

(2022) 04 TEL CK 0069

In the Telangana High Court

Case No : I.A.No.1 Of 2022 In Writ Appeal No. 258, 259 Of 2022

M/S. Kesari Hanuman Yuva Sangathan

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 25-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 19, 25
Defence of India Rules, 1962 — Rule 30, 30(1)(b)

Citation : (2022) 04 TEL CK 0069

Hon'ble Judges : K. Lakshman, J;G. Anupama Chakravarthy, J

Bench : Division Bench

Advocate : Bommineni Vivekananda

Final Decision : Allowed

Judgement

1. With the consent of both the parties, these Writ Appeals are being disposed of.
2. Feeling aggrieved and dissatisfied with the common advance order dated 08.04.2022 in Writ Petition Nos.18037, 18044 and 17767 of 2022, the appellants herein have preferred the present Writ Appeals under Clause 15 of the Letters Patent.
3. Perusal of the record would reveal that the petitioner in Writ Petition No.18037 of 2022, vide letter dated 06.04.2022 requested the Station House Officer, Begumpet Police Station, to grant permission to conduct Sri Rama Navami Shoba Yatra, cultural programmes including bhajans etc., on 10.04.2022 from 5:00 p.m. onwards from Annanagar Hanuman Mandir via Shri Ram Mandir (Jagadish Nagar Colony) to Margadarshani Society Ground. They have also enclosed a route map. The said request was rejected by the Assistant Commissioner of Police, Begumpet Division, Station House Officer, Begumpet Police Station on 07.04.2022.
4. According to the petitioner, the Station House Officer, Begumpet Police Station, North Zone, Secunderabad, the sixth respondent, has not served copy of the said

order on the petitioner herein.

5. Whereas Sri Andapalli Sanjeev Kumar, learned Special Government Pleader attached to the Office of the learned Advocate General, on instructions, would submit that Sri S. Rama Mohan, learned Assistant Government Pleader, has filed a copy of the said order in the Court after serving the same on Whatsapp, on the applicants.

6. Likewise, the petitioner in Writ Petition No.18044 of 2022 has made a similar request on 02.04.2022 with the Assistant Commissioners of Police, Goshamahal Division and Asifnagar Division, Hyderabad. The same was also rejected on 08.04.2022. The petitioner filed the said Writ Petition to declare the action of respondent Nos.3 to 5 therein in sitting idle for taking a call for granting or refusing permission as illegal.

7. Perusal of the record would also reveal that Hindu Vahini had also filed Writ Petition No.17762 of 2022 challenging the rejection order in respect of the same Shoba Yatra proposed in Bhainsa Town. Vide common advance order dated 08.04.2022, the learned Single Judge has permitted the petitioner in Writ Petition No.17767 of 2022 to conduct the Shoba Yatra in Bhainsa Town. Therefore, the petitioner in the said Writ Petition did not prefer any Writ Appeal.

8. Whereas, the learned Single Judge vide the said impugned advance common order permitted the petitioners in Writ Petition Nos.18037 and 18044 of 2022 to join Sri Rama Navami Procession on 10.04.2022 from 1:00 p.m. onwards as permitted vide proceedings dated 07.04.2022 from Seetha Rambagh Temple to Hanuman Vyayamshala and the route also specifically mentioned in the impugned order. However, the learned Single Judge held that the petitioners cannot conduct independent processions at their localities and that they shall abide by the conditions imposed in the proceedings dated 7.04.2022.

9. The advance common order also says that the detailed order follows. However, in view of paucity of time, the appellants herein have not filed the detailed order and they would submit that the Registry has not furnished the advance order to the appellants herein.

10. However, they have filed applications to dispense with filing of certified copies of the said advance common order. Having considered the reasons mentioned therein, the said applications are ordered.

11. Sri Bommineni Narayana Reddy, learned Senior Counsel representing Sri Bommineni Vivekananda, learned counsel for the appellant in Writ Appeal No.258 of 2022 would submit that the impugned advance common order denying conducting of independent processions at their localities by the petitioner association is violative of the right of the petitioner and its members guaranteed under Articles 19 and 25 of the Constitution of India and also in violative of the principles laid down by the Hon'ble Apex Court and of this Court in a catena of decisions.

12. It is further contended that the said order is not on consideration of actual facts and submissions made by the petitioners in both the writ petitions. The petitioner never sought permission for joining the procession at Seetha Rambagh Temple to Hanuman Vyayamshala and to participate in the public meeting. Furthermore, the capacity of the said Vyayamashala is only 250. Their request was only to conduct Sri Rama Shoba Yatra from Annanagar Hanuman Mandir to Margadarshini society ground. They have also enclosed a route map. He would further submit that the learned Single Judge erred in passing an order directing the petitioner not to conduct independent processions at their localities. He would further submit that the President of the Association, deponent of the writ affidavit, is ready to give an undertaking stating that he will take entire responsibility in the event of any untoward incident during the said procession. The petitioner will gather around 300 devotees and they will use only 2 mobile mics and 2 loudspeakers. They will not use DJs during the procession. Considering the present situation, the learned Senior Counsel would submit that the petitioner will take the procession from 3:00 p.m. to 5:00 p.m.

13. Whereas Sri Andapalli Sanjeev Kumar, learned Special Government Pleader vehemently and seriously opposed the submissions made by the learned Senior Counsel. According to him, the area where the organizers have proposed to conduct yatra is communally sensitive. Previously, some communal cases were registered in Begumpet Police Station limits and details of the same are also mentioned in the proceedings dated 07.04.2022. The en-route is covering Mosques, Chillas and Dargahs. Therefore, in the interest of public at large, the Assistant Commissioner of Police, Begumpet Division, has rightly rejected the request made by the petitioner vide proceedings dated 07.04.2022 and according to him, there is no error in it. He would further submit that considering the rival submissions of the parties, the learned Single Judge rightly passed the advance common order permitting the petitioner to join the procession from 1:00 p.m. onwards from Seetharambagh Temple to Hanuman Vyayamshala and there is no error in it.

14. On instructions, he would make alternative submissions by referring the route maps and other aspects.

15. Coming to the reliefs sought by the petitioner in Writ Petition No.18044 of 2022, perusal of the record would reveal that the writ petitioner, vide letters dated 02.04.2022 and 04.04.2022 respectively, requested the Assistant Commissioners of Police, Goshamahal Division and Asifnagar Division, Hyderabad City, to grant permission to organize Sri Rama Shoba Yatra on the occasion of Sri Rama Navami on 10.04.2022 from 9:00 a.m. onwards and they have also given a route map. Vide proceedings dated 08.04.2022, both the learned Assistant Commissioners of Police rejected the said permission on the following grounds.

a) The proposed en-route of Shobha yatra passes through communally sensitive places and there is every possibility of breach of peace due to activities of anti-social elements.

b) The proposed en-route passes through narrow lanes and crowded places due to which traffic congestion takes place causing severe inconvenience to regular commuters.

c) The proposed en-route goes very nearer to main procession being organized by Bhagya Nagar Sri Ram Navami Utsav Samithi which was permitted by the Police Department. If the applicant is permitted to organize the procession, it may cause hurdle to the above said main procession.

16. Sri P. Shashikiran, learned counsel for the petitioner would submit that the rejection of the said request is violative of Articles 19 and 25 of the Constitution of India.

17. In view of the said rival submissions, it is relevant to note that Article 19 of the Constitution of India guarantees protection of certain rights regarding freedom of speech etc. Article 25 of the Constitution of India deals with freedom of conscience and free profession, practice and propagation of religion.

18. The respondent police have not considered the said request and the fundamental rights guaranteed to the petitioner and its members. They have failed to draw a distinction between law and order and public order. The said aspects were considered by the Hon'ble Apex Court in Ram Manohar Lohia v. State of Bihar AIR 1966 SC 740. In the said case, on consideration of various aspects, the Hon'ble Apex Court held as follows:

54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not

in aid of maintenance of law and order under ordinary circumstances.

55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

19. In view of the law laid down by the Hon'ble Apex Court, the respondent police cannot reject or deny the request made by the petitioner to conduct Sri Rama Navami Shoba Yatra as proposed by them. It is relevant to note that the petitioner never requested the police to permit them and devotees to conduct a public meeting at Hanuman Vyayamshala, Sultanbazar, Hyderabad.

20. Although the State is having power to impose certain restrictions on the freedom of expression, the said restrictions should be reasonable. In view of the same, according to this Court, the learned Single Judge has not considered the said aspects in respect of the petitioner in Writ Petition No.18037 of 2022. Further, learned Single Judge failed to consider the request made by the petitioner in the letter dated 06.04.2022. However, we have no benefit of going through the detailed order of the learned Single Judge and therefore, we are not in a position to say anything on the same.

21. Therefore, according to this Court, the said order needs to be modified to the following effect:

22. The respondent police shall permit the petitioners and their devotees to conduct the procession in the route which they have mentioned in the letters dated 02.04.2022, 04.04.2022 and 06.04.2022 respectively.

23. The Assistant Commissioner of Police, Begumpet Division (North Zone), is directed to permit the petitioner in Writ Petition No.18037 of 2022 i.e., Sri Rama Navami Utsav Committee, Rasoolpura, to take procession on the eve of Sri Rama Navami on 10.04.2022 from 3:00 p.m. to 5:00 p.m. on the following route: Annanagar Hanuman Mandir, Annanagar Rasoolpura via Sri Ram Mandir (Jagadishnagar Colony), Dandu Maremma Temple, Viman Nagar, up to Margadarshani society ground.

24. Sri P. Chandrakanth, President of Sri Rama Navami Utsava Committee, Rasoolpura, shall submit an undertaking to the Assistant Commissioner of Police, Begumpet Division, before 9:00 a.m. of 10.04.2022 stating that he will take entire responsibility in the event of any untoward incident during the said yatra. The Assistant Commissioner of Police shall receive and acknowledge the same.

25. The petitioner shall conduct the said yatra with 150 devotees.

26. With regard to Writ Petition No.18044 of 2022, both the Assistant Commissioners of Police, Goshamahal and Asifnagar Divisions, Hyderabad, shall permit the writ petitioner and its devotees to organize Sri Rama Shoba Yatra on the occasion of Sri Rama Navami on 10.04.2022 from 9:00 a.m. to 12:00 noon.

27. Sri A. Karthik, President of the petitioner organization shall submit an undertaking to both the Assistant Commissioners of Police, Goshamahal and Asifnagar Divisions, stating that he will take entire responsibility in the event of any untoward incident during the said Shoba Yatra on or before 7:00 a.m. of 10.04.2022. They shall receive and acknowledge the same. The petitioner is permitted to organize Shoba Yatra with 125 devotees.

28. Petitioners in both the Writ Petitions are permitted to use 2 mobile mics and 2 loud speakers within the permissible sound. They shall not use DJs and bikes during procession. The respondent police shall not object the devotees for conducting Sri Rama Bhajan during the procession. Liberty is also granted to the respondent police to take action against the Presidents of the Associations and the devotees in the event of any violation of the conditions imposed by this Court and also by the Assistant Commissioners of Police, Begumpet, Asifnagar and Goshamahal Divisions. The respondent police more particularly, the said Assistant Commissioners of Police and the Station House Officers, Begumpet Police Station, Goshamahal Police Station and Asifnagar Police Station are directed to provide necessary police protection to the petitioner associations and also to the devotees while conducting the said Shoba Yatra time during 3:00 p.m. to 5:00 p.m. and from 9:00 a.m. to 12:00 noon respectively, on 10.04.2022 in the above said route. They shall take all measures in conducting the processions smoothly to avoid any untoward incident including law and order problem.

29. The Presidents and the devotees shall follow the COVID-19 guidelines issued by both the State and Central Governments including wearing masks and using sanitizers etc., and the other conditions imposed in the proceedings No.L&O/102/0775/ 2022 dated 07.04.2022 issued by the Additional Commissioner of Police, Law and Order, Hyderabad City.

30. At this point of time, Sri Bommineni Narayana Reddy, learned Senior Counsel representing Sri Bommineni Vivekananda, and Sri P. Shashikiran, learned counsel for the petitioners in Writ Petition Nos.18037 and 18044 of 2022 respectively, would submit that the petitioners have not received the detailed order in the above said writ petitions and on going through the said detailed order, if required, liberty may be granted to them to challenge the said detailed orders.

31. In view of the above said discussion, liberty is granted to the writ petitioners in both the Writ Petitions to challenge the detailed order, if so advised.

Miscellaneous petitions, if any, pending shall stand closed.