

(1956) 09 AHC CK 0006
In the Allahabad High Court
Case No : Civil Misc. Writ No. 1174 of 1955

Pt. Rama Kant Shastri	Vs	APPELLANT
The Cantonment Board		RESPONDENT

Date of Decision : 03-09-1956

Acts Referred:

Cantonments Act, 2006 — Section 282, 283
Constitution of India, 1950 — Article 226

Citation : (1956) 26 AWR 771

Hon'ble Judges : G. Mehrotra, J

Bench : Single Bench

Advocate : S.N. Kacker, for the Appellant; S.C. Khare, for the Respondent

Final Decision : Dismissed

Judgement

G. Mehrotra, J.—This is a petition Under Article 226 of the Constitution for the following reliefs:

(a) That a writ in the nature of mandamus be issued to command the Respondent, the Cantonment Board, Allahabad, not to enforce the resolution No. 23 dated 8-11-55, otherwise than in accordance with law.

(b) That it is further prayed that the resolution No. 10 dated 29-9-1955 and resolution No. 23 dated 8-11-1955 be quashed by this Hon"ble Court as being in excess of the authority possessed by the opposite party.

2. It is further prayed that the operation of the said resolution may be suspended during the pendency of this writ application.

3. The applicant is the proprietor of a brick-kiln situated in village Tar Bagh, Mazra Umarpur, Neema, Tehsil Chail, district Allahabad. The brick-kiln is situated just on the outskirts of the Cantonment Limits of Allahabad. The fact alleged by the Petitioner in the affidavit filed in support of the petition is that in order to proceed from the city to the brick-kiln of the applicant or vice versa it is

necessary to pass through Meaghargunj road (Ravidas Road), which is under the control and management of the Cantonment Board, Allahabad. In August, 1955, a dispute arose between the applicant and one Shiv Nath who happened to be a member of the Board and due to that dispute he got the Board to pass a resolution No. 10 dated 29-9-1955 which prohibited absolutely the use of Ravidas Road by motor lorries. A notice to that effect was given to the public at large by pasting it on the Notice Board. On 28-10-1955 the Petitioner hearing of the said notice applied for the copies of the bye-laws of the Cantonment Board and also a copy of the aforesaid resolution No. 10 through his counsel Sri Agarwal. Thereafter he made repeated requests to get the said copies but the opposite party refused the same. On 8-11-1955, another resolution was passed which was numbered as 23 and a notice of this resolution was given to the public on 21st November. The Petitioner inspite of his efforts could not get the copies of the bye-laws. The effect of the two resolutions mentioned above is that the Petitioner has been excluded from the use of the road. He is the solitary owner of the brick-kiln which is reached through this road. His business is therefore affected. A counter-affidavit has been filed on behalf of the Board in which it is stated that the bye-law was passed in accordance with law and it is stated that an application without necessary fee was made by a lawyer, therefore no copies could be given at that time. When necessary fee for supply of copies was deposited, the copies of bye-laws were supplied to the Petitioner. As regards the road, it is asserted that the Meagherganj Road (Ravidas Road) is situated within the cantonment area on the land belonging to the Government. Certain areas were granted by the Cantonment authorities for building house. In all 37 houses exist in that locality. The site holders had a right of easement to reach the Grand Trunk Road from their houses on the vacant land lying in front of their houses belonging to the Cantonment authorities. There was no road or a public highway. On the representation of the residents of these houses in 1945-46, the Cantonment Board metalled on 8 feet wide road beginning from the Grand Trunk Road to a length of 11 hundred feet. In 1950-51, the metalling was extended by further 600 feet. This was made on the Government land for the benefit of the residents of the 37 houses situated on the Cantonment land. There is a public highway known Niwan Road Connecting Niwan village to Grand Trunk Road, within the limits of the District Board area. There is again a public highway which connects the brick-kiln of the applicant with Niwan Road. The Niwan Road is about 18 feet wide and the Petitioner's brick-kiln can be approached through the road. As the trucks carrying bricks used to pass on the 8 feet wide, Ravidas road, the road has been spoiled and in order to protect that road, on the report of the Sanitary Inspector, the resolutions were passed prohibiting the lorry traffic on this road. It is said in the counter-affidavit that the Petitioner has no statutory or common law right to use this road for passage of vehicles.

4. A rejoinder affidavit has been filed in which it is denied that there is another approach road to the brick-kiln and that the Petitioner had no right to use this disputed road for carrying bricks on the lorry. The main contention raised by the

applicant is that the bye-law framed by the Cantonment Board by which the lorry traffic on this road has been prohibited is contrary to the provisions of the Cantonment Act. It is necessary to refer to the two resolutions which are sought to be quashed by the applicant. The resolution No. 10 dated 29-9-1955 reads as follows:

10. Closing of Meaghergunj Road for heavy Traffic--To consider Cantonment Sanitary Inspector's report dated 22-9-1955, that the Meaghergunj Road is being damaged by heavy trucks. The trucks use this road for collecting bricks from the brick kiln situated outside the Cantonment limits.

Resolution--Meaghergunj Road (Ravidas Road), Allahabad (New) Cantonment be prohibited for Motor Lorries with immediate effect under paragraph 8(1) of the bye-laws framed by the Cantonment Board, Allahabad, for the regulation or prohibition of traffic in the Allahabad Cantonment.

5. The resolution No. 23 of 8-11-1955 reads as follows:

23. Prohibition of heavy Traffic on Ravidas Road--Further to consider the question of prohibition of Motor Trucks, Motor Lorries and Bullock Carts, laden with bricks etc. on f Ravidas Road, Allahabad (New) Cantonment.

Cantonment Board Resolution No. 10 dated 29-9-1955, refers.

Resolution--Under the bye laws framed by the Cantonment Board, Allahabad, for the prohibition of heavy traffic in the Allahabad Cantonment, the following class of traffic are prohibited absolutely on Meaghergunj Road Ravidas Road with immediate effect:

1. Motor Lorries. 2. Country Carts, except when actually crossing or proceeding to a bungalow, house or shop which cannot be reached by any other road within the Cantonment area.

6. The bye-laws notice of which was published on 26-5-1945, provides as follows:

No person shall drive or propel any vehicle along any street under the control of the Cantonment Board upon which a notice prohibiting vehicular traffic is displayed....

8(1) Any of the following classes of traffic prohibited either absolutely or during such hours as may be notified by the Cantonment Board, in this behalf, on any road within the Cantonment limits.

(a) Motor Lorries, (b) Country Carts, (c) Ekkas, (d) Horses out for Exercise, (e) Laden Animals and (f) Hand carts,

except when actually crossing of proceeding to a bungalow, house or shop which cannot be reached by any other road,

(2) The Cantonment Board may prescribe particular routes to be taken by any class of traffic.

7. The main contention of the applicant is that this bye law is contrary to the provisions of the Cantonment Act. A preliminary objection has been raised by the opposite parties to the maintainability of the petition on the ground that the Petitioner has not set out in the affidavit nor has proved by the evidence on the record any right which he can get enforced by this Court by means of a writ or direction Under Article 226 of the Constitution. It was contended that the foundation for the relief Under Article 226 of the Constitution is the existence of a right and unless the Petitioner establishes his right which has been affected by certain act of the Board or Cantonment authorities, he cannot ask for any relief. The facts which emerge from these two affidavits are that the Petitioner has a brick-kiln situate on the outskirts of the Cantonment area. The case put forward by the applicant is that he has been using this road for carrying his bricks on lorry for a long time and the effect of the resolution is the total prohibition to ply lorries on this void. This order will affect the right of the Petitioner to carry on his business and thus his fundamental right is affected. The contention of the opposite party is two-fold. Firstly, it is urged that this is not the only road by which the (sic) can be approached. There is another Niwan road which connects the Petitioner's brick-kiln to the Grand Trunk Road and it cannot therefore be said that the Petitioner's right has been totally affected. The second contention is that the road is a private road constructed by the Cantonment authorities and the Petitioner has no right to use this road for carrying his goods. It is not a public highway on which every member of the public has acquired a right to pass.

8. In the case of *Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others*, , it was observed by the Chief Justice at p. 268:

In India we have highways or roads that are maintained by the State. There are roads which vest in Municipal Boards or District Boards, but it can be assumed that the law relating to highways is, more or less, the same as in England.

9. In the case of *Saghir Ahmad Vs. The State of U.P. and Others*, , it was observed:

A highway has its origin, apart from statute, in dedication either express or implied, by the owner of land of a right of passage over it to the public and the acceptance thereof by the public. Dedication is presumed by long and uninterrupted user of a way by the public. The presumption in such cases is so strong as to dispense with all enquiry into the actual ownership of the land or the intention of the owner about its user.

All public streets and roads vest in the State, but the State holds them as trustees on behalf of the public. The members of the public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar right possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally; but subject to such limitations the right of a citizen to carry

on business in transport vehicles on public pathways cannot be denied to him on the ground that the State owns the highways.

Within the limits imposed by State regulations, any member of the public can ply motor vehicles on a public road.

10. In both these cases it was admitted that the road on which the bus owners were plying their buses for carrying their passengers was a highway and was used by the public. The question which was raised in these two cases was that the right to pass and re-pass on the road acquired by the public by long user did not include the right to carry on business. In the present case, however, it is disputed that the Ravidas Road is a public highway. According to the opposite-party it was constructed in the year 1945 with the express purpose of giving facilities to the residents of the locality. It was constructed on the Cantonment land. It was a private land specially for the use of the inhabitants of the locality and as such a member of the public cannot claim any right to pass and re-pass through that road. The Petitioner on the contrary has asserted that he has been using this road for a long time. The road was a public road. It was used by the members of public constantly. There is therefore a controversy between the parties on the question as regards the nature of the road and the right of the public. This Court in writ petitions will not enter into these controversial questions of fact dependent on evidence. The Petitioner, if he has any right which has been infringed by the Board, has his remedy by means of his regular suit.

11. As the right on which the present petition is claimed is disputed, the Petitioner is not entitled to any relief Under Article 226 of the Constitution. In view of this decision it is not necessary to consider the question of the validity of the bye-laws framed by the Board; but as the point has been argued by the counsel for the parties I should like to express my opinion on that question also.

12. The main contention raised by the Petitioner is that the bye-laws did not come within the ambit of Sections 282 and 283 of the Cantonment Act. Section 282 provides that subject to the provisions of this Act and of the rules made thereunder, a Board may, in addition to any bye-laws which it is empowered to make by any other provision of this Act, make bye-laws to provide for all or any of the following matters in the Cantonment, and Sub-clause (4) of the said section provides for the power to make such a bye-law which relates to the regulation or prohibition of any description of traffic in the streets.

13. It is contended that Section 282 gives power to the Board itself to regulate or prohibit any traffic in the street under the bye-laws. The bye-laws framed by the Board itself should specify the nature of prohibition and the description of the traffic which is sought to be regulated or prohibited. It is not open to the Board to frame a bye-law providing that in future the Board by its resolution may regulate or prohibit any kind of traffic. In substance, the argument is that Clause (8) of the bye-laws is not in accordance with the provisions of Section 282(1) inasmuch as the bye-law itself does not prohibit the use of the road for the lorry

but it only gives power to the board to prohibit in future either absolutely or through such hours as may be notified by the Board any class of traffic on the road within the Cantonment limits. In my opinion there is no substance in this argument. Sections 282(4) gives power to the Board to frame a bye-law to provide for the regulation or prohibition of any description of traffic in the streets. The law by giving power to the Board to prohibit during such hours absolutely any kind of traffic on the road has provided for the regulation or prohibition of any description of traffic in the street. The subject matter of the bye-law is covered by Section 82(4) and it does not go beyond the scope of the said section. The bye-law itself may have provided for the absolute prohibition or regulation for certain time of any particular class of traffic; but if a bye-law provides that such a prohibition or regulation can be done by the Board by its notification at a later date, it cannot be said that the bye-law has not provided for the subject-matter contained in Section 282(4). In my opinion therefore the bye-law cannot be said to be against the provisions of Section 282 of the Cantonment Act.

14. The resolution of the Board further provided that the maximum penalty which can be imposed for the contravention of the bye-law was a fine of Rs. 100 and in case of a continuing contravention, with an additional fine which may extend to Rs. 20 after the conviction of the first such contravention. This provision is against Section 283 of the Cantonment Act. Section 283 provides that "any bye-law made by a Board under this Act may provide that a contravention thereof shall be punishable--

(a) with fine which may extend to one hundred rupees; or

(b) with fine which may extend to one hundred rupees and in the case of a continuing contravention, with an additional fine which may extend to twenty rupees for ever day during which such contravention continues after conviction for the first such contravention; or

(c) with fine which may extend to ten rupees for every day during which the contravention continues after the receipt of a notice from the Board by the person contravening the bye-law requiring such person to discontinue such contravention.

15. In this connection it was urged that this resolution was beyond Section 283 and further that Section 283 gives power to provide for penalty in the bye-law itself It is not open to the Board by subsequent resolution to lay down the penalty for breach of the conditions of the bye-laws. Prima facie it appears to be right that the bye law itself should provide for the penalty, but as I am dismissing the writ petition on the ground that the Petitioner has not asserted in clear terms and established his right, he is not entitled to any relief Under Article 226 of the Constitution and it is not necessary for me to examine this question further.

16. I therefore dismiss this petition with costs.