

(1985) 01 PAT CK 0034

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 5228 of 1984

Pooja Samiti, Fulwaria and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-01-1985

Acts Referred:

Bihar and Orissa Police Manual, 1930 — Rule 23
Constitution of India, 1950 — Article 19(1), 226, 227, 25
Police Act, 1861 — Section 30

Citation : AIR 1985 Patna 229

Hon'ble Judges : Lalit Mohan Sharma, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : Shyma Prasad Mukherji, Sirajul Hoda, Md. Wasi Akhtar and Farooque Moazzam, Tara Kant Jha and Mihir Kumar Jha, for the Appellant; K.P. Verma, General, Rameshwar Prasad, Govt. Pleader, B.B. Sinha, Jr. Counsel and Amarendra Kumar Sinha, J. Counsel, for the Respondent

Final Decision : Allowed

Judgement

Hari Lal Agrawal, J.—We had already passed an order in this case on 24th Jan. 1985, giving necessary directions in the matter of taking of the immersion procession of the idol Saraswali, reserving our reasoned judgment. Now I give the reasons and the judgment for the said order.

2. The important question of law falling for consideration in this case is as to whether on the facts and in the circumstances of the present case, the petitioners can be refused permission to take the immersion procession of idol Saraswati through the highway, which was being allowed since a long time without any objection or obstruction, on the objection of some of the Muslim residents of an intervening village.

3. The four petitioners of village Fulwaria under Dhaka Police Station in the district of East Champaran, have filed this application for a writ of mandamus directing the respondents, namely, the executive and police authorities, to grant

a licence for the passing of the Saraswali Pooja Immersion Procession through the road passing via village Mahuawa, shown in red colour in the sketch map (Annexure 7 to (he writ application), to river Lal Bakeya near Guabari Barrage at a distance of about 1 1/2 Kms. from their village, on a declaration that the respondents have got no legal authority to refuse to grant a licence for taking the immersion procession through the public road or any road, under the purported exercise of their powers under Rule 23 of the Police Manual.

4. Petitioner No. 1 is the Pooja Committee of the village constituted by the local people, for carrying out and performing the necessary rituals and ceremonies of the Hindu festivals including the Saraswati Pooja, which has been actively engaged in its affairs for more than the last 50 years. The Saraswati Pooja is performed on the Basam Panchami day and usually on the next day the idols are taken out in a procession for immersion in the river. The claim of the petitioners has been founded on these allegations and assertions vide para 5 of the writ application : --

"That it has been long uninterrupted custom of the villagers of Fulwaria that all the idols installed in the village are taken out together in a procession for its immersion after Pooja they are taken to Lalakeya river through village Mahuawa....."

5. According to the case of the petitioners, the immersion procession has been passing through this route for over 50 years without any objection of any kind from anybody. Undisputedly village Mahuawa itself was established at the present place by the side of the road to rehabilitate the residents who were uprooted on the construction of the Guabari Barrage in the year 1978. The Hindu population there is only 20 per cent and the remaining population is said to be of the Muslims.

No objection was taken by anybody to the taking of the procession through the route in question up to the year 1982 when for the first time "some anti social elements had made an abortive attempt to stop the procession at village Mahuawa but due to the timely intervention of the local Officer-In-charge of Jundwa Chainpur Police Station, the idols were immersed in the river in the traditional manner without causing any problem to the law and order authorities."

In the next year, i.e., during the 1983 immersion procession, direction was issued by the authority to take the procession through another route shown in green colour in the said sketch map, covering a distance of 5 1/2 Kms. passing along the Mahuabari Canal, reaching the site of immersion (barrage) by a circuitous route. The alternative route, however, was not acceptable to the people and they were stopped en route while passing through the usual route, and immersion of the idols could not take place at the old site. According to the case of the petitioners, the police immersed the idols in the village pond, hurting the religious sentiments of the devotees.

6. During the course of hearing, the petitioners also filed two affidavits -- one by a resident of village Fulwaria and another by the Mukhia of Fulwaria Gram Panchayat, to show that the Hindu population of village Mahuawa was in favour of the procession passing through their village. The next affidavit shows (vide its Annexure A) that only a few disgruntled anti-social elements of the Muslim community of village Mahuawa and not the entire Muslim community were opposing the passing of the procession. The Mukhia also supported the case of the petitioners that the immersion procession was passing from a long time without affecting any law and order problem and that the present dispute was due to the conspiracy of one local Muslim M.L.A. as an election stunt to secure the Muslim votes.

7. A supplementary affidavit was also filed, by the petitioners to put on the record a recent report dated 8-12-1984 of the Inspector of Police, Dhaka (Annexure 8) submitted to the Superintendent of Police, Motihari, by which he has recommended the route for the passing of the procession. In this report it has been stated that the road in question is a Government road under the Revenue Department. This report further says that village Mahuawa was centre of criminals and that in the year 1980 they had also stopped the devotees of the Chhath festival from going to the Ghat through this road, on which account every year a Magistrate is deputed on that occasion and that the procession has been passing through this road since a long time.

8. It may be mentioned that the petitioners have further stated that when the alternative route was rejected by the devotees and the students, and Satyagrah and Anshan (fasting) were resorted to by the petitioners and Samiti members for two days, an assurance was given by respondent No. 4 that the entire problem would be solved before the next Pooja time, meaning thereby 1985 Pooja Celebrations, but in spite of filing of a series of representations (copies filed as Annexures 5 and 6) the authorities have not taken any decision in the matter. In both the representations a request has been made to accord permission for taking the procession through the old route in the coming Pooja celebrations of 1985.

9. According to the statements made in the counter-affidavit filed on behalf of the State, it is admitted that village Mahuawa was established at the present site in the year 1978-79 and that "from 1979 to 1981 there was no occasion of such dispute and the people of the two villages were maintaining all law and order and were living peacefully the dispute over the route of the immersion of the Goddess Saraswati..... cropped up for the first time in 1982, because the villagers of Mahuawa, which is mostly dominated by Muslim community, objected to the people of Fulwaria village for passing of the procession of Goddess Saraswati for immersion which was traditionally held at Guawari Ghat, which is the nearest route, i.e., 1 1/2 Kms. away from village Fulwaria. The cause of objection, as alleged in the writ petition, was on account of obscene songs by the processionists."

Proceeding further, it has been said that the present dispute was actually on account of tension prevailing between the two villagers due to village politics and religious sentiments.

It has been admitted in the counter-affidavit that in the year 1982 when the trouble had started for the first time "the District Administration at once took up the matter and pacified the situation, with the result that the procession passed off peacefully through that very village and route and the processionist immersed the idol at Guabari Ghat itself." With respect to the offer of alternative route the case of the State is that the same was done under the orders of the District Magistrate, Motihari, on the recommendation of the Subdivisional Officer.

When in the year 1983 the processionists again insisted for passing through village Mahuawa in spite of their objections, the processionists left the idols on the road itself and the idols were immersed in the village tank on the request of the law and order authorities. In the year 1984 also the licence was issued through the alternative route to petitioner No. 2, but the processionists again wanted to take the procession through the old route which was not allowed and then they repeated the same course by keeping the idols upon the road and on the intervention of the official they were again immersed in the said village pond.

On these facts, the State pleaded that it was desirable that for maintaining law and order, the processionists should be directed to go through the alternative route, as already indicated above.

10. Mr. Advocate General, who appeared on behalf of the official respondents, to a Court question as to whether this was a public road which in the survey map has been shown as a road, submitted that he could not find any relevant material to show as to whether the road was a "public road" as such, but he admitted that the general public was using it without any objection by any authorities and that the road was under the management of the Irrigation Department.

11. Mr. Advocate General, who was supported by Government Pleader No. 6, however, took the stand that the plea of customary right raised by the petitioners was a question of fact and was not established by them and this right could be proved only in a properly constituted suit. Surprisingly, the Government Pleader No. 6 went on to contend that it was a disputed question of fact

12. I, however, do not find any merit in the submissions of the learned Advocate General. From the discussions made above it becomes well established that the immersion procession was passing through the route now under dispute since long past and no dispute was raised till 1982 by anybody and that when it was raised for the first time in 1982 then the procession was allowed to pass under the supervision of the District Administration. It has further been seen that the intervenors have not given any indication as to why the procession should now be disallowed to pass through the traditional route. The case of the intervenors that it was not passing through the route in question, in view of the overwhelming materials on the record discussed above, cannot be accepted. It

has been seen that in the counter-affidavit of the State (which has been affirmed by the Circle Officer) the ground of objection to the passing of the procession through village Mahuawa is only "on account of obscene songs by the processionists" and village politics.

13. Mr. Tara Kant Jha who appeared on behalf of the petitioners, submitted that although the reasons assigned on behalf of the official respondents for the objection by Muslim community of the village was wrong, as a religious procession carrying the idol was not supposed to indulge in any obscenity, yet even assuming the allegation to be true, the petitioners or the processionists could be put to terms and an order of reasonable restraint may be passed by the Court to regulate the passing of the procession. He further argued that no foundation has been laid in the counter-affidavit of the State muchless any case has been made out by the intervenors to deny the petitioners their right of performing this religious ceremony and simply because some members of a particular community may take in their heads to raise a frivolous and baseless dispute to obstruct the observance of the religious ceremony by the other community, then that should not furnish a ground for the authorities to refuse to issue the licence under the purported exercise of the police powers under Rule 23 of the Police Manual or Section 30 of the Police Act.

14. The learned Advocate General as well as Mr. Mukherji raised yet another ground of attack, namely, that no demand was made before the appropriate authorities for the issue of a licence for taking out the procession for 1985 and, therefore, the writ application for the reliefs was not maintainable.

I do not find much substance in this contention either, inasmuch as an application for a licence could not have been made a long way back from the day of the immersion and the previous history of the dispute and the attitude of the District Administration contained in Annexure 4 and the statements made in the counter-affidavit are eloquent to show that the application for taking the procession through the route in question was bound to be disallowed. The taking out of a licence being an yearly affair every time the petitioners would be faced with similar situation. Accordingly it was rightly contended by Mr. Tara Kant Jha that the right of the petitioners to take the procession through the route in question may be decided by the Court so that the dispute can be set at rest for future.

I find substance in this argument and even as a matter of fact the copies of the two representations which have been filed as Annexures 5 and 6, do establish that the petitioners have also performed the formality of making a demand for permitting them to take the procession for the current year through the old route.

15. The main plank of the argument of the learned Advocate General, however, was based upon the decision of the Supreme Court in the case of Gulam Abbas and Others Vs. State of U.P. and Others, , where it has been observed that the exercise of the fundamental rights in the nature of the observance of religious

ceremonies was not absolute and must yield or give way to maintenance of public order which would be in the larger interest of the society. That observation was made with reference to a dispute between the members of the Shia and the Sunni sects of the Muslims of Varanasi, pertaining to performance of some religious rites, practices and observances by members of Shia sect on certain plots and properties. The Supreme Court in order to find out a permanent solution to the perennial conflict between the parties in future, in an atmosphere of cordiality and amity had appointed a Committee to ascertain the feasibility of the proposal of shifting of the graves from its original place which was recommended by the Committee and accordingly the direction was given for shifting of the two graves.

In the main judgment of the case of *Gulam Abbas and Others Vs. State of Uttar Pradesh and Others*, the Supreme Court had held that the Shia community had established their religious rights for performance of certain ceremonies minus the recitations and utterances of *Tabarra* over the plots in question and The Sunni sect was permanently restrained by injunction from interfering with the exercise of those rights. The Executive authorities were also directed to take suitable preventive measures.

I am afraid, the reliance placed by the learned Advocate General on this decision is misplaced and the observations made there will have no application to the facts of the present case in view of the police reports already referred to earlier that the objection of some members of the Muslim community to the passing of the procession was based only on account of the alleged singing of obscene songs and that the tension was on account of the village politics and not for any other reason.

16. The Supreme Court in the main judgment while considering the case of infringement of customary rights to perform religious rites, referred with approval the following observations of the Madras High Court in the case of *Sundram Chetti v. The Queen* ILR (1883) Mad 203 :

"Where rights are threatened, the persons entitled to them should receive the fullest protection the law affords them and circumstances admit of. It needs no argument to prove that the authority of the Magistrate should be exerted in the defence of rights rather than in their suspension; in the repression of illegal rather than in interference with lawful acts. If the Magistrate is satisfied that the exercise of a right is likely to create a riot, he can hardly be ignorant of the persons from whom disturbance is to be apprehended, and it is his duty to take from them security to keep the peace".

The Supreme Court took a view in favour of the writ petitioners belonging to the Shia community to exercise the rights to perform their religious rites, practices, ceremonies and functions etc. already indicated above and passed prohibitory orders against members of the other sect and directed the Executive Magistrate of Varanasi to take such preventive measures, if necessary, to allow the

members of the Shia community to exercise their rights.

17. The learned Advocate General further submitted on instructions that there was no restriction of any kind for the members of the public to use the road in question. The insistence of the learned counsel for the respondents that the petitioners should have made an application for a licence before the local authorities before coming to this Court under the provisions of the Police Act, rather goes to support the case of the petitioners that they had got the right to take the procession as such but under a licence. The authority has got power only to regulate the procession subject to the direction of the District Magistrate.

18. Long back in the case of AIR 1925 36 (Privy Council) it was observed that there is a right to conduct a religious procession with its appropriate observances along a highway and persons of whatever sect are entitled to conduct religious processions through public streets so that they do not interfere with the ordinary use of such streets.

19. It has been seen that apart from the fact that the alternative route suggested by the District Administration was much longer than the route in question, and a cumbersome one, from the report of the Police dated 20-5-83 (Annexure 3) it appears that there is an Idgah on this route also and the said officer in his report has indicated an apprehension that on account of the existence of the Idgah, the members of the Muslim community may raise fresh dispute on this route also in future.

20. Before parting with this case I may notice yet another point which was raised by Mr. Shyama Prasad Mukherji, appearing for the intervenors, which has to be rejected without any discussion. The point was that this Court has got no jurisdiction to interfere with the administrative orders. The principle has now been well established that administrative orders also can be examined by the High Court in the writ jurisdiction.

21. I do not find any force in the stand of the learned Advocate General that due to the so called law and order problem facing the local administration on account of objections, the petitioners should be denied their right of taking the procession of the idol Saraswati for immersion at the original place, namely, river Lal Bakeya through the route passing via village Mahuawa which is their old route shown in the red colour in the annexed map (Annexure 7) and that the State cannot be saddled with the responsibility of maintaining the law and order problem which might arise on this account.

22. In the view that I have taken, it is manifest that the local authorities, namely, the Police and Executive Authorities owe a legal duty to take all the necessary measures for the unobstructed passing off of the immersion procession through the route via the village of the intervenors and provide proper protection to the processionists as well as the local residents. The petitioners, however, also must refrain from indulging in singing of obscene songs or in any other activity not consistent with their legitimate right. The

District Administration, namely, the respondents, are directed to take all preventive and precautionary measures if they apprehend any obstruction or breach of the peace on the Hindus taking the Saraswati Puja immersion procession through the route in question. The members of the Muslim community of village Mahuawa are hereby permanently restrained by a rule of injunction from interfering, in any manner with the exercise of the said right of the Hindus of village Fulwaria including the petitioners. This order would bind all the members of both the communities of village Fulwaria and Mahuawa.

23. In the result, this application is allowed, but in the circumstances of the case, I shall make no order as to costs.

Lalit Mohan Sharma, J.

24. I agree.