
(1989) 02 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 8334 of 1988

Parmhans Vajpayee and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-02-1989

Acts Referred:

Constitution of India, 1950 — Article 19, 25
Police Act, 1861 — Section 30, 30A

Citation : AIR 1989 Patna 332 : (1990) 38 BLJR 29 : (1989) PLJR 797

Hon'ble Judges : S.B. Sanyal, J; R.N. Lal, J

Bench : Division Bench

Advocate : Yogendra Mishra and Pankaj Kumar Thakur, for the Appellant; M.S. Madhup, Standing Counsel and Durga Pd. Junior, to Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

1. This is an application for quashing an appeal and/or directions issued by the Respondents-District Magistrate and Superintendent of Police of Sitamarhi confining the taking of Mahabiri Jhanda to three days in a year in the district namely Deshara, Kartrik Krishna Chaturdashi and Shivratri and if anybody takes out a procession on any other day of the year, they shall not be granted licence and be exposed to prosecution.

2. The petitioners, resident of Sitamarhi district, have assailed the said annexure on the plea that even though the order is prefixed by the word appeal, it is, in fact, a threat to the citizens of Sitamarhi not to take Mahabiri Jhanda procession on any day other than three days. It has further been stated that there has been no law which empowers the District Magistrate and Superintendent of Police to negotiate the fundamental rights of an individual with bodies claiming to represent him and to intrude in the religious right of an individual as enshrined under Articles 25 and 26 of the Constitution of India. The only right which can be exercised by the State in this regard is for maintenance of public order, morality

and health but in the whole of annexure-1 there is no reference that such a direction has been issued for the said purpose.

3. The State has filed a counter-affidavit stating therein that the district authorities have arrived at the impugned decision after consultation with the various bodies and in the interest of maintenance of public order, decency etc. It has been averred that in Sitamarhi district Mahabiri Jhanda procession was taken 196 days in a year which compelled the authorities to pass the said order because State machinery had to remain busy to control those processions and, therefore, diverting man power and energy of the district in that direction to the detriment of the development work.

4. Learned counsel for the State has further submitted that the State authorities have no objection to add few more days if the petitioners so like.

5. Ours is a secular State and every citizen has a right freely to profess, practice and propagate religion. This is fundamental right to the citizens of India. The exercise of this right is, however, subject to maintenance of public order, morality and health. The right to profess religion restricted by an executed order to particular days is not permissible de hors public order. Public order is something much wider than the law and order. The right to practise and profess religion even by taking religious procession cannot be interfered with. The Statute has cast duties and responsibilities in this regard u/s 30 of the Police Act, 1861. Section 30 of the Police Act reads as follows :

30. Regulation of public assemblies and processions and licensing of the same--

(1) The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

(2) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare or to form a procession which would, in the judgment of the Magistrate of the district or of the subdivision of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a licence.

(3) On such application being made, he may issue a licence specifying the names of the licencees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this section; provided that no fee shall be charged on the application for, or grant of any such licence."

This section on mere perusal manifest that as occasion requires the district authorities are mandated to regulate and conduct the assemblies and processions on public roads, streets and thoroughfares and prescribe the rule

therefore provided in the judgment of the Magistrate of the district if such assembly is not regulated, left uncontrolled, that may likely cause breach of peace. This section further envisages the taking of a licence in this regard which may lay down the conditions and conduct of the processions etc. Section 30A of the Police Act provides that if there is any breach of the conditions of the licence the authorities can take legal action for such disobedience. The Police Act, therefore, provides the duties and responsibilities of the State authorities to maintain law and order on public roads, thoroughfares and streets which is part of their fundamental duties. It is true that the State authorities have also been very much burdened with lot of development work but to say that much of time, money and compliment is required for the maintenance of law and order, if a general direction of this kind is not made, other urgent work for the development of the district is affected, is acting beyond the scope of Sections 30 and 30A of the Police Act and by abridging the fundamental right of the citizens of India. If the work load of the district has increased they may have more compliments commensurate to additinal responsibility but they cannot shirk the responsibility and duties by stopping the persons from exercising their fundamental rights by curtailing their religious activities in the way annexure-1 has proposed to do. The authorities have a right to regulate and control the religious congregation bearing in view public order and may prescribe the mode and manner of controlling assembly or directing the procession to proceed but the authorities have no right to lay down that the religious functions should only be held on three specified days. That is the choice of the citizens and they can exercise that right whenever they feel to do so.

6. Sections 30 and 30A of the Police Act, in our opinion, authorise the respondents to take a decision as and when occasion requires and not in advance. They have no right to prejudge that a procession is bound to cause breach of peace and, therefore, set out a calendar for performing religious functions. Their power is confined to lay down only the conditions bearing in view the law and order problem and directing the persons who intend to take out procession to apply for grant of licence in advance and the authorities have right to lay down conditions for the grant of the said licence. Sections 30 and 30A of the Police Act are really powers granted to the authorities to serve the cause of religious functions and not to deny it to the public who are entitled under the Constitution to freely perform the religious functions. The authorities u/s 30 of the Police Act could have laid down that any organisation intending to take out a procession on a particular day should apply for grant of licence ten days in advance, may be regulatory in nature by providing sufficient notice to the State authorities to take measures for controlling the assembly.

7. Having considered the pros and cons, we are of the opinion, that the respondents District Magistrate and Superintendent of Police have acted wholly without jurisdiction in fixing a calendar of taking Mahabiri Jhanda on three days in a year in the district of Sitamarhi and it amounts to abridgment of fundamental rights granted under the Constitution. The threat of prosecution for

taking Mahabiri Jhanda procession on any other day is equally bad, illegal and inoperative. Their only power is to act under Sections 30 and 30A of the Police Act, 1861.

8. In the result, the writ application is allowed. Annexure-1 to the writ petition is quashed but there will be no order as to costs.

9. Let a copy of this order be given to learned counsel for the State.