Police, Birbhum shall on his part, render all assistance to the District Magistrate.”

“In so far as outsiders carrying on with the Mela after the 3rd day is concerned, we would direct that the activity of such persons shall be permitted only outside the University area under the strict supervision and control of the Superintendent of Police and District Magistrate, Birbhum and the overall management and

disposal of garbage generated thereby under the Bolepur Municipality. Under no circumstances shall they be permitted to undertake any activity within the University during the "Pous Mela".

25. That apart, vide our order dt. 15.11.2016, which is the other order impugned in the MA, reiterating our order dated 14.10.2016, we had issued further directions prohibiting bursting of fire crackers at the beginning of Poush Mela which we reproduce below: -

" The third aspect which has been brought to our notice is the bursting of crackers at the beginning of the Poush Mela by the organisers. The applicant submits that this aggravates the adverse pollution condition already prevailing in the University to alarming levels. He submits that an appropriate order would be necessary to restrict such activity.

Upon hearing the Ld. counsel for the parties, it is revealed that bursting of crackers is not an essential practice connected with Poush Mela. It obviously appears to be a recently added embellishment which is avoidable considering the immense pollution potential of the fire crackers.

In views of this, we also direct that that there shall be no bursting of fire crackers at the beginning, during or at the end of the Poush Mela festival."

"We direct the Visva Bharati University, the Respondent No. 1, Shantiniketan Trust, the Respondent No. 6 and the Bolepur Municipality, the Respondent No. 7, to work in coordination with the District Magistrate and Superintendent of Police, Birbhum district, to ensure compliance of our directions and thereby achieve the object of having issued such directions. "

26. Thus from the above facts and circumstances, it is indisputable that our orders including those impugned in this MA emanated from the issues pertaining to indiscriminate dumping and disposal of plastic and solid waste, generation of air and noise pollution and improper collection and disposal of the waste materials and the lack of regulation on the use of plastic materials during the Poush Mela. The issue pertaining to Poush Mela was the prime factor that had spurred the applicant to file the OA for preventing further degradation of the environment of the entire area including the University.

27. In the backdrop of the above facts and circumstances and the reliefs sought for in this MA, it was felt essential for us to examine the genesis of the Poush Mela and its objects. The parties were accordingly heard at length on this and all i.e., Mr. Subhas Datta, the applicant in the OA, Mr. Birendra Kr. Singh, Ld. Advocate for the applicant in this MA, the Visva Bharati University, respondent No.1 and the Santiniketan Trust, the respondent No. 6, referred to and relied upon the Deed of Trust executed by Maharshi Devendranath Tagore, founder of the Santiniketan, in support of their respective contentions. We may refer to the relevant portion of the Deed of Trust translated in English pertaining to the Poush Mela by Mr. Subhas Datta and Mr. Bikram Singh, Learned Counsel for the applicants in the MA which are found to be common. To ensure fairness, we may reproduce below the translation filed by Mr. Singh:

“No puja or home aryati relating to any daity or bird, person or statue or photo or any symbol sans only prayer for formless Brahma will be allowed at Santiniketan.

No killing of animals on religious function or bringing meat or non-vegetarian meals pr drinking of wine or alcohol to be allowed in that place. No flaying or denigration or criticism of any deity of any individual in any manner to be permitted at that place. Only a such advice as to creator universe towards utility of meditation of end be conducive to by which principle, Dharma and Universal brotherhood is strengthened. No tainted entertainment be permitted. For growth of religious protectively every year trustee will arrange for a Mela. In that Mela, saints, recluse irrespective of religion will congregate at the Mela and hold deliberation over religious matters. In that Mela there will be no puja and prayer of any deity and there will be no obscene entertainments. Sans wine and meat, there will be sale and purchase of goods, and articles. In the event of earning or profit from Mela is derived the same to be spent for the development of Mela or the Ashrama” (This English translation from Bengali Trust deed of Debendranath Thakur is similar to Translation in English from Hindi) published by Visva-Bharati Patrika as January-March issue 1968.

(2) Part English translation from the chapter “Pous Mela” authorised by Late Saiyed Mustak Ali in Bengali, a direct student of Rabindranath Tagore in 1929 in his famous book under caption

“Gurudev and Santiniketan” published by Mitra & Ghosh Publishers Pvt. Limited at 10, Shyama Charan Dey Street, Kolkata-700012 highlighting some aspects of burning of fire crackers at Pous Mela for the first time and the tradition of burning of fire crackers at Pous Mela has been continuing uninterruptedly till now.

“On 7th Pous 1298 B.S. (about 123 years) age the Upasana Mandir or prayer hall of Santiniketan was inaugurated by Dwijendranath Thakur after reciting the foundation related hymns. At the third annual festival poor were fed, at the fourth annual festival for the first time there was burning of fire-crackers at Santiniketan and at the fifth annual festival or on 7th Pous 1303 B.S. Pous Mela commenced at Santiniketan for the first time.”

28. It will appear from the translations that no period for the fair has been prescribed. However, from the specific pleadings of the respondent No. 1, Visva Bharati University and the Santiniketan Trust, respondent No. 6, who are admittedly the appropriate authorities competent to deal with the University and its activities including the poush Mela, it is quite clear that the fair is traditionally run for only three days. After that, it is wound up and that considering the magnitude of the work involved in the winding up process, the stall owners are granted some time for the purpose. In view of this, we have no hesitation to hold that the fair is held for three days and not a day more.

29. We may now deal with the issue pertaining to the use of fire crackers. Although in the translation submitted on behalf of the applicant, the term “fire crackers” has been used, the case of the respondent No. 6 is that traditionally it is actually “fireworks” display that is held as one of the events during the fair.

30. We are, therefore, convinced that it is not “fire crackers” but “fireworks” that do not emit sound that is permitted as per the traditions of the Mela.

31. For all the above reasons, we hold that the Poush Mela is traditionally held only for 3 days during which other than wine and meat, sale and purchase of other goods and articles are permitted. Secondly, as a matter of tradition, as would appear from the averments contained in MA.1270/2016/EZ filed on behalf of the respondent No. 1, Visva Bharati, “fireworks” display that does not emit any sound is held on the 2nd day of

the Mela. We, therefore, observe that holding of fireworks display of such nature is an essential traditional practice of the Mela. ”

4. It would be relevant to note that M.A. 1265/2016/EZ in which the above order came to be passed, was filed by an organisation, viz., Bolepur Station Road Byabsayee Welfare Samity, a registered Association of traders at Bolepur, purportedly to protect the common interest of all the traders at Bolepur and its adjoining areas. In the MA, the Samity sought to recall and modify the orders dated 14.10.2016 and 15.11.2016 passed in the OA which have been reproduced in the above extracted portions of the order dated 20.12.2016. While rejecting the MA as being untenable, directions had been issued upon the Samity to approach the Santiniketan Trust and the Mela Committee for permission to set up stalls and, at the same time, directing the Santiniketan Trust and the Mela Committee to consider the applications and take decisions keeping in view the guidelines, rules, directions and the statutory provisions applicable in such matter.

5. As would appear from the order dated 04.10.2016 (also extracted in the order dated 20.12.2016) we had inter alia directed that the Poush Mela should be held for 3 days as envisaged originally in the Deed of Trust of the University and that it should be restricted only to the sale and exhibition of arts, crafts, traditional rural handicrafts, literature, etc., and in holding intellectual, academic and literary discourses. It was further directed that it would be permissible to play classical and traditional music, songs and ballads and that the Mela should be wound up without fail on the 4th day. Further direction was

issued vide order dated 15.11.2016 whereby it was ordered that there should be no bursting of fire crackers at the beginning, during or at the end of the Mela as it did not form an essential part of the Mela but an embellishment of the recent past. This direction was felt necessary to be issued in consideration of the immense pollution potential of the fire crackers.

6. Although we were of the view that the orders passed in the two MAs would have been sufficient to dispose of the OA, an application was filed by the Applicant amongst others, suggesting bifurcation of the Poush Mela and Pous Utsav with the Mela being held outside and the Utsav within the University. We, therefore, directed vide order dated 17.04.2017 that the matter be discussed amongst the State Respondents, Bolepur Municipality, the Shantinekatan Trust and the Visva Bharati University and to arrive at a mutually acceptable solution. In response thereto, on 16.08.2016 an affidavit was filed on behalf of the Visva Bharati University, Respondent No.1, the relevant portions of which is reproduced below :

“5. The answering respondent states that another meeting was convened to finalise the matter and the applicant Subhas Datta was also invited to the said meeting held on July 17, 2017, in Visva Bharati’s Rathindra Atithi Griha. The following officials were present:-

- 1) Prof. Swapan K. Datta, Vice-Chancellor (officiating) V.B.
- 2) Prof. Amit Hazra, Registrar (Acting), V.B.
- 3) Sri Bikash Roy Chowdhury, Sabhadhipati, Birbhum Zilla Parishad.
- 4) Sri P. Mohan Gandhi, District Magistrate, Birbhum.
- 5) Smt. Shampa Hazra, Sub-Divisional Officer, Bolpur.
- 6) Sri Subimal Paul, Additional Superintendent of Police, Bolpur.
- 7) Sri Amlan Kusum Ghosh, Sub Divisional Police Officer, Bolpur.

- 8) Sri Subhas Datta, Applicant in OA No 16 of 2016/EZ.
- 9) Sri Anjan Fouzdar, Environmental Engineer, WBPCB, Durgapur.
- 10) Sri Swattik Saha, Executive Officer and Assistant Engineer, SSDA,
- 11) Smt. Subarna Dutta (Pandit), Assistant Planner, SSDA
- 12) Sri Amit Sengupta, University Engineer, Visva Bharati.
- 13) Sri Supriya Gangopadhyay, Chief Security Officer (Officiating), Visva Bharati.
- 14) Sri Ashok Kr. Mahato, Joint Registrar, Estate Office and Legal Cell, Visva Bharati.
- 15) Anil Kumar Konar, Hon'y Secretary, Santiniketan Trust.
- 16) Kalika Ranjan Chatterjee, Member Santiniketan Trust.
- 17) Dr. Amartya Mukherjee, Secretary, Visva-Bharati Karmi Parishad and Cultural Convener, Pous Mela.
- 18) Dr. Goutam Saha, Convener Pous Mela Committee, 2016.
- 19) Sri Debabrata Sarkar, President, Visva Bharati Karmi Sabha.
- 20) Sri Sagar Biswas, Councillor, representing Chairman, Bolpur Municipality.

6. The following decisions were taken in the said meeting:-

- i) 'Pous Mela' and 'Pous Utsav' are inseparable. Considering the traditional, historical and cultural background of 'Pous Mela' the Pous Mela may not be held at different places. As usual, the Pous Mela may be held within the Visva-Bharati premises itself, maintaining the uniqueness of the Pous Mela and academic ambience of the university. However food stalls may be set up in a separate enclosure for ensuring hygiene and the overall stall distribution shall keep in mind the tradition and purpose of the Pous Mela i.e. stalls dealing with handicrafts, folk art, cultural discourse etc. shall be encouraged.
- (ii) Some stall owners do not vacate the ground after three days because putting up a stall for three days only, is not financially viable. To discourage 'bhanga mela' (unauthorized mela after official closure), it is proposed that the Pous Mela may be officially held for six days and one day may be allowed for winding up of the stalls. The clearing and restoring the Pous Mela ground will be a joint responsibility of the Visva-Bharati and Pous Mela Committee. The District Magistrate and the Superintendent of Police will take necessary administrative measures including development of police force as requested by Pous Mela

Committee for vacating the Pous Mela ground by 5.00 p.m. on 7th day. The Pous Mela Committee will make necessary announcement and deploy sufficient number of volunteers/members on ground to assist the Police in identifying/removing unauthorized stalls. Visva-Bharati authority will coordinate with the Stall Distribution and Rent Collection Sub-Committee and District Administration/Police.

(iii) The Sabhadhipati, Birbhum Zila Parishad assured that all possible administrative support will be provided to the University and Pous Mela Committee so that the ground is cleared of stalls on the 7th day by 5 pm.

(iv) The Hon'ble Tribunal may be requested to consider appointing the following personalities as Observers for suggestions of cleanliness, pollution control, and waste disposal aspects.

- (a) Sri Subhas Datta, Environmental Activist.
- (b) Sri Jayanta Mitra, Senior Advocate,
- (c) Dr. Kalyan Rudra, Chairman, WBPCB.

A copy of the Resolution of the meeting dated 17th July is annexed hereto and marked with the Letter "R-2".

7. It is stated that earlier Visva-Bharati had submitted before this Hon'ble Tribunal that the Pous Mela should be held for three days and that two days would be required for winding up of the Pous Mela, which was followed for the Pous Mela held in 2016 (26th and 27th December, 2016) but, while winding up and closing of the mela it was noticed that there was resistance from some of the stall owners of wind up after three days. As only three days was not economically viable there was some obstruction in the process of closure of the Mela. Hence the participants present at the meeting held on July 17, 2017 unanimously opined that if the 'Pous Mela' is held for six days, then the closure of the mela by the next day will be easier and smooth. As such, it was resolved in the said meeting at the suggestion and approval of all concerned that the 'Pous Mela' would be for six days and the Mela ground would be vacated by 5 p.m. on the 7th day. It is submitted that the Hon'ble Tribunal may be pleased to allowed the mela to continue for 6 days and provide one extra day for winding up of the same and the earlier submission made by Visva-Bharati be modified accordingly.

8. Pous Utsava popularly known as Santiniketan Pous Mela has a tradition and is part of history. A small fair was organized in 1894 in connection with the

establishment of anniversary of the Mandir and Debendranath's initiation day into Brahma Dharma. What started as a small homely Pous Mela of one day, now attracts attention of tourists from all around. In earlier days, the Mela was held in the ground on the north side of Brahma Mandir. On that day a fireworks display was held in earlier days after evening prayer. As the Mela increased in size, it was shifted to the field in Purbapalli which is in the vicinity of the Mandir. If we shift the Mela from Santiniketan ground to Bolpur it will lose basic connection, basic flavor and heritage character. It will also lose its importance and uniqueness. Over and above it will not be a Santiniketan Pous Mela.

9. It is further stated that all the participants at the meeting as also the applicant have agreed that 'Pous Mela' should retain its character, heritage, tradition and specialty as an integral part of a celebration by Visva-Bharati, the Mela cannot be separated from the cultural and religious celebration and should be held at the same place as held in the previous years.

10. Visva-Bharati undertakes as follows:

- a) To co-operate with the District Administration as regards the safety, security, and protection of environment and closure of the Mela.
- b) The Visva-Bharati will demarcate the Mela ground and barricade the same so that the Mela ground will be a separate self-contained unit from the university and the locality.
- c) The University along-with the Santiniketan Trust and Bolpur Municipality will jointly bear the responsibility for cleaning, health and sanitation.
- d) There will be no bursting of crackers. Fireworks will be soundless and its display shall not last for more than 30 minutes and the same shall be carried out in an open space away from the main mela ground.
- e) The cultural events will be restricted to folk and classical music and dance drama.
- f) Food stalls shall be set up in a hygienic manner, in an enclosed area where there will be adequate provisions for dust control, waste removal, clean drinking water and toilet facility.

11. It is the humble submission of the deponent that as the Mela has become a big affair it will all along cooperate with all and see that the Mela continues

every year in a disciplined and environment friendly way and aspires to work in union with the District Administration, Municipality and other authorities.

12 In the meeting some names of Observers were suggested. The deponent humbly prays that the Hon'ble Tribunal may name such Observers as the Hon'ble Tribunal may deem fit and proper. The University has already taken verbal consent from Sri Jayanta Mitra, Dr. Kalyan Rudra and Shri Subhas Datta.

13. I submit that the answering respondent has taken initiative to keep the ground free and shall take all steps in future to keep the same clean and healthy and pollution free and on the basis of this affidavit necessary orders be passed as to this Hon'ble Tribunal may seem fit and proper."

7. Later M.A. 1270/2016/EZ was filed by the Respondent No. 1, Visva Bharati University, praying for modification of the orders dated 04.10.2016 and 15.11.2016 allowing :-

- (i) display of fireworks on the second day of the Mela;
- (ii) the Mela to continue till the fourth day, i.e., the 10th day of the month of Poush as per BS;
- (iii) The Mela Committee 48 hours to wind up the Mela;
- (iv) The Mela Committee to permit groups including self help groups to put up stalls for sale of their products, sale of agricultural products for benefit of farmers;
- (v) Stalls to be put up to deal with public awareness, education, health, sanitation, Government welfare schemes and social issues.

8. Upon hearing the parties the Application viz., MA 1270/2016/EZ was allowed vide order dated 20.12.2016 by modifying the directions to the following extent:

- (i) As we have accepted in MA No. 1265/2016/EZ by order passed today that display of fireworks is a traditional practice, prayer for holding such display on the second day of the Mela corresponding to 8th day of Poush is allowed subject to the condition that the fireworks shall be without emission of sound.

- (ii) The period for winding up of the Mela which would involve dismantling and removal of stalls may extend to 48 hours. The District Magistrate and the Superintendent of Police, Birbhum District shall permit the stall owners to complete the task within that period.
- (iii) Apart from the activities indicated in the orders dated 4.10.2016 and 15.11.2016, it is open for the Santiniketan Trust and the Mela Committee to allow stalls to be set up for sale of agricultural tools and agricultural products for the benefit of the farmers and, for holding awareness programmes on health, education, sanitation and hygiene, legal rights and duties of citizens, of government welfare schemes and on social schemes. We also grant further liberty to the organisers to permit events as well as putting up stalls for sale of other wares which are non-polluting, like handicrafts, carpets, handloom productions, etc. These are only illustrative and not exhaustive. It will be for the organisers to decide as to which shall be the events and non-pollution wares that should be permitted.
- (iv) In addition to the above, the organisers may also permit setting up a limited number of food and refreshment stalls for the benefit of the visitors.

9. Apart from the above, we had further directed that the organisers of the festival should take care of the following:-

- (a) Monitoring the use of plastic and other non-biodegradable substances during the Mela. Ideally, the use of plastic and thermocol products ought to be strictly prohibited and, in the interest of the environment and to enable the local villagers to derive some economic benefit, use of leaf containers and plates and wood based spoons should be encouraged.
- (b) Use of black generators and playing DJs shall not be permitted.

- (c) The food stalls shall only use liquid petroleum gas (LPG) for cooking food. They shall also be directed to provide for fire extinguishers in the stalls.
- (d) Each stall owner shall be directed to place dust bins.
- (e) Adequate number of water sprinklers shall be provided which shall be used for ensuring dust free atmosphere at the Mela.
- (f) Sufficient number of portable toilets shall be provided for the use of the visitors which would include old and infirm as well as children.

10. Quite evident from the affidavit filed on 16.08.2017 by the Visva Bharati University, the substance of the decisions taken in the meeting held on July 17, 2017 were essentially as follows :-

- i) Poush Mela and Poush Utsav cannot be bifurcated as suggested by the applicant as these are inseverable and formed integral parts of the same festival which is held within the Visva Bharati University campus ground on northern side at Brahma Mandir. Any attempt to bifurcate the two will result in the Mela losing its basic flavour and its heritage character.
- ii) If the Mela for only 3 days was not economically viable due to resistance by the traders in closing the Mela after that period.
- iii) If the Poush Mela is held for 6 days, it would be convenient to wind up the Mela very next day of the 6th day without impediment or obstruction.
- iv) Since the Mela had become a big affairs, all concerned will ensure that the Mela takes place every year in a disciplined and environment friendly manner; and

v) That the Tribunal should consider appointing the following eminent persons as observers for the Mela to ensure compliance of the festival :-

- a) Mr. Subhas Dutta, Environmentalist
- b) Shri Jayanta Mitra, Sr. Advocate,
- c) Dr. Kalyan Rudra, Chairman, WBPCB.

11. Apart from the above, we have noted an undertaking given by the Visva Bharati University in para 10 of the affidavit of the University.

12. As already noted already, in our orders dated 4.10.2016 and 15.11.2016 specific directions had been issued on matters pertaining to the conduct of the Mela, the merits of which had been considered and upheld on being challenged in MA 1265/2016/EZ.

13. Vide order dated 20.12.2016 passed in MA 1270/2016/EZ, we had issued specific directions modifying the ones in the orders dated 04.10.2016 and 15.11.2016 as would appear in paragraph 3 and 4 of the said order and sub-paragraphs thereto.

14. We have considered the affidavit filed on 16.08.2016 by the Respondent No. 1, Visva Bharati University, placing on record the minutes of the meeting held amongst a large number of Authorities on 17.7.2017 and the decisions taken in that meeting upon which directions have been sought for. In our view, pollution caused by the Poush Mela as projected by the Applicant can be brought under control and the environment of the University protected if the directions issued in MA 1265/2016/EZ and MA 1270/2016/EZ vide orders dated 20.12.2016 are

strictly adhered to. For the sake of convenience, we may set out the essential parts of the orders dated 4.10.2016 and 15.11.2016 :

- i) The Mela should be held only for 3 days as traditionally observed and wound up on the 4th day. This period shall not be extended under any circumstances.
- ii) The Mela should be restricted to sale and exhibition of arts, crafts, traditional rural handicrafts, literature, etc., and hold intellectual, academic and literary discourses. It would be permissible to play traditional and cultural music, songs and ballads.
- iii) There shall be no bursting of fire crackers at the Mela as it is not an essential practice connected with the festival but a recent embellishment which had potential for causing immense pollutions.

15. The aforesaid directions having been modified by our order dated 20.12.2016, we may also reproduce once again the relevant portion :-

“(i) As we have accepted in MA No. 1265/2016/EZ by order passed today that display of fireworks is a traditional practice, prayer for holding such display on the second of the Mela corresponding to 8th day of Poush is allowed subject to the condition that the fireworks shall be without emission of sound.

- (i) The period for winding up of the Mela which would involve dismantling and removal of stalls may extend to 48 hours. The District Magistrate and the Superintendent of Police, Birbhum District shall permit the stall owners to complete the task within that period.

(ii) Apart from the activities indicated in the orders dated 4.10.2016 and 15.11.2016, it is open for the Santiniketan Trust and the Mela Committee to allow stalls to be set up for sale of agricultural tools and agricultural products for the benefit of the farmers and, for holding awareness programmes on health, education, sanitation and hygiene, legal rights and duties of citizens, of government welfare schemes and on social schemes. We also grant further liberty to the organisers to permit events as well as putting up stalls for sale of other wares which are non-polluting, like handicrafts, carpets, handloom productions, etc. These are only illustrative and not exhaustive. It will be for the organisers to decide as to which shall be the events and non-pollution wares that should be permitted.

(iii) In addition to the above, the organisers may also permit setting up a limited number of food and refreshment stalls for the benefit of the visitors. ”

16. Equally relevant would be the directions issued in paragraph 4 of the said order which though repetitive is reproduced below :

“(a) Monitoring the use of plastic and other non-biodegradable substances during the Mela. Ideally, the use of plastic and thermocol products ought to be strictly prohibited and, in the interest of the environment and to enable the local villagers to derive some economic benefit, use of leaf containers and plates and wood based spoons should be encouraged.

(b) Use of black generators and playing DJs shall not be permitted.

(c) The food stalls shall only use liquid petroleum gas (LPG) for cooking food. They shall also be directed to provide for fire extinguishers in the stalls.

(d) Each stall owner shall be directed to place dust bins.

(e) Adequate number of water sprinklers shall be provided which shall be used for ensuring dust free atmosphere at the Mela.

(f) Sufficient number of portable toilets shall be provided for the use of the visitors which would include old and infirm as well as children. ”

17. Considering the further modification sought for in the aforesaid directions by the Respondent No. 1 as per the decisions taken in the

meeting held on 17.7.2017, the period of the Mela may be extended to six days as prayed for. This shall be subject to the condition that it is wound up without fail on the 7th day in the manner decided in the meeting recorded in clause (ii) of para 6 of the affidavit of the Respondent No. 6 re-produced above.

18. Except for the limited modification aforesaid, the directions issued in the MAs particularly, in MA 1270/2016/EZ vide order dated 20.12.2017, shall remain unaltered to be strictly complied with by the organisers of the festival. In order to ensure compliance of the directions and smooth conduct of the festival, the Committee of eminent persons suggested in the meeting be constituted as we are informed that they have conveyed their consents to be the members of the Committee. Preferably they ought to be appointed as life time member.

19. In order to avoid any confusion as regards the decisions taken by the organisers of the Mela in the meeting held on 17.7.2017 and the undertaking given by the Visva Bharati University at para 10 of the affidavit, we direct that the same shall form part of this order and be read as directions in addition to the conditions stipulated in the orders dated 20.12.2016 in M.A. No. 1265/2016/EZ and M.A. No. 1270/2016/EZ subject to the limited modifications set out in paragraphs 17, 18 and 19 above.

20. Before parting we deem it necessary to further direct as follows :-

- (i) The State to take a final decision on the question relating to the Visva Bharati University area within the jurisdiction of Bolepur Municipality for effective monitoring of the Solid

Waste and other Wastes generated in those areas not only during the Poush Mela but also at other times;

(ii) The Visva Bharati University, Respondent No. 1, Shanti Niketan Trust, Respondent No. 6 and Sriniketan Shantineketan Development Authority (SSDA), Respondent No. 8, shall draw up a project for establishment of dedicated Solid Waste Management Plant and Sewage Treatment Plant within the premises of the Shantiniketan area for disposal of such waste;

(iii) The Govt. of West Bengal shall ensure effective implementation of the Solid Waste Management Rules, 2016, Plastic Management Rules, 2016 and other rules cognate thereto.

(iv) The State PCB, Respondent No. 5, shall monitor the implementation of these Rules by the University Authorities in collaboration with the Bolepur Municipality;

(v) The Bolepur Municipality shall extend the necessary support to the University authorities in the implementation of the Waste Management Rules and in combating environmental pollution in the University area.

21. The aforesaid directions are issued with the object to ensure effective control and monitoring of various pollutions being caused in the area in question.

22. Upon considering the various affidavits filed by the parties, more particularly, the Visva Bharati University, Respondent No. 1, we

find that there is gross negligence on the part of its governing body which practically has left the University on its own to survive.

23. We also notice that the University, being a Central University, adequate attention is not being paid by even the State Govt. The eminent position which the University holds the world over ought to have been a matter of pride for the State. The rapid degradation of the environment in the University and its precincts reflect the apathy of those responsible for its administration. In our considered opinion, the State Respondents ought to take pro-active measures to ensure that it survives and its past glory restored. One of the major steps in this direction would certainly be to restore, conserve and protect the nature and ecology of the University complex which is considerably large.

24. With the above observations and directions, the OA stands disposed of.

There shall be no order as to costs.

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Justice S.P.Wangdi, JM

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Prof. (Dr.) P. C. Mishra, EM

Dated : 1st November, 2017



NGT