

(1981) 07 KAR CK 0048
In the Karnataka High Court
Case No : Writ Appeal No. 1162 of 1979

Deputy Commissioner and District Magistrate, Mysore and
Others

APPELLANT

Vs

Vidya Ganapathi Mandali, Chamarajanagar

RESPONDENT

Date of Decision : 23-07-1981

Acts Referred:

Karnataka Police Act, 1963 — Section 31 (1), 31 (1) (o)

Citation : AIR 1982 Kar 123 : (1981) ILR (Kar) 1289 : (1981) 2 KarLJ 357

Hon'ble Judges : V.S. Malimath, J;N.R. Kudoor, J

Bench : Division Bench

Advocate : S.G. Doddakalegowada, for the Appellant; K. Sreedhar, for H. Subramanya Jois, for the Respondent

Judgement

Malimath, J.—The Deputy Commissioner and District Magistrate, the Superintendent of Police, Mysore District and the Circle Inspector of Police, Chamarajanagar have challenged in this appeal the order of the learned single Judge rendered in Writ Petition 9360 of 1979.

2. The respondent, Sri Vidya Ganapathi Mandali, Chamarajanagar, was planning to take out Ganapathi procession for the purpose of immersion of Sri Ganapathi, on a particular route in Chamarajanagar town. The Circle Inspector of Police issued an endorsement to the respondent dated 20/21st Sept. 1978 as per Ext. D, stating that there being strong objection from the residents of Khadakpur Mohalla in Mosque Street and the Harijan Colony through which the procession was proposed to be taken and as the situation was likely to create law and order problem, it should approach the District Magistrate, Mysore and secure appropriate permission under S. 31(1)(o), Karnataka Police Act, 1963 (hereinafter referred to as the "Act") before taking out the procession. Thereafter, the respondent made an application to the District Magistrate and the Deputy Commissioner, Mysore seeking permission under S. 31(1)(o) of the Act for taking out Sri Vidya Ganapathi procession for the purpose of immersion, by

the route specified in the application. The learned District Magistrate, by his order dated 24th Jan., 1978 produced at Ex. G, granted permission under S. 31(1)(o) of the Act to the respondent to take out Sri Vidya Ganapathi procession for immersion and expressly specified, in detail the route by which the procession should be taken. The order further states that so far as the timing of the procession is concerned, the same shall be decided after consultation with the local officers viz., Tahasildar and the police. In the preamble portion of the order, it is stated that the District Magistrate has made the said order to ensure maintenance of peace in Chamarajanagar Town. It is the said order that was challenged by the respondent in Writ Petition No. 9360 of 1979. The learned single Judge, by his order dated 29th Aug., 1979, allowed the writ petition and issued a writ in the nature of mandamus to the District Magistrate to permit the respondent to take out the procession on the streets specified by it, but regulating the same in accordance with S. 31(1)(o) of the Act with all such expedition as is possible in the circumstances and in any event within a period of three weeks from the date of receipt of the order. It is the said order that is challenged in this appeal.

3. The learned single Judge has come to the conclusion that there is difference between the route by which the respondent proposed to take the procession and the route actually prescribed by the District Magistrate. It is not disputed that the route prescribed by the District Magistrate is substantially the same as the one applied for by the respondent. All that has been done by the District Magistrate is to exclude from the route applied for by the respondent, Khadakpur Mohalla and Harijan Colony. The learned single Judge has taken the view that the District Magistrate had no competence under S. 31(1)(o) of the Act to prohibit the procession from passing through Khadakpur Mohalla and the Harijan Colony. The learned single Judge has taken the view that the power conferred on the District Magistrate by S. 31(1)(o) of the Act is only to regulate the procession and not to prohibit the same. The learned single Judge has taken the view that the District Magistrate by prescribing the route in such manner as to exclude Khadakpur Mohalla and Harijan Colony, has in fact prohibited the respondent from taking Sri Vidya Ganapathi procession through Khadakpur Mohalla and Harijan Colony. This, according to the learned single Judge, the District Magistrate is not empowered to do.

4. Sri Doddakalegowda, learned Government Advocate appearing for the appellants, contended that the order passed by the District Magistrate was well within the powers conferred on him by S. 31(1)(o) of the Act and as the said power was exercised for the purpose of maintaining peace in the locality, the learned single Judge ought to have held that the District Magistrate has validly exercised the power conferred on him by Section 31(1)(o) of the Act.

5. The only question for consideration in this appeal is as to whether the District Magistrate had the necessary competence while granting permission to the respondent to take out Sri Vidya Ganapathi procession, to prohibit by implication

the respondent from taking the procession through Khadakpur Mohalla and Harijan Colony. Whereas the learned Government Advocate contends that the District Magistrate had the necessary competence to prescribe the route in such a manner as to prohibit the respondent from taking out the procession through Khadakpur Mohalla and Harijan Colony, Sri Sridhar, learned counsel for the respondent, maintained that the District Magistrate does not have such a power of prohibiting the respondent from taking out the procession through Khadakpur Mohalla and Harijan Colony. In the light of the contentions urged by the parties both before us and before the learned single Judge, it is obvious that the only question for consideration is as to whether the District Magistrate could have made the impugned order u/s 31(1)(o) of the Act.

6. It is necessary to extract the relevant portion of S. 31 of the Act for the purpose of understanding the true scope and ambit of statutory provision in question which reads as follows:-

"Section 31(1):

The Commissioner and the District Magistrate, in areas under their respective charges or any part thereof, may make, alter or rescind orders not inconsistent with this Act, for-(o) regulating the conduct of and behaviour or action of persons, constituting assemblies and processions on or along the streets and prescribing in the case of processions, the routes by which the order in which and the times at which the same may pass;

It is clear from S. 31(1)(o) of the Act that the District Magistrate has been clothed with two powers - one of regulating and another of prescribing. The first part of the section entitles the District Magistrate to regulate the conduct and behaviour or action of persons constituting assemblies and processions on or along the streets. The second part of S. 31(1)(o) confers the power on the District Magistrate of prescribing in the case of processions the routes by which the order in which, and the time at which the same may pass. The first part of the section confers regulatory power on the District Magistrate, whereas the second part confers the power of prescribing the routes, the order or the time in respect of processions. Whereas the first part of the section deals with assemblies and processions, the second part of the section is confined to processions only. The District Magistrate, by the second part of the section, has been given the power of prescribing the routes by which the procession may pass, the power of prescribing the order in which the procession may pass and prescribing the times at which the procession may pass. Let us examine what has been done by the District Magistrate in this case. If we read the entire order of the District Magistrate, it is clear that he has granted permission to the respondent to take out Sri Vidya Ganapathi procession by the route which he has prescribed in great detail. The order clearly indicates the starting point, several streets through which it has to pass and the place of ultimate destination. The entire route has been clearly delineated in the order meaning thereby that the respondent has been permitted to take out the procession only by the route

specified in the order. In other words, the respondent is prohibited from taking the procession by any other route. The respondent is, therefore, right in pointing out that by the impugned order, the respondent is prohibited by implication from taking out the procession as proposed by it through Khadakpur Mohalla and Harijan Colony. Having regard to the nature of the order made by the District Magistrate challenged by the respondent, there cannot be any doubt that the same has been passed by the District Magistrate in exercise of the power conferred on him by the latter part of S. 31(1)(o) of the Act. As already, stated, the latter part of S. 31(1)(o) empowers the District Magistrate to prescribe the route by which the procession may pass. When the District Magistrate is expressly given power to prescribe the route by which the procession may pass, it follows that the District Magistrate has been given power to prohibit the procession from taking a route other than the one which he has prescribed. Prohibition from taking out any other route than the one prescribed by the District Magistrate clearly flows from the power given to the District Magistrate to prescribe the route by which the procession may pass. When the District Magistrate has power to prescribe the route by which the procession may pass, it follows that by implication, the District Magistrate has been clothed with the power of prohibiting the procession from taking any other route. We have, therefore, no hesitation in taking the view that the impugned order which has the effect of prohibiting the respondent from taking out the procession through Khadakpur Mohalla and Harijan Colony, is well within the power conferred by latter part of S. 31(1)(o) of the Act of prescribing the route by which the procession may pass. Unfortunately the attention of the learned single Judge was not specifically drawn to the power conferred on the District Magistrate by the second part of S. 31(1)(o) of the Act. The parties appear to have concentrated their attention only on the first part of S. 31(1)(o) of the Act focused the attention of the learned single Judge to the question as to whether the impugned order can be regarded as having been, made within the power of regulation conferred on the District Magistrate by the first part of S. 31(1)(o) of the Act. As already stated, the first part of S. 31(1)(o) of the Act confers the power of regulating the conduct and behaviour or action of persons constituting assemblies, or processions on or along the streets. The power exercised by the District Magistrate in this case is of prescribing the route by which the procession may pass. The order is not one regulating the conduct, behaviour or action of persons constituting the procession. The entire judgment of the learned single Judge deals with the question as to whether the power of regulation conferred on the District Magistrate in the first part of S. 31(1)(o) of the Act can be regarded as entitling the District Magistrate to exercise a power of prohibition. As already stated, that question did not arise in this case as the order of the District Magistrate was not passed in exercise of the regulatory powers conferred on him in the first part of S. 31(1)(o) of the Act, but has been passed in exercise of power conferred on him by the second part of S. 31(1)(o) of the Act, of prescribing the route by which the procession may pass. As the learned single Judge has passed the order under appeal on an erroneous assumption that the

order has been made in exercise of the power conferred by the first part of S. 31(1)(o) of the Act, and as we have come to the conclusion that the order has been passed in exercise of the power conferred on the District Magistrate by the second part of S. 31(1)(o) of the Act, the order of the single Judge has to be set aside. We hold that the order of the learned District Magistrate is legal and valid the same having been passed in exercise of the powers, conferred by the second part of S. 31(1)(o) of the Act of prescribing the route by, which the procession may pass.

For the reasons stated above, we allow this appeal, set aside the order of the learned single Judge made in Writ Petition 9360 of 1979 (since reported in 1980 (1) KarLJ 246) and dismiss the Writ Petition .

In the circumstances of the case, parties to bear their respective costs in this appeal.

We do not consider it a fit case to grant leave to appeal.

7. Appeal allowed.