
(1969) 12 GUJ CK 0010
In the Gujarat High Court

Himatlal K. Shah

APPELLANT

Vs

Shri Debu, Police Commissioner and Another

RESPONDENT

Date of Decision : 12-12-1969

Acts Referred:

Bombay Police Act, 1951 — Section 33(1), 33(1)(o)
Constitution of India, 1950 — Article 14, 19(1)(a), 19(1)(b), 19(2)
Police Act, 1861 — Section 30

Citation : (1971) 12 GLR 13

Hon'ble Judges : P.N. Bhagwati, C.J;D.A. Desai, J

Bench : Division Bench

Judgement

D.A. Desai, J.—In this petition under Article 226 of the Constitution, petitioner Himatlal K. Shah challenges the orders Annexures "A" and "B" both dated 2nd September 1969 by which the Deputy Commissioner of Police Special Branch second respondent in this petition-refused to grant permission to the petitioner to hold public meeting near Panch Kuva Darwaja on the 4th and 5th September 1969. The petitioner claims to be the Secretary of Maha Gujarat Nav Jawan Sangh. The petitioner sent two applications on 30th August 1969 to the first respondent Commissioner of Police, Ahmedabad, praying for a permission to hold meetings near Panch Kuva Darwaja on the 4th and 5th September 1969. Second respondent refused to give permission for the meeting intended to be held on 4th September 1969 on the ground that the application was not made to the concerned officer not less than five days before the time at which the public meeting was to be held as required by Rule 9 of the "Rules for the conduct, behaviour and action of the persons desirous of conducting processions or holding or convening public meeting within the areas covered by the Commissioner of Police, Ahmedabad City" (hereinafter referred to as The Rules.) Second respondent refused permission for holding meeting on 5th September 1969 on the ground that under a permission granted by him on an earlier occasion a meeting was held on 7th August 1969 but immediately after the meeting was over, riot occurred and mischief to private and public property was

committed and in respect of which offence was registered at Karanj Police Station and in view of the position then prevailing and in order to maintain law and order, it was not possible to grant such permission. The petitioner has challenged the aforementioned two orders of the second respondent refusing to grant permission to hold meetings.

2. Mr. H.M. Mehta, learned Advocate who appeared for the petitioner, challenged the validity of the impugned orders on the following grounds:

(1) Sub-clause (o) of Section 33(1) of the Bombay Police Act does not empower the Commissioner of Police to frame rules requiring any person to obtain prior permission for holding meeting and the rule so framed is in excess of the rule making power and is consequently invalid.

(2) Sub-clause (o) of Section 33(1) of the Bombay Police Act suffers from the vice of excessive delegation of legislative powers; and is ultra vires Article 14 in that it confers uncontrolled, naked and arbitrary powers on the Commissioner of Police to grant or refuse permission at his sweet will and pleasure without laying down any guiding principles.

(3) Sub-clause (o) of Section 33(1) and the Rules framed thereunder are ultra vires Articles 19(1)(a) and 19(1)(b) inasmuch as they put a total ban on the fundamental rights of freedom of speech and freedom to assemble peaceably; and even if it be held that the rules put restriction on the exercise of the said fundamental rights, the same are unreasonable.

We shall take up these grounds in the order in which they are set out.

3. At the outset it is necessary to make it clear that the principal prayer in the petition, namely, the validity of the two impugned orders Annexures "A" and "B" had become infructuous by lapse of time as the dates on which the intended meetings were to be held had long since passed and even if the declaration sought was granted, it would in no way help the petitioner. But Mr. Mehta submitted that the organization of which the petitioner is an office bearer has to organize meetings on a number of occasions and every time the question of applying for permission would arise and therefore, it is necessary to get a decision, whether the rules under which prior permission for holding meeting is insisted upon are legal and valid. Therefore, even though specific prayer for quashing the impugned order cannot now be granted as it has become infructuous, we propose to examine the aforementioned contentions raised in this petition.

4. The first ground of attack is that Sub-clause (o) of Section 33(1) of the Bombay Police Act does not authorise, enable or empower the Commissioner of Police to frame rules inter alia, providing for previous permission for holding a meeting on or along the street. Sub-clause (o) of Section 33(1) reads as under:

33. (1) The Commissioner and the District Magistrate, in areas under their respective charges or any part thereof, may make, alter or rescind rules or

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.

Mr. Mehta contended that the use of the words "regulating the conduct of and behaviour or action of persons constituting assemblies" in Clause (o) would indicate that an assembly is already constituted and it is necessary to regulate the conduct, behaviour, and action of persons constituting the assembly. The submission was that regulation of a thing or the state of affairs pre-supposes prior existence of it and subsequent regulation thereof. In other words, it was urged that one cannot regulate a non-existent thing or state of affairs and therefore, regulation must imply continued existence of thing which is sought to be regulated. As a corollary, it was contended that Clause (o) can come into play after an assembly is constituted and unless there are persons or members who have constituted the assembly, their conduct, behaviour and action, cannot be regulated. The rules, it was urged, to fall within the ambit of Clause (o) must be so framed that under it the conduct, behaviour and action of persons who have constituted assembly can be regulated; and from this, it must follow that the rules cannot be framed so as to govern the conduct of persons who are desirous of constituting an assembly. Viewed from this angle, Mr. Mehta contended that Rules 7, 8, 9 and 10 of the Rules which prescribe the requirement of prior permission and method of applying for the same, contents of the application for permission before constituting assembly or convening meeting would be in excess of the rule making powers conferred upon the Commissioner of Police by Clause (o) and would be bad. Even though the impugned rules are framed by the Commissioner in exercise of the powers conferred by Clauses (n), (o) and (y) of Section 33(1), it appears that the rules for regulating meetings and assemblies in order to be valid must fall under Clause (o). The Commissioner can, therefore, frame rules to regulate, the conduct, behaviour and action of persons constituting a meeting. What is the connotation of the word "regulating" as used in Clause (o)? Does "regulate" imply prevention or prohibition? Can one regulate a thing or state of affairs without in some way prohibiting a thing to be done or state of affairs taking place? The word "regulating" appears to have been used in a broad sense which will include prevention or prohibition though not total prohibition. "Regulating" in some form contains an element of prohibition or prevention. When it is said that traffic is regulated, it would mean that the vehicles can be directed along a certain specified route or vehicles may be prevented from proceeding in a certain direction or the vehicles cannot be parked except in the parking lot-which would mean that there is a prohibition against parking at other places. The right to regulate to be effective must carry in its sweep right to control, prohibit and prevent. "Regulation" thus includes prohibition and something more. Mere prohibition is preventing and nothing more. While regulating means preventing if necessary; but if allowed to proceed

further, controlling or keeping a watch so as to prevent occurrence of undesirable consequences. Thus, "prohibition" has a narrow connotation. It prevents things from coming into existence; while "regulating" has a wider meaning which goes beyond prohibition and prevention. The Legislature appears to have used the word "regulating" in Clause (o) advisedly. Where the Legislature considered it necessary to prohibit a thing being done, it has used the word "prohibiting" such as in Clause (da) under which rules prohibiting the display of any pictures, etc. can be framed; Clause (db) under which rules prohibiting the erection, exhibition etc. for the purpose of advertisement, can be framed; Clause (i) under which rules can be framed for prohibiting exposure or movement in any street of persons or animals suffering from contagious or infectious diseases etc.; Clause (p) under which rules can be framed for prohibiting hanging or placing of any cord or pole across a street or part thereof, etc.; and Clause (q) under which rules can be framed for prohibiting the placing of building materials or other Articles in any street or public place etc. Thus, where the legislature wanted to confer powers for framing rules for prohibiting something being done it has used the word "prohibiting", while where it was considered proper that something may be prohibited from being done or if permitted, could be regulated thereafter, it used the word "regulating" such as regulating traffic etc. in Clause (b). Therefore, from the scheme of Section 33, the intention of the Legislature in using the word "regulating" in Clause (o) becomes manifestly clear. It was of course urged that wherever the Legislature wanted to prohibit something being done, it has used the word "prohibiting" in various sub-clauses in Section 33(1) and therefore, wherever that word is not used, the Legislature never wanted to confer powers to prohibit a thing being done and therefore, the word "regulating" in Clause 33(1)(o) must be understood and interpreted in the light of the language of other clauses of the same section. If something is to be prohibited from being done, there is no question of it being permitted to be done under certain circumstances. Prohibition would thus mean total prohibition. "Regulating anything" word mean prohibiting or permitting it to be done with or without conditions attached to it. Any other approach would ignore the vital element in the connotation of the word "regulating" which includes prohibiting or preventing. Prohibition or prevention is a mode of regulation and regulation in its wide connotation implies overall regulation, in which prohibition incidentally comes in as a part of overall regulation. Regulation is a continuous process, one of its essential ingredient being prohibition. By use of the word "regulating" the legislature intended to empower the Commissioner of Police to frame rules by which assembly can be prohibited or if permitted to be convened can be regulated during its course of continuance. Both purposes are served by use of the word "regulating". In *Indubhushan Base v. Ramsundari Devi and Anr.* Civil Appeal No. 882 of 1968 decided on 29th April 1969, the Supreme Court construed the words "regulation of house accommodation (including control of rent) in such areas" in entry 3 List I, Seventh Schedule, to mean "control, govern or direct by rules or regulations" and therefore, it was held that under the said entry, the Parliament has power to pass Legislation for the purpose of

directing or controlling of house-accommodation and this power to direct or control will include within it all aspects as to who is to make construction, under what condition the construction can be altered, who is to occupy the accommodation and for how long, on what terms it is to be occupied, when and under what circumstances, the occupant is to cease to occupy and the manner in which the accommodation is to be utilised. It was specifically held that all these are ingredients of regulation of house accommodation and it was further held that the word "regulation" in entry 3 has been used in this wide sense. Thus, the word "regulation" is interpreted to include something prior to the coming into existence of the construction and who has to occupy if the construction is made and under what condition. All these things were brought within the sweep of the word "regulation". In *Charles Kovece v. Albert Cooper* 336 U.S. 77, it is observed that all regulatory enactments are prohibitory so far as their restrictions are concerned and the prohibition of the ordinance under challenge as to a use of street was merely regulatory. Mr. Mehta drew our attention to *Qasim Raza Vs. Emperor*, . The petitioner in that case was convicted for contravening Section 30 of the Police Act, 1861 in that he took out a procession without a licence. The scheme of Section 30 is that licence as such for taking out procession is not necessary unless the District Magistrate or Sub-Divisional Magistrate may require by a general or special notice that the person convening or collecting such assembly or directing or promoting such procession shall apply for a licence. Interpreting the section, it is held that there is no bar under the Act absolutely to forbid a procession; but the officer has power only to regulate the procession in the manner prescribed by the Act by the issue of a licence or the procession may be left alone. There is a material difference in the language of Section 30 and Section 33(1)(o) of the Bombay Police Act. Therefore, this decision is not an authority for the proposition that a right to regulate procession does not carry with it the right to prohibit one being taken out. At any rate, this decision does not go so far as to emphatically say that "regulating" does not include "prohibiting". Reference was also made to *Emperor v. Gulam Kadar Saheb* 30 B. L.R. 367. In that case a police constable on duty directed the processionists to turn and go in a particular direction which was disobeyed and the accused were prosecuted and convicted for an offence u/s 153 of the Indian Penal Code. It was urged that the police constable charged with a duty to regulate and control traffic under Clause (a) of Section 53(1) of the Bombay District Police Act, 1870 has no power to stop persons having a right to go along that particular street and to order them to go by another way to their destination. This contention was negatived. But it is observed that: "If Clause (a) merely used the words 'to regulate the traffic in the streets', then possibly there would be a good case for Mr. Thakore's contention." It was urged that if "regulating" did not include "prohibiting", the Court could not have said that Mr. Thakore's contention as good. We fail to see how from this observation it can be spelt out that "regulating" would not include "prohibiting". In our opinion, all regulatory enactments are prohibitory so far as restrictions are concerned. "Regulation" would imply prohibition because prohibition is a part of overall

regulation and incidentally comes in as a part of regulation. In fact process of regulating something may necessitate some kind of prohibition which is an essential ingredient of regulating. When, therefore, power is conferred upon the Commissioner of Police to frame rules for regulating conduct, behaviour and action of persons constituting assembly, it would of necessity include power to provide for a prior permission before convening a meeting which would be part of overall regulation.

5. The context in which the word "regulating" is used in Clause (o) also indicates that it takes within its sweep something prior to the formation of the assembly. The words "regulating the conduct of and behaviour, or action of persons constituting assemblies" would include the conduct and behaviour of those who are going to constitute assembly. If the conduct, behaviour and action of those who have constituted the assembly were to be regulated, the Legislature would not have used the words "constituting assemblies." Upon a true interpretation of the clause, keeping in view the juxtaposition of the words and the tense used, in our opinion, the words "persons constituting assemblies" should include those about to constitute or are desirous of constituting assemblies. Viewed from either angle, the Commissioner of police has powers to frame rules including the rules for taking prior permission for convening meetings or constituting assemblies.

6. One more submission of Mr. Mehta may be noticed at this stage. It was pointed out that Clause (y) of Section 33(1) confers powers upon the Commissioner to prescribe procedure in accordance with which any licence or permission sought to be obtained or required under the Act should be applied for, and fixing the fees to be charged for any such licence or permission. It was urged that if specific provision is made for prescribing the procedure by rules for obtaining permission required under the Act that procedure can be prescribed under the powers conferred under Clause (y). But the provision for insisting upon a prior permission should be found in some other clauses and there is no such provision in Clause (o). It was contended that in order to reach a true interpretation of the word "regulating" we must bear in mind the provision contained in Clause (y). In our opinion, there is no merit in this contention because once true meaning of the word "regulating" is correctly understood, meaning thereby that it implies prohibition and therefore, the rule providing for prior permission which may enable the Commissioner of Police to prohibit a meeting from taking place would fall within the ambit of Clause (o). The provision contained in Clause (y) would not abridge the meaning of the word "regulating" in Clause (o).

7. Second ground of attack is that Sub-clause (o) of Section 33(1) of the Bombay Police Act suffers from the vice of excessive delegation of legislative powers, and it is ultra vires Article 14 of the Constitution, in that it confers uncontrolled, naked and arbitrary powers on the Commissioner of Police to grant or refuse permission at his sweet will and pleasure and no guide lines are furnished for the exercise of power. The submission is that no legislative policy is discernible from

the various provisions of the Act and no guidance is available to the officers not only as to what Rules should be enacted but the circumstances in which the permission may be granted or withheld. While considering the attack under Article 19(1)(a) and (b) that the rules framed by Commissioner of Police under Clause (o) infringe or abridge the fundamental rights of freedom of speech and assembly, we would point out that Clause (o) and rules framed there under though undoubtedly impose restrictions on the exercise of the said fundamental rights but they constitute reasonable restrictions in the interest of public order and would be justified under Clause (2) of Article 19. We would point out that a detailed examination of the various provisions of the Act clearly indicate the policy underlying the Act and provide clear guidance to the officers who have to exercise powers of framing rules conferred on them. If the restrictions placed by the rules are found to be reasonable and if the policy underlying the Act is discernible and guidance is provided to the officers who have to exercise the powers, it cannot be said that Clause (o) confers naked, uncontrolled and arbitrary powers on the Commissioner of Police to grant or refuse permission at his sweet will and pleasure. Once the Legislature lays down clear legislative policy underlying the Act and guide lines are provided for the guidance of the officers on whom the discretion is conferred and powers are delegated for making rules, it cannot be said that Clause (o) suffers from the vice of "excessive delegation of legislative powers. Various clauses of Section 33(1) provide for regulating of various things in a given manner in different parts of this State. The conditions are likely to differ from area to area, and therefore, the legislature cannot undertake a comprehensive statute to meet with different situation in different areas and varied conditions. It is, therefore, essential for the legislature to delegate powers to responsible officers in charge of different areas to frame rules keeping in view the local conditions and exigencies of the situation. In the very nature of things comprehensive statute with regard to regulating various things in different areas cannot be undertaken and it is implicit in the language of Section 33(1) that the local conditions must be taken into consideration before framing rules. Therefore, if the legislature lays down a policy and provides guidance for the officers who have to exercise the powers, it cannot be said that the impugned provisions suffer from the vice of excessive delegation of legislative power, nor can it be said that it confers uncontrolled, naked and arbitrary powers on the Commissioner of Police.

8. That takes us to the principal ground of attack on the validity of Clause (o) and rules framed thereunder. It was contended that Sub-clause (o) and Rules framed thereunder are ultra vires Articles 19(1)(a) and 19(1)(b) of the Constitution inasmuch as they put a total ban on the fundamental rights of freedom of speech and freedom to assemble freely. Before we examine the merits of this contention, we would briefly refer to relevant rules. The rules are styled as "Rules for the Conduct, behaviour and action of the persons desirous of conducting processions or holding or convening public meeting within the areas covered by the Commissioner of Police, Ahmedabad City." Rules are framed

under the powers conferred on the Commissioner of Police under Clauses (n), (o) and (y) of Sub-section (1) of Section 33 of the Bombay Police Act. Rules (1) to (6) provide for regulating processions along the street with which we are not concerned. Rules (7) to (14) provide for regulating conduct, behaviour and action of persons constituting a meeting. Except Rule (13) rest of the rules are impugned in this petition. Rule (7) provides that no public meeting shall be convened without a permission in writing being obtained from the Commissioner of Police or officer authorised by him. Rule (8) provides that an application for permission shall be made by the person who intends to organize or promote such a meeting. Rule (9) provides that such an application should be made 5 days before the time at which the public meeting is to start. Proviso to Rule (9) empowers the officer to condone delay in making application in suitable cases. Rule (10) provides what should be the contents of the application. Rule (11) provides that the applicant or his representative must be present at the meeting with the permission granted to him and produce the same for inspection whenever required by the police officer. Rule (12) provides that no assembly of 5 or more persons not constituting part of the meeting shall assemble at the place of the public meeting or within 10 yards of the extremities of the public meeting at the time when the public meeting is held as per the permission granted by the officer authorised to grant the permission. Rule (13) provides that a police officer may warn five or more persons gathering within 10 yards of the extremities of the authorised public meeting or at the place of public meeting to leave the place beyond the distance of 10 yards from the extremities of the public meeting. Rule (14) provides that the organizer or organisers or promoters of the meeting shall on being called upon furnish security in the amount fixed by the Commissioner of Police or by any officer authorised by him. Rule (15) provides for punishment for infringing the rules.

9. The petitioner has impugned the validity of Rules (7) to (11) and (14) and (15). It was urged that these rules put a total ban on the fundamental rights of the freedom of speech and assembly and even if they are held to be restrictions put on the exercise of the said fundamental rights the same are unreasonable and would not be saved by Clause (2) of Article 19. Articles 19(1)(a) and 19(1)(b) ensure freedom of speech and expression and freedom to assemble freely to every citizen of this country. The right of free speech carried with it right to propagate one's views which in turn would include the right to assemble and hear the views or share knowledge. Freedom of speech and expression includes freedom of propagation of ideas and this freedom is further ensured by the freedom of circulation of views and ideas which in turn implies a right of the society to know the views. Freedom of speech goes to the heart of the natural right to acquire and share information and knowledge Vide *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, . If, therefore, by any device this right is sought to be curtailed or even whittled down, it cannot be gainsaid that it would impose restrictions on the

exercise of the right. The impugned rules provide for prior permission before holding a meeting and to that extent they put restrictions on the exercise of fundamental rights of freedom of speech and assembly. Once restriction is put which would abridge or impinge upon fundamental rights, it is for the State to justify the same. The impugned Clause (o) and the rules framed thereunder do put a restriction on the exercise of the fundamental rights of free speech and assembly inasmuch as the Commissioner by refusing to grant permission to hold the meeting would restrain the citizen concerned from exercising the said rights and therefore, the State must justify the same by showing that they would be saved by Sub-article (2) of Article 19. The respondents contend that Clause (o) and the rules framed thereunder impose reasonable restrictions in the interest of public order on the exercise of fundamental rights of freedom of speech and expression. The question, therefore, is whether the rules which provide for a prior permission which may or may not be granted would impose reasonable restriction on the exercise of the right of free speech and assembly.

10. It was vigorously contended that prior restraint or obligation to take previous permission or permission in advance of the exercise of the right cannot be justified as reasonable restriction as it has the tendency to impose a total ban on the exercise of the right. It was urged that previous restraint which is very much akin to anticipatory action or determination of criminality in advance based on conjectures and surmises which may be wholly unwarranted would impose a total ban or an unreasonable restriction on the exercise of the right. It was also contended that the officer charged with a duty to grant permission may in his discretion refuse to grant one and that would impose a total ban on the exercise of the right and decision of the officer may be influenced by reasons wholly unconnected with the object underlying such an enactment.

11. Mr. Mehta referred to a number of decisions of the United States Supreme Court in support of his submission that prior restraint is a negation of the right of free speech. It was submitted that there is paucity of decisions on Article 19(1) (a) and (b) and further we have bodily imported Article 19(1)(a) and (b) from first Amendment of United States Constitution and therefore, the decisions of United States Supreme Court would be helpful in determining the content of fundamental rights of freedom of speech and assembly. We may first refer to these decisions. In *Samuel Sale v. People of the States of New York* 334 U.S. 556, the Court struck down the Ordinance which forbade the use of sound amplification devices except with permission of the Chief of Police on the ground that the right to be heard is placed in the uncontrolled discretion of the Chief of Police which stands athwart the channels of communication as an obstruction which can be removed only after criminal trials and convictions and lengthy appeals. The Court was impressed by the provisions showing that the statute is not narrowly drawn to regulate the hours or places of use of loudspeakers, or the volume of sound to which they must be adjusted, and felt that a more effective previous restraint is difficult to imagine. In *Alma Lovell v. City of Griffin* 303 U.S. 444 the Court struck down the Ordinance requiring a licence for distribution of

literature on the ground that approval of licensing system would institute pre-censorship "in its baldest form". In *Frank Hague v. Committee for Industrial Organization* 307 U.S. 496, the Court struck down the City Ordinance which required a licence from a local official for a public assembly in or upon the public streets, high ways or in public parks or public buildings on the ground that such ordinance can be made instrument of arbitrary suppression of free expression of views on the national affairs. In *R.J. Thomas v. H.W. Collins* 323 U.S. 516 the Court set aside the conviction for contempt of Court committed by the petitioner by violating a temporary restraining order by which the petitioner was restrained from soliciting union memberships and funds while addressing a meeting. The Court observed that if the exercise of right of free speech and free assembly cannot be made a crime, this cannot be accomplished by a device to require previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. The requirement of prior registration before making a public speech to enlist support for a lawful movement was considered quite incompatible with the requirements of the first Amendment of the Constitution. In *L.M. Near v. State of Minnesota* 283 U.S. 696 , the Court considered the constitutional validity of the provisions under which action can be brought for restraining the publisher from publishing any obscene, lewd and lascivious newspaper or periodical. The question considered was whether the statute authorising such a proceeding in restraint of publication is consistent with the concept of liberty of the press as historically conceived and guaranteed. It was held that exceptional nature of its limitation places in a strong light the general conception that liberty of the press, historically considered and taken up by the Constitution has meant principally, although not exclusively immunity from previous restraints or censorship. Referring to this decision, it was urged that previous restraint of any kind and in any form has the mischievous tendency to put a total ban on the exercise of the right and infringes and abridges the fundamental right of free speech and cannot be sustained as merely a restriction. Such a power urged Mr. Mehta has a tendency to put a complete embargo on the exercise of the rights and cannot be sustained as a mere restriction much less a reasonable restriction. Mr. Mehta referred to *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, , and urged that there is paucity of authority in India on the nature, scope and extent of the fundamental right of the freedom of speech and expression, and as we have largely drawn on the first Amendment of the Constitution of United States while enacting Articles 19(1)(a) and (b) it would be legitimate and proper to refer to the decisions of the Supreme Court of United States in order to appreciate the true nature, scope and extent of this right. It is however, observed in that very case that in two other cases the Supreme Court has uttered a warning against the use of American and other cases vide *State of Travencore-Cochin v. Bombay Co. Ltd.* 1952 3 S.C. 1112 , and *The State of Bombay Vs. R.M.D. Chamarbaugwala*, . Mr. Mehta drew our attention to *Brij Bhushan and Another Vs. The State of Delhi*, . This decision was given prior to

the amendment of Sub-article (2) of Article 19 by the first amendment to our Constitution. In that case, validity of an order u/s 7(1)(c) of the East Punjab Public Safety Act, 1949, calling upon the editor and publisher of Organizer an English weekly to submit for scrutiny in duplicate before publication of the matters set out in the order was impugned. The challenge was that pre-censorship is a negation of the right of free speech and expression. The challenge was upheld on the ground that the restriction did not fall within the ambit of Sub-article (2) as it stood then. This decision is not an authority for the proposition canvassed by Mr. Mehla that pre-censorship which is very akin to prior restraint would be a negation of the fundamental right of freedom of speech and expression and would be constitutionally invalid. The First Amendment of the United States Constitution contains no exception and it enacts an absolute prohibition. There pre-censorship or for that matter prior restraint on the exercise of the right of freedom of speech and expression has been held to be invalid. But even the Supreme Court of America has not adhered to the strict view that prior restraint necessarily implies curtailment or abridging of the right of the freedom of speech and is always bad. In the absence of any specific provision in the United States Constitution akin to Sub-article (2) of Article 19 under which reasonable restrictions on the exercise of such right can be imposed, the United States Supreme Court by judicial decision and pronouncement evolved the doctrine of clear and present danger in dealing with freedom of speech and press. The trend of the decisions of the United States Supreme Court indicate that the fundamental right of freedom of speech is not absolute in character and no restraint can be imposed upon it. We may in this connection refer to *Charles Kovacs. v. Albert Cooper* 336 U.S. 77 in which the validity of the City Ordinance prohibiting the operation upon the streets of sound amplifier or other instruments which emit "loud and raucous noises" and are attached to vehicles operated or standing upon such streets was considered. Considering the fact that sound trucks can be utilised in places such as parks or other open spaces off the streets and further considering that natural human voice is not sought to be restrained, the validity of the Ordinance was upheld. While reaching this conclusion the case of *Samuel Saia v. People of the Slate of New York* (supra) was referred to. After considering this case, the Court referred to an earlier decision of Mr. Justice Holmes in *Shench v. United States* 249 U.S. 47 in which it was observed that: "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force." It is further observed that city streets are recognised as a normal place for the exchange of ideas by speech or paper. But this does not mean that the freedom is beyond all control. It was considered permissible exercise of legislative discretion to bar sound trucks to which are attached sound amplifying devices which emit loud and raucous noise from the public streets of the municipality. In *Willis Cox v. State of New Hampshire* 312 U.S. 569, validity of a statute requiring persons using public streets for a parade or procession to procure a special licence therefore from the local authorities came up for

consideration. It was challenged on the ground that it contravenes the freedom of assembly by imposing prior restraint. The challenge was negated observing that if a municipality has authority to control the use of its public streets for parades or processions, as it undoubtedly has, it cannot be denied authority to give consideration without unfair discrimination, to time, place and manner in relation to the other proper uses of the streets. The limited authority conferred by the licensing provisions of the statute in question as thus construed did not contravene any constitutional right. This would show that as a general proposition even the Supreme Court of United States has not accepted that prior restraint in any form is a curtailment or infringement of the fundamental rights of freedom of speech. This is so where there is no provision in the Constitution comparable to Sub-article (2) of Article 19. If the provisions of our Constitution and the Constitution of United States were materially identical, we would have had little difficulty in striking down the Rules which provide for prior permission before holding the meeting. But we would like to point out that there is a fundamental difference between our Constitution and the Constitution of United States relevant to the point under discussion and this glaring difference has in fact been noticed by the United States Supreme Court very recently in *Kingsley Corporation v. Regents of the University of New York* 360 U.S. 684 wherein it is observed as under:

If we had a provision in our Constitution for "reasonable" regulation of the press such as India has included in hers there would be room for argument that censorship in the interest of morality would be permissible.

12. The First Amendment of the United States Constitution provides that the Court shall not make any laws abridging the freedom of speech or of the press. There is no provision in the Constitution of United States similar to or even nearly akin to the provision contained in Article 19(2). The provisions in two Constitutions concerning freedom of speech and restraint are essentially different. Provision in United States Constitution contains no exception and it enacts an absolute prohibition. Abridgement or curtailment of the right of free speech in any form in that country cannot be sustained in the absence of a provision similar to one contained in Sub-article (2) of Article 19. In our Constitution right to freedom of speech and expression is subject to the limitation on that right contained in Sub-article (2). In view of this difference in two provisions one has to draw upon the American decision with certain restraint. It would be unwise to bodily import the views expressed by the Supreme Court of United States. In fact considering the language of Article 19(1)(a) and (b) and Sub-article (2) our Supreme Court held that anticipatory action which has a tendency to put restriction on the exercise of the fundamental right of freedom of speech can be justified or is not impermissible. In *Babulal Parate Vs. State of Maharashtra and Others*, constitutional validity of the orders passed u/s 144 of the Criminal Procedure Code came up for consideration. It was contended before the Supreme Court that anticipatory action that can be taken u/s 144 will infringe the fundamental rights of freedom of speech and assembly. Negating

this contention, it has been observed:

Whatever may be the position in the United States it seems to us clear that anticipatory action of the kind permissible u/s 144 is not impermissible under Clauses (2) and (3) of Article 19. Both in Clause (2) (as amended in 1961) and in Clause (3), power is given to the Legislature to make laws placing reasonable restrictions on the exercise of the rights conferred by these clauses in the interest, among other things, of public order. Public order has to be maintained in advance in order to ensure it and, therefore, it is competent to a Legislature to pass a law permitting an appropriate authority to take anticipatory action or place anticipatory restrictions upon particular kinds of acts in an emergency for the purpose of maintaining public order.

13. Considering the matter from all aspects, it is crystal clear that merely because prior permission for holding a meeting is insisted upon, it would not impose a total ban or embargo on the exercise of the right of freedom of speech and expression and would be necessarily bad. Prior restraint does impose a restriction but is not an impermissible restriction and it can be imposed under Sub-article (2), if it is otherwise reasonable. Therefore, merely because Rules provide for prior permission implying previous restraint it cannot be said that they are not mere restrictions put on the exercise of the said fundamental rights but they would put a total ban or embargo on the exercise of the said fundamental rights.

14. The next question to be considered is: whether the restrictions are reasonable? It was urged that neither the Act nor the Rules lay down policy or provide guidance for the officers who have to exercise the powers. In order to find out whether the Bombay Police Act lays down policy for the guidance of officers on whom powers are conferred, it is not necessary for us to examine the entire scheme of the Act. In an almost identical challenge to Rules framed under Clause (a) of Section 33(1) of the Bombay Police Act, the Division Bench consisting of Miabhoy J. (as he then was) and Modi, J. considered the entire scheme of the Bombay Police Act in the case of *Indulal Yagnik v. The State and Ors.* 4 G.L.R. 209, to find out whether the Act reveals policy of the State Legislature and purpose for which the Act is enacted. After considering various provisions of the Bombay Police Act, it was observed that the provisions of the Act give a sufficiently clear indication of the policy, underlying the legislation and they clearly bring out that the main object of the Act is to create a police force for preservation of peace and order and to ensure that prompt steps are taken for quelling public disorder whenever and wherever it occurs. In order to carry out this policy, powers have been conferred and duty is imposed on the police force and these duties and powers have been specified in details and hedged in with qualifications and safeguards wherever they have been found to be necessary by the Legislature. The powers which have been conferred u/s 33 are calculated to empower some of the highest authorities in the State to make rules or pass orders for regulating traffic and for preserving public order and

tranquility. But the powers are not untrammelled. The section provides certain safeguards and imposes certain conditions in the matter of the exercise of these powers. The rules require previous publication in the Government Gazette and previous sanction of the State Government. Therefore, it is quite obvious that the power which has been conferred by the Legislature by the impugned clause is not arbitrary or untrammelled power. Undoubtedly, after examining the entire scheme and all the provisions of the Act and particularly the provisions of Section 33(1), the Court found out the policy underlying the legislation. The policy underlying the Act in terms is creation of police force for preservation of public order and to effectively deal with and quell any public disorder. If the policy underlying the Act is preservation of public order and this, policy is clearly discernible and to carry out this policy Legislature confers powers and imposes duties on the officers to carry out the policy and the purpose it cannot be said that the powers are uncontrolled or arbitrary. If the powers can only be exercised for carrying out the purpose or policy of legislation then guidance for the exercise of powers is clearly provided therein, because the powers can only be exercised for preservation of public order. Preservation of public order in a given situation may necessitate prohibiting holding of public meetings in the streets. The policy underlying the Act and the Rules framed thereunder thus clearly provide guidance for the exercise of powers conferred on officers. It cannot therefore, be said that such a power to refuse permission for holding a meeting would be naked or arbitrary power. It is in fact hedged in by conditions and the policy underlying the Act which could provide guidance for the exercise of powers. Therefore, the powers conferred upon the Commissioner of Police are neither uncontrolled, naked nor arbitrary. It was urged that the Rules impose unreasonable restriction because they do not provide as to in what circumstances the permission should be granted or refused and the decision to grant or refuse permission is left to the whim and fancy or sweet will of the officer. The emphasis was laid on the fact that there is no provision in the rules for assigning reasons for refusing to grant permission. It was further urged that the officer concerned may refuse permission for reasons which may be wholly unconnected with maintenance of public order and his arbitrary exercise of power cannot be checked up as he is not bound to make a speaking order. The power to grant permission vests in the Commissioner of Police or any other officer authorised by him. The Rules do not lay down specific condition or circumstances in which permission would be refused. Equally, there is no provision in the Rules which necessitate giving reasons for refusing permission. If the powers are conferred on such a superior officer as Commissioner of Police, it is expected that the same would be exercised for carrying out the objects for which the legislature has enacted the Act, namely, preservation of public order. The officer on whom the power is conferred to grant permission must ordinarily grant permission unless he is satisfied that meeting if held may lead to public disorder. Restriction cannot be struck down as unreasonable on the ground that officer may exercise the powers in an arbitrary or capricious manner. If for the exercise of the powers, guidance is provided it is reasonable to believe that superior officer would

exercise the powers keeping in view the object or policy of the legislation. Looking to the rules and policy underlying the Bombay Police Act, the officer should ordinarily grant permission for convening meeting unless he is satisfied that permitting meeting to be held would lead or was likely to result in public disorder. Granting or refusing to grant permission would be an administrative act and at any rate it was not even urged that it would be a quasi-judicial act. Therefore, unless the rules themselves so provide, there is no duty to give reasons for refusing to grant permission. There is no provision in the rules giving reasons. But on this ground alone, it cannot be said that the power is likely to be abused and conferment of such discretion by itself would make the restriction an unreasonable one. Rule 10 sets out the information which applicant for permission must furnish in the application. Broadly stated the details required to be given are: the purposes for holding the meeting, names of persons who are to address the meeting and time and place at which the meeting is to be held. This information cannot be termed irrelevant in the context of granting or refusing permission. The officer who has to grant permission must make up his mind whether the permission asked for should be granted or refused. He has to decide whether there is any reasonable apprehension of threat to public order by convening meeting. For that, he must know the time, place, purpose of the meeting and speakers who are to address the meeting. These requirements of application for permission are quite relevant and necessary to enable the officer to properly decide whether permission ought or ought not to be granted. On this account, the rules cannot be said to be unreasonable. Similarly insistence upon furnishing security or prescribing conditions subject to which permission may be granted would also not make the rules unreasonable.

15. In fact the nature of the powers conferred by rules and circumstances in which, they can be exercised and purpose for which they can be exercised would indicate that rules in themselves are not unreasonable. If in a given case the powers are exercised in an arbitrary manner or on extraneous consideration, as observed in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, , the Court's arms are strong enough to deal with such a refractory officer. But the possibility of misuse of powers in a given case is not the test by which reasonableness of the powers can be judged. In our opinion, therefore, the Act discloses a policy underlying the legislation and the object for which the legislation is enacted is discernible and guidance is provided by the objects sought to be achieved by the legislation namely preservation of public order. If the preservation of public order is the object sought to be achieved by the particular legislation, the powers conferred upon the officer to act in advance before disorder takes place could not be said to be either uncontrolled, arbitrary or naked. To say that after the disorder takes place, action can be taken is the very antithesis for which the legislation is enacted. In *Virendra Vs. The State of Punjab and Another*, , it is observed that quick decision and swift and effective action must be of essence of these powers and the exercise of it must, therefore, be left to the subjective satisfaction of the Government charged with the duty of

maintaining law and order. Exercise of discretionary preventive powers to be exercised in anticipation for preventing breach of the public order must necessarily be left to the State Government or its officers to whom the State Government may delegate the authority. The test of reasonableness of the restriction has been laid down in the State of Madras Vs. V.G. Row, it is observed as under:

It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.

Keeping in view this test, we must examine the reasonableness of the restrictions. The first and most essential thing to be borne in mind is that the provisions contained in Clause (o) seeks to regulate the conduct of persons constituting the assemblies on public streets. The impugned clause does not empower the Commissioner of Police to restrain the meetings being held in public halls or for that matter at any other place except streets. Streets are ordinarily used for passing or repassing over them by the persons using the streets and for the traffic to pass over it. If such is the normal use of the street, then, if a meeting is to be held on the street, certainly, it requires to be regulated. If by the rule prior permission was to be insisted upon in respect of the meeting wherever held, serious question would have arisen whether the restriction is reasonable. But if by the provision prior permission is insisted upon for meeting to be held on public street, which is ordinarily not a place for holding a meeting, certainly, the conduct, behaviour and action of the person constituting assemblies on the public streets must and need be regulated. Restriction, in our opinion, is very partial one. The rules do not put a total ban on the holding of the meetings without permission. The fundamental rights of freedom of speech and assembly are not substantially restricted if the meeting is not allowed to be held on a public street. The purpose underlying the regulation is preservation of public order. If unfettered right to use street for holding meeting is to be envisaged a similar exercise of right by other person may inevitably lead to a clash. For maintenance of public order the power to regulate the conduct, behaviour and action of persons desirous of constituting assemblies is a sine que non. In our opinion, therefore, prior permission which implies prior restraint is a reasonable restriction on the exercise of fundamental right of freedom of speech and expression. As stated earlier, permission would ordinarily be granted except where the officer is satisfied that the granting of the permission is likely to lead to a public disorder. The officer has to keep in view the policy underlying the legislation that is maintenance of the public order. If all these aspects are kept in view, the restriction imposed by the rules are reasonable and would be covered by Sub-article (2) of Article 19.

16. If the restrictions are reasonable and for the exercise of the powers conferred, there is sufficient legislative policy and object disclosed and guidance provided, and if the powers can neither be termed as uncontrolled or arbitrary, then the rules as stated earlier cannot be said to be suffering from vice of excessive delegation and would not be violative of Article 14 nor are they violative of Articles 19(1)(a) and (b). The attack on both the grounds must fail.

17. As stated earlier, the question of the validity of the impugned orders need not be considered for the reasons hereinbefore given. The petition, therefore, fails and must be dismissed. Rule discharged with no order as to costs. At this stage, Mr. Mehta for the petitioner applies for leave to appeal to the Supreme Court. The petitioner is granted leave to appeal to the Supreme Court under Articles 134(1)(c) and 132 of the Constitution of India.