
(1983) 01 DEL CK 0013

In the Delhi High Court

Case No : C.W.P. No's. 1475 and 1487 of 1982

Baldev Band and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 04-01-1983

Acts Referred:

Citation : (1983) CriLJ 787

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Judgement

1. These petitions are filed by the proprietors of bands who use trolleys fitted with loudspeakers for use in marriage processions and similar processions. The other petitioners are allegedly working on the said trolleys and they earn their livelihood on the same. The petition was filed on the basis of a news item published on 13-5-1982 and an announcement on T.V. and radio that the Police Commissioner has banned the movement of trolleys fitted with loudspeakers forming part of marriage processions with crooners singing film songs. It is claimed in the writ petition that after the said announcement on 16-5-1982 such a trolley fitted with loudspeaker belonging to "Master Band" was seized by the Police. It is the contention of the petitioners that playing of music on the loudspeakers fitted on trolleys is done with the intention of "relaxation and glamour" and has become a social and customary practice for marriage celebrations. It is then claimed that the trolleys are too small to cause any obstruction, inconvenience or nuisance to traffic on the roads. As for the legal submissions, it is contended that Section 28(1)(b) of the Delhi Police Act, 1978, is ultra virus as it gives unguided arbitrary powers to Police authorities to prevent the use of loudspeakers. It is also urged that the said section unreasonably restricts the right to carry on the trade/profession of bands (wherein trolleys fitted with loudspeakers are used) and thereby violates Art 19(1)(g) of the Constitution. It is also contended that the order in question has not been published in the official gazette as required by the Act and, Therefore, the order is bad in law. The order, according to the petitioners is not legal also, for another

reason, namely, that it was not published in the concerned localities as required by the Act.

2. The respondents on the other hand submit that the powers u/s 28 are necessary in public interest and were not arbitrary. The impugned order it is contended, was the result of (public complaints and) the experience of the Police in regard to use of loudspeakers. It is also contended that on 12-5-1982 the Commissioner of Police issued instructions to all the District Commissioners of Police directing them that no permission for use of loudspeakers on trolleys/ moving vehicles should be granted in future. These instructions were not addressed to the public but were only the departmental instructions. It is claimed in the counter-affidavit that the directions were issued in exercise of the powers conferred by the Delhi Police Act and Regulations in that regard. These Regulations are called Union Territory of Delhi Loudspeakers (Licensing and Controlling) Regulations, 1980. The respondents further submit that there is no prohibition on the band being played on the public streets. There is no fundamental right in the petitioners to use trolleys fitted with loudspeakers in the band. It is then pointed out by the respondents that pursuant to the said Regulations the petitioners ought to have obtained the prior permission to use the trolleys with loudspeakers but none of them had obtained the permission and are carrying on their business illegally. It is then stated that the assertion that thousands of persons are losing their livelihood made in the petition is unfounded as the business of running a band is not prohibited by the impugned order. It is then claimed that a restriction on few people so as to achieve the general public interest would be a reasonable restriction.

3. I do not think that any fundamental right of the petitioners is violated. There is a right to carry on the business or trade of a band. Even this right can be curtailed or regulated for an appropriate time or an appropriate place or generally. Some trades/business have a potentiality of being abused easily when they become danger to public peace tranquillity and order and create public nuisance inconvenience and hazard to normal social life. Right to carry on trade in liquor can be said to be one belonging to this category. If there is a restriction that there cannot be a country liquor shop in the residential areas or near a school or in the public place of entertainment the restrictions/ preventions are really in public interest. Right to carry on trade, which can be called a fundamental right is not here directly threatened in this case. Even assuming that running of a band is a fundamental right to carrying on trade and business, it cannot be said that there is a fundamental right in the use of every instrument in the band or the vehicles used or the number of loudspeakers used to make the band more loud than it normally is. Every trade/profession gives livelihood to some people. Even smuggling and dealing in narcotics provide livelihood to some people. It is, Therefore no argument in law that some people who are allegedly used for pushing the trolleys will suffer because to use the trolleys in a band is itself not a fundamental right. I do not think that Section 28(1)(b) can be faulted on the ground that it violates Art. 19(1)(g) of the Constitution.

4. Even assuming that the right to carry on trade/business of band includes the use of vehicles and the instruments like loudspeakers for increasing the sound I would hold that prevention of the use of trolleys fitted with loudspeakers in public processions is in public interest and reasonable. The question has to be viewed from several angles. The first is phenomenal increase of population in Delhi in last twenty years. Increase of population is about three lacs every year. The increase in population has resulted in phenomenal increase of vehicular traffic on the streets. The real difficulty in the traffic in Delhi is that there are not only fast moving vehicles, such as cars and buses but very slow moving vehicles such as cycle rickshaws and hand driven carts moving side by side with the high speed vehicles. Due to concentration of industries and thermal power stations there is air pollution and sound pollution which has increased to dangerous proportions. Vehicular traffic substantially adds persistently to air pollution and sound pollution. The increase in incidents of accidents on the streets with high mortality figures published every year, shows how movement of pedestrians and vehicles is becoming increasingly hazardous. Delhi was a comparatively clean city with big roads and sparse population providing peaceful and quiet life to its residents thirty years back. Even according to the petitioners use of loudspeakers in bands fitted on moving trolleys has come up in the last 15 years. The hazards to public safety, health and tranquillity has brought about a sea of change during the last twenty years. If by public apathy or by the official negligence such use of trolleys with loudspeakers was allowed to continue, it cannot be an argument against its prohibition after twenty years. Marriage processions stopping at different corners for people to dance with a deafening band music is a regular sight for the residents of Delhi. The public attitude is very peculiar. If a person is going in a vehicle and there is obstruction because of the marriage procession he will shout or call names. But if he is moving with the marriage procession he will participate in the dance to the tune of the band and will forget that he is obstructing the traffic and movement of vehicles on a public street. If there is self regulation there will be no necessity of any law in this area of public participation. The public failure on self-discipline requires the authorities such as Police Authorities to take the preventive steps. Loudspeakers on moving trolleys is a diversion of mind for a driver driving a vehicle on the crowded streets. Traffic accidents can be averted if the faculties of mind of the drivers of the vehicles are composed and alert. Driving is a great tension on number of roads and particularly the busy periods of the day.

5. Assuming that the Commissioner had issued an order prohibiting use of trolleys fitted with loudspeakers to be used by bands it is difficult to understand how validity of Section 28(1)(b) has been challenged in these proceedings. The source of power of the Commissioner in the present case is the Regulations framed by the Commissioner u/s 28(1)(s). The said section reads :-

The Commissioner of Police may by notification in the official Gazette, make regulations to provide for all or any of the following matters, namely. -

"licensing controlling or in order to prevent obstruction, inconvenience, annoyance risk, danger or damage to the residents or passengers in the vicinity, prohibiting -

... (iii) the using of a loudspeaker in or near any public place or in any place of public entertainment;"

There is another sub-section, namely, Sub-section (o) of Section (1) which also must be noted. The section reads :-

"Licensing controlling or in order to prevent obstruction, inconvenience, annoyance risk, danger or damage to the residents or passengers in the vicinity, prohibiting the playing of music, the beating of drums, tom-toms or other instruments and the blowing or sounding of horns or other noisy instruments in or near streets or other public places." Reading Sub-section (s) with Sub-section (o) of Section 28(1) it is clear that the Commissioner has the power to prevent use of loudspeakers near public places or in streets or near streets. The words "to prevent" are very clear to show that a total ban can be imposed on the use of loudspeakers as in the present case. The object of such prevention contemplated by the Section is to ensure that there is no obstruction, inconvenience, annoyance risk, danger or damage to the residents or passengers. I have already held that use of trolleys fitted with loudspeakers moved in the processions causes obstruction inconvenience and risk to the traffic on the streets and the residents.

6. The petitioners" challenge to the constitutional validity of Section 28(1)(b). That sub-section reads :-

"The Commissioner of Police may make regulations for "regulating traffic of all kinds in streets and other public places, and the use of streets and other public places by persons riding driving cycling walking or leading or accompanying cattle, so as to prevent danger obstruction or inconvenience to the public."

It may at once be seen that the sub-section is a general section for regulating traffic on streets. We are here concerned with a specific aspect of regulating traffic namely the use of trolleys fitted with loudspeakers. Even there what is really prohibited is not the movement of trolley as a vehicle. What is objectionable is the loudspeakers being moved from place to place blaring out music in a deafening sound. Since S. 28(1)(b) is directly not in issue the challenge is misconceived. But even assuming that the part of prohibition falls u/s 28(1)(b) I do not think that the said sub-section gives unguided or uncanalised powers to the Police Commissioner. Regulation of traffic is one of the essential functions of police in any city. It is, Therefore, not a power but the duty of the Police Commissioner to prevent danger, obstruction or inconvenience to the public on the streets. It is impossible to enumerate in how many ways danger obstruction and inconvenience can be caused to public on the streets. The sub-section not only enumerates auto vehicles but also vehicles driven by cattle and movement of cattle themselves. Not walking on the foot-paths and crossing

streets at will without caring for the pedestrian crossings, can also cause obstruction and inconvenience to the public. It is impossible to give an exhaustive list of the methods or manners or persons or vehicles by which a danger, obstruction or inconvenience can be caused. The sub-section naturally has to be worded in general terms so as to cover every action or movement resulting into danger, obstruction or inconvenience to public. Considering the nature of the administration by the Police in regard to the traffic control and regulations, the powers given to the Commissioner by Section 28(1)(b) cannot be held to be arbitrary and unguided power. The question of arbitrariness or uncanalised nature of power varies with different types of administration and the nature of duties of a public authority. If the duties are too plenary in nature or too vast and unlimited, the powers conferred are also put in broader generalisations. Section 28(1)(b) does not suffer from the vice of arbitrariness or being vocative of Art. 14 of the Constitution.

7. Challenge to Section 28(1)(b) is also misconceived for another reason. As stated earlier the immediate source of the power of Police Commissioner is the statutory regulations framed by him u/s 28. The writ petition does not challenge the constitutional validity of the said regulations. Unless the petitioners challenge the legality and constitutionality of the regulations, constitutional challenge of Section 28(1)(b) would be otiose. It has already been noted that the principal provisions under which the Commissioner is exercising the power in the present case is u/s 28(1)(o) & (s). However, a vague attempt has been made in the rejoinder-affidavit to challenge the validity of the said statutory regulations. It is no argument in law that the petitioners were not aware of the statutory regulations. The regulations were duly published in the official Gazette. The statement in the rejoinder-affidavit that they were not published in the official Gazette is patently wrong. It was for the petitioners to find out the provisions of law including the statutory regulations and prefer a specific challenge. Even after the filing of the counter affidavit to which the said regulations were annexed by the respondents the petitioners did not amend their writ petition so as to challenge the validity of the said regulations. But even assuming that the pleadings including the rejoinder-affidavit should be liberally construed. I do not find any substance in the petitioners challenge to the validity of the said regulations.

8. The first challenge to the regulations is that it is not promulgated by previous publications as required by Section 28(3). Sub-section (3) reads as follows :-

"The power of making regulations under this section shall be subject to the condition of the regulations being made, after previous publication and for the purpose of Section 23 of the General Clauses Act, 1897 (10 of 1987), such regulations shall be deemed to be rules; and every regulation made, under this section, shall also be published in the locality affected thereby by affixing copies thereof in conspicuous places near to the building, structure, work or place, as the case may be, to which the same specially relates or by proclaiming the same

by the beating of drum or by advertising the same in such local newspapers in Hindi, Urdu and English, or in two or more of these languages, as the Commissioner of Police may deem fit, or by any two or more of these means, or by any two or more of these means, or by any other means he may think suitable :

Provided that any such regulation may be made without previous publication if the Commissioner of Police is satisfied that circumstances exist which render it necessary that such regulation should be brought into force at once." Section 28(3) refers of Section 23 of the General Clauses Act. That section may also be noted.

"23. Provision applicable to making of rules or bye-laws after previous publication. Where, by any (Central Act) or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication then the following provisions shall apply, namely :-

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft to the proposed rules or bye-laws for the information of persons likely to be affected thereby :

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the (Government concerned) prescribed :

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration.

(4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the official Gazette of a rule or bye-laws purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made."

9. The challenge of the petitioners is vague. It is said that there is no publication of the Regulations as required by Section 23(3), 28(3) ? It is then stated that the Regulations are ultra virus of the Act. The Regulations are also attacked on the ground that they give arbitrary power resulting into discrimination between persons and persons but there are no facts and grounds for sustaining this challenge. To put it in simple form the purport of the Delhi Police Act is as follows :-

The Regulations are required to be published at two stages and two different

modes. There is a "previous publication" as required by the Act. There is a subsequent publication after the regulations are made in the localities which are affected by the regulations. The statutory regulations are deemed to be rules for the purposes of Section 23 of the General Clauses Act 1897. Section 23 of the General Clauses Act refers to rules and bye-laws and not regulations. Therefore a specific reference is made to Section 23 of the General Clauses Act in Section 28(3) of the Delhi Police Act. What is the effect of reference to Section 23 of the General Clauses Act ? The counsel for the petitioners argues (although the point is not specifically taken in the writ petition or in the rejoinder affidavit) that as required by Section 23(1) of the General Clauses Act a draft of the proposed regulations was not published for the information of persons affected thereby and no opportunity was given to the petitioners and others to have their say against the draft proposed regulations. The counsel submits that this is a mandatory requirement and also the requirement of natural justice. The regulations in question are void in law for violation of the mandatory requirements of Section 23 of the General Clauses Act and the principle of natural justice.

10. The regulations were published in the official Gazette as required by Section 23(1) of the Delhi Police Act. There is no doubt that Section 23 of the General Clauses Act requires the draft regulations to be published for ascertaining the views of the persons affected. But it must be remembered that we are not examining the requirements of S. 23 of the General Clauses Act independently. A reference to Section 23 of the General Clauses Act in Section 28(3) of the Delhi Police Act and the said requirement of publication of the proposed draft regulation has been incorporated by the well known legislative practice of legislating by reference. The requirement of the publication of the draft thus forms part and parcel of Section 28(3) of the Delhi Police Act. Now the requirements regarding publications in Section 23(28 ?) are to be read subject to the proviso. The proviso stated that where the Commissioner of Police is satisfied that circumstances exist which render it necessary that such regulation should be brought into force at once, the requirement regarding the previous publication can be dispensed with. Admittedly, the regulations were framed in 1980. The (sic) validity of the said regulations on the ground of non-publication of the draft is being made after two years of the publication of the regulations. The challenges should have been made immediately after the publication of the regulations in the Gazette in 1980 itself. It is too late in the day to call upon the Commissioner of Police to explain as to why he was satisfied that the Regulations should come into force at once. If the petitioners had challenged the validity of the regulations on these grounds in the petition the Commissioner would have got an opportunity to explain the circumstances in his counter-affidavit but that was not done by the petitioners. In fact they claim complete ignorance of the said regulations in the writ petition. I, Therefore, hold that the Commissioner of Police was within his legal powers to dispense with the previous publication of the draft regulations and the same cannot be challenged in an indirect manner at

such late stage. The second publication expected in Section 28(3) is the publication in the localities affected. This requirement can be appreciated where the object of regulation is limited to a particular or specific locality but where the entire area of Delhi is covered by a regulation such minor modes of publication by beat of drums or by an advertisement in the local newspaper are not of much avail. Publication in the official Gazette in the present circumstances was sufficient compliance of the requirement of second publication in Section 28(3). It may be noted if previous publication of a draft regulation, the object of which is to invite representations from affected persons can be dispensed with in an emergency by virtue of the proviso, it can certainly be argued that the Commissioner can dispense with the subsequent publication which is only meant for general information. There are number of provisions in Section 28(3) for which the regulations made would have immediate effect as if they were administrative orders. Examples of sub-cl. (k) and sub-Clause (m), sub-clause (t), sub-cl. x(iv), sub-Clause (z) can be cited. Provision of the second publication in Section 28(3) appears to be more aimed as such provisions in Section 28(3) which are self executing. Where, however, Executive Orders are issued under the regulations as in the present case for putting into operation a part of the general power the publication of such an administrative order will be meaningful. The petitioners have themselves admitted that the impugned order was published in the newspapers and on the T.V. and radio. In fact the petition is based only on such a paper report. The petitioners' contention that the regulations were never put in operation and that there was no procedure or machinery for the enforcement of the regulations created is also without any substance. The petitioners have nowhere averred that they went to the Police Authorities with an application for permission under the Regulations, on the contrary they have said that none of the bands had taken any such permission. This is a clear admission of the illegal use of the trolleys fitted with loudspeakers being made by the bands in Delhi for the last two years. Such petitioners cannot be heard now to challenge the ban on the use of loudspeakers on trolleys.

11. Coming now to the actual order banning the use of loudspeakers fitted on trolleys it is seen that the Explanation of the Commissioner of Police in the impugned order (R-1) and (R-3) is quite reasonable and convincing. In Annexure R-1 it is stated "Instructions have been issued from time to time regarding unauthorised use of loudspeakers which cause inconvenience to the public at large, this nuisance has assumed alarming proportion. It has also been observed that trellis fitted with loudspeakers which move ahead of the marriage procession have become a major source of inconvenience to the public in Delhi."

In Annexure R-3 it is also stated : "Some of the persons usually use the three wheeler scooters fitted with loudspeakers for political propaganda. Apart from causing general public nuisance, the users of the vehicles give a chance of retaliation to the party (s) against whom the propaganda is conducted. It is Therefore felt imperative to take appropriate action against those causing public nuisance," It is thus clear that after publications of the regulations in 1980 and

with the experience of illegal use of the loudspeakers the Police Commissioner came to the conclusion that total prohibition of loudspeakers used on vehicles should be imposed. The petitioners have themselves admitted that none of the bands had obtained permission from the Commissioner as required by the regulations. The permission was necessary to enforce partial control and regulation and when this system failed the Commissioner took the present decision.

12. This leaves us to the argument of the petitioners that music played on bands and the loudspeakers has become a part of the social celebrations of marriages in Delhi. It is interesting to note that no member of the public as such has come before this court as a petitioner making this assertion. The petition is filed primarily by the proprietors of the business of bands whose financial interest is allegedly threatened by the present prohibition. Although marriage is a solemn sacrament/or a contract it has become an occasion for gaiety and group enjoyment. Playing of music on such occasions is understandable but traditionally only Sehnaï is played as an auspicious music in Delhi and around. There was also a practice of dance with music programmes, particularly in rich houses of Delhi. It is a matter of common knowledge that playing of film music on brass bands and dancing in the processions has become common only recently. Taking liquor for marriage processions is also becoming common. Now, a new culture is coming in vogue. This is the culture of neo-rich who use these occasions for spending unaccounted money. Celebrations of marriages in Five-Star Hotels, arranging cocktail parties on the eve of marriage, spending huge amounts on shamianas, illuminations and marriage dinners are being done on large scale. Blocking public roads, by erecting shamianas, is common sight in Delhi. All this outward show is done in total disregard of law in relation to Guest Control Orders, orders regarding consumption of electricity and municipal regulations regarding non-encroachment on public streets. Presentation of gifts is degenerating into extraction of dowries and collection of imported goods. Delhi has perhaps an all India, record of bride burning case. The leaders of the society, in all walks of life, celebrate the marriages with the same fan fare. There is no wonder that this is setting a new social pattern of celebrating marriages and less affluent people are forced to follow this pattern for the fear of not being laughed at. Bands accompanied by trolleys fitted with loudspeakers blaring out rock or disco music at a deafening tune is a part of this neo-culture. Can it be said with any seriousness that this cheap and vulgar display of wealth is a part of our culture or for that matter of any civilized society ? It is said that Pandit Jawahar Lal Nehru had once described Delhi as big village. The citizens of Delhi have miles to go to develop civic sense to justify the claim of a metropolitan town and particularly as a Capital of this nation. This is what the citizens of Delhi must ponder upon seriously and act by self regulation to prevent it. But in so far as these practices tend to violate law and result into obstruction, annoyance, inconvenience, risk or danger to general public, the authorities must take effective steps to prevent them.

13. Delhi Police are required to work under unusual constraint and difficulties, Lack of civic sense and respect for legal regulations on the part of the citizens, create perpetual problems for the Police force. Jumping queues at the bus stops, violation of traffic signals and parking of vehicles at will, is almost a natural habit for citizens. Encroachments on public lands and illegal constructions has become the order of the day. Running of commercial of industrial units illegally in the residential areas, abuse of Government concessions in the allotment of shops and factory premises, illegal use of load of electricity for industrial purposes, illegal transfer of lands and profiteering are freely practiced by the citizens. These illegal practices usually acquire menacing proportion and develop into a law and order problem. Running of Universities and educational institutions and industrial establishments is becoming difficult without the police aid. Freely using trolleys fitted with loudspeakers without permission (as required by Regulations) of the Police authorities is a part of this habit, of disregarding law. Apart from these habits of the residents of Delhi is spreading far and wide without any limits. The police force is not commensurately manned or equipped. Being a Police force in the Capital, the Police are required to act with one eye permanently fixed on the bureaucratic and political bosses from time to time. Enforcement of civic duties and enforcement of legal order is thus a Herculean task for Delhi Police. Any effort on their part to regulate the civic life in Delhi, in public interest and within the framework of law should be encouraged, the bands and band-wagons notwithstanding .Life of law is experience of social realities. It is asserted in the writ petition that the marriage season is usually from July to December in Delhi and the people start placing orders on the bands for couple of months in advance. It was claimed that the impugned order had come up suddenly so as to upset even the then existing contracts. Without going into the correctness of these averments the petition can be decided. Marriage season is now over and no financial interest are likely to suffer if the petitioners and the other bands stop the practice of using trolleys fitted with loudspeakers. The oncoming season of marriage was perhaps the reason for the Division Bench to give partial protection to the use of trolleys fitted with loudspeakers during the pendency of the writ petition.

14. The writ petition is dismissed with costs. The stay order is also vacated. Counsel fees Rs. 500/- in each petition.

15. Petition dismissed.