
(2007) 01 AHC CK 0146
In the Allahabad High Court

Nanku Prasad and Others

APPELLANT

Vs

Rameshwar Giri and Others

RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 13, 19

Citation : (2007) 2 AWC 1229

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—The plaintiffs filed a suit for a permanent injunction praying that the defendants and their agents and associates be restrained from interfering in any manner in the functioning of the plaintiffs by providing Deotai Boat, (Goddess boat) inside the river Ganga and Yamuna and at the Sangam point, to the pilgrims and bathers. The plaintiffs further prayed that the defendants should be restrained from doing the business and functioning as gosain pandas inside the water on their personal boats for the purposes of providing facilities to the bathers and the pilgrims. The plaintiffs also prayed that the defendants should be restrained from receiving any sort of offerings inside the water from the pilgrims and the bathers.

2. The plaintiffs alleged that there are three types of pandas in Allahabad. The first kind of pandas are called the "prayagwal pandas", who are located about 500 yards away from the water. It is alleged that the basic aim of these pandas is to provide residential facilities to the pilgrims visiting the Sangam. The second type of pandas are called the "ghatia pandas" who are located around two hundred yards from the bathing ghat. It is contended that these Pandas keep their "takhs" on the banks of river and provide a place for the pilgrims to keep their clothes and other belongings. These pandas also provide chandan, rori, mirror, combs and other facilities to the bathers. In return for the aforesaid

facilities, the pilgrims give offerings, alms (Dan Dakshina), etc. The plaintiffs further contended that the third type of pandas existing at Allahabad are called "Gosain pandas". These pandas keep their Deotai boat/"Godess Boat" in the middle of the water at the Sangam, i.e., at the confluence of the river Ganga and Yamuna. These pandas provide idols of the God/Goddess in their boats at the Sangam point and also provide chandan, rori, mirror, combs and other facilities to the bathers inside the Ganga and Yamuna waters. In return of the facilities provided by these pandas, the pilgrims/bathers offer them dakshina, etc. The plaintiffs alleged that the mela authorities as well as the District Administration provides licence to the individuals to ply their trade, profession or calling in the mela area. The petitioners contend that they are gosain pandas and have been plying their trade at the Sangam point since long and that their forefathers were also plying the same trade/business since time immemorial. Consequently, the plaintiffs contended that not only they have a customary right to provide these facilities to the bathers at the confluence of Ganga and Yamuna river but they also have the exclusive right to carry on this business to the exclusion of any other person including the defendants.

3. The plaintiffs further alleged that there are four types of boats for which the licence is issued by the mela Administration, namely, the Deotai Nav, the individual boats, the passengers boats and the administration boats. The plaintiffs also contended that a similar dispute arise in the year 1959 which led to the filing of O.S. No. 254 of 1959, which after contest was decreed and the gosain pandas were declared to be the persons who had the customary right to carry on the business in Deotai boat inside the river at the Sangam point, namely, at the confluence of the river Ganga and Yamuna. The plaintiffs contended that the defendants have a licence for an individual boats and by virtue of holding a licence for an individual boats, the defendants are interfering in their business of receiving offerings at the Sangam point. The plaintiffs alleged that the defendants are carrying on the business of providing chandan, rori, etc. at the Sangam point without having a valid licence and therefore, prayed for a permanent injunction restraining them from carrying on any activity at the Sangam point. The plaintiffs also filed an application for grant of temporary injunction. The defendants contested the aforesaid application alleging that apart from the three types of pandas, as alleged, by the plaintiffs, the defendants are carrying on the business of chandan, rori inside the river as well as on the land and that they have been carrying on this trade since a long time and that their forefathers were also carrying on this business and consequently, the defendants had a customary right to perform such functions and receive the offerings from the pilgrims and bathers. The defendants contended that the mela administration had issued a licence to them not only to ply individual boats but also to provide chandan, rori, etc. in the individual boat and therefore, the defendants have a right to carry on their trade and calling not only inside the river but also on the ghat. In support of their case, the defendants have filed copies of the licence given to them by the mela authorities of various years before the court below.

4. The trial court after considering the evidence held that by virtue of the judgment passed in O.S. No. 254 of 1959, the plaintiffs had a customary right to ply the Deotai boats at the confluence of the river Ganga and Yamuna, namely, at the Sangam point. The trial court, upon perusing the original receipts, given by the mela administration, in favour of the defendants concluded that the receipt was issued only for an individual boat and that the words "chandan, rori" written separately on the receipt appears to be manipulated and therefore a forged document. The trial court, on this basis, disbelieved the receipts of the defendants and concluded that the defendants had no right to ply their trade of chandan and rori at the Sangam point inside the river. Consequently, the trial court found that a prima facie case existed in favour of the plaintiffs and issued an ad interim injunction restraining the defendants from interfering in the business and trade of the plaintiffs on the basis of the licence for individual boats granted in favour of the defendants. The defendants, being aggrieved by the injunction order filed a misc. appeal under Order XLIII, Rule 1(r) of the C.P.C. which was also dismissed. Consequently, the present writ petition.

5. This Court found that the mela officer was not arrayed as a party in the suit. Accordingly, the Court, by an order dated 22.12.2006, directed the petitioner-defendants to file an impleadment application to implead the mela officer in the writ petition. Based on the aforesaid direction, the District Magistrate and the mela officer were impleaded as respondents in the writ petition. Sri J.K. Khanna, the learned standing counsel was directed to receive necessary instructions and by an order of the Court dated 15.1.2007, the standing counsel was directed to produce the counterfoils of the licence issued to the petitioner-defendants of the last five years. Based on the aforesaid direction, the counterfoils of the licence were produced before the Court, which the Court has perused.

6. Heard Sri Ajit Kumar, the learned Counsel for the petitioners assisted by Sri Mohit Kumar and Sri H.R. Misra and Sri V. S. Girt for the plaintiff-respondents and Sri J.K. Khanna, the learned standing counsel for the District Magistrate and the mela Adhikari.

7. The learned standing counsel, on instructions, submitted that there is no provision under the United Provinces Mela Act, 1938 to provide a licence to a person to ply a trade of chandan and rori in an individual boat and submitted that the receipts issued to the defendants-petitioners were only for an individual boat and that no licence was issued to the defendants for the purpose of carrying on a trade of chandan and rori on an individual boat inside the river. The learned standing counsel also pointed out to an inquiry report dated 29.1.2003, issued by the Manager of the Magh mela which has been annexed to the counter-affidavit of the plaintiffs, indicating that the Manager had reported that no such licence of chandan, rori was being issued by the mela authorities and that the incorporation of the words "chandan. rori" on the receipts had been manipulated by someone. Based on this, the District Magistrate also passed an order dated 3.2.2003, on similar lines. The standing counsel submitted that the defendants had no right to

carry on their alleged trade of offering chandan and rori in an individual boat at the Sangam point inside the river. Similar argument was raised by the learned Counsel for the plaintiffs Sri H.R. Misra who also submitted that by virtue of a decree passed in O.S. No. 254 of 1959, the Gosain Pandas had been given the exclusive right to offer chandan, rori and ply the deotai nav at the Sangam point and that the defendants or any other persons had no right to be given a licence or ply this trade at the Sangam point.

8. On the other hand, the learned Counsel for the petitioners submitted that the plaintiffs are not Brahmins and therefore, they have no right to perform such functions or offer any kind of services to the pilgrims, inasmuch as, such functions can only be performed by a Brahmin. The defendant-petitioners also contended that since time immemorial they and their fore-fathers, who are Brahmins, have been carrying on this trade at the Sangam point inside the river as well as on the ghat and that they alone have the exclusive right to perform such functions and receive the offerings from the pilgrims/bathers. The defendants also alleged their customary rights of practicing this profession. The learned Counsel for the petitioners further submitted that the findings given by the trial court, namely, that the licence issued to them by the mela authorities was a forged and fabricated documents was incorrect and was based on surmises and conjectures. The learned Counsel further submitted that in view of the earlier Suit No. 254 of 1959 and Suit No. 1018 of 1988, the present suit was barred by principles of res judicata, as contemplated u/s 11 of the C.P.C.

9. Upon considering the rival submissions of the parties, the moot question that arises for consideration is whether there is any alleged infringement of the plaintiffs' trade in carrying on their profession, calling or trade at the Sangam point and whether the plaintiffs have an exclusive right to carry on such trade on the basis of having a customary right or whether such trade can only be carried out in accordance with the provisions of the Constitution of India.

10. Article 19(1) of the Constitution provides that all citizens shall have a right to practice any profession or to carry on any occupation, trade or business subject to reasonable restrictions that can be imposed by the State under Sub-clause (6) of Article 19 of the Constitution of India. The right to ply any profession or trade or calling in the mela area is provided u/s 7 of the United Provinces Mela Act, 1938 which stipulates that no person shall ply any profession, without a licence. Section 7 of the Mela Act, 1938 reads as under:

7. Power to licence,-The District Magistrate, may, by rule, prescribe fees on payment of which any conditions subject to which any person or class of persons may be licensed to ply any profession, trade or calling in the mela area.

11. The learned standing counsel has submitted that on or before the start of the mela, namely, the Magh mela or the Ardha Kumbha mela, the District Magistrate frames a rule which is notified and gazetted. The Rules published and gazetted every year are the same, except for minor alternations in the rates of the licence

fee.

12. Rule 3 of these Rules provides that the mela officer incharge, shall grant a licence to ply such profession, upon being satisfied that the person was plying that profession, trade or calling on the basis of a customary right. The Schedule to the Rules prescribes 20 such licences that is issued by the mela authorities and at Sl. No. 6, a licence is issued for a deotai nav, namely, idol/God boat and at Sl. No. 7 a licence is issued for a personal boat. There is no provision for an issuance of a licence for a personal boat with chandan and rori and, on this basis, the plaintiffs as well as the standing counsel have urged that the defendants' licence appears to be a forged and a manipulated document.

13. From the aforesaid Rules framed by the District Magistrate, it is clear that a licence is provided to a deotai nav as well as to an individual boat but under Rule 3, a licence can be given to a person who is plying any profession, trade or calling on the basis of possessing a customary right. This Court has perused the counterfoils of the receipts issued by the mela administration to the defendants, and in most of the receipts, the Court has found that the individual boat was certified to be fit for use as an individual boat with chandan and rori and in the licence fee receipts, the words "chandan and rori" was also written. Consequently, the finding of the trial court to the effect that the receipts filed by the defendants appears to be a forged and manipulated document is incorrect since the same words are also written in the counterfoils and which is in the custody of the mela authorities.

14. It, therefore appears that the mela authorities had been issuing a receipt to the defendants for an individual boat with chandan and rori written on it and, on that basis, the defendants are contending that they have been plying their trade not only inside the river but also on the banks of the river. They also alleged that they have been plying their trade since time immemorial and, in support of their case, have filed the licence receipts of the last 30 years. The question as to whether the defendants have a customary right to ply their profession inside the river and at the banks of the river, is a question which can only be considered after the evidence is led by the parties before the trial court. But, one thing is clear, is, that the mela authorities had in fact issued a receipt to the defendants to ply an individual boat with the "chandan and rori" written on it. The plaintiffs' allegation that the defendants are interfering in their profession also cannot be decided in the summary proceedings at this stage and can only be decided after the evidence is led. Further, the contention of the plaintiffs that they have the exclusive right to carry on their trade at the confluence of the river Ganga and Yamuna, to the exclusion of others is misconceived. Prima facie, no person can have an exclusive right to carry on his trade, profession or calling to the exclusion of others as this would be in violation of Article 19(1)(g) of the Constitution of India which guarantees that every citizen has a fundamental right to practise any profession, trade or calling. The contention of the plaintiffs as well as the defendants that they have an exclusive right to carry on their trade or

profession on the basis of possessing a customary right is patently misconceived as, in my opinion, it would be violative of Article 19(1)(g) read with Article 13(3) of the Constitution of India. The customary right which the plaintiffs and the defendants are alleging would be in contravention to the fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. In view of the aforesaid, this Court is of the opinion that the plaintiffs cannot allege exclusive right to carry on their trade at the confluence of river Ganga and Yamuna to the exclusion of others. On the other hand, the defendants have to prove their case that they have a customary right or otherwise to ply their trade inside the river as well as on the river bank.

15. In view of the aforesaid, this Court is of the opinion that no injunction could be granted as an interim measure. The order of the trial court is erroneous and cannot be sustained and therefore, the order of the trial court as well as of the appellate court are quashed. The writ petition is allowed. However, this Court directs the Mela Administration to ensure that the defendants can only ply their trade, business or calling on the basis of the licence issued to them. The authority shall indicate the trade, business or calling in the licence issued to the person. The licence and/or the licence receipts shall be appropriately amended by the authorities.

16. Before parting, this Court has found that a plea of res Judicata was raised by the defendants. The trial court had rejected the submission of the defendants, on the ground, that the plaintiffs were not parties in the earlier suit. In my opinion, the trial court is required to adjudicate on this question and therefore, the trial court shall frame an issue in this regard which would be considered and decided appropriately by the trial court at an appropriate stage. This Court also finds that the mela officer/officer incharge of the mela area and the District Magistrate were not arrayed as parties to the suit. In the opinion of the Court, even though, no relief has been prayed by the plaintiffs against the mela officer/officer incharge or the District Magistrate, nonetheless, the said authorities are necessary parties. Consequently, the plaintiffs are directed to implead the mela officer/officer incharge of the mela area as well as the District Magistrate, Allahabad, as defendants in the suit. Necessary application shall be filed by the plaintiffs.

17. A certified copy of the order shall be made available to Sri J.K. Khanna, the learned standing counsel free of cost to enable him to communicate the order of the District Magistrate/Officer Incharge for necessary compliance.