
(1985) 07 KL CK 0026

In the High Court Of Kerala

Case No : O.Ps. No's. 779, 1162, 2271, 6782 and 9578 of 1984

Sankaranarayanan and Others

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-07-1985

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Citation : AIR 1986 Ker 82

Hon'ble Judges : K. Bhaskaran, C.J;V. Sivaraman Nair, J

Bench : Division Bench

Advocate : T.P. Kelu Nambiar, Amicus Curiae, for the Appellant; A.G., for the Respondent

Judgement

Sivaraman Nair, J.—These Original Petitions have their genesis in letters addressed to the Chief Justice by five different citizens. The problem highlighted is seemingly quite an ordinary one -- how far shall organised strength of people seek to strangle the ordinary civil rights of others? What can be done to mitigate the agony of citizens trapped in populous urban centres, the thoroughfares of which are invaded by massive processions and demonstrations-political, religious or otherwise? Should lawlessness be the law when large numbers are involved?

2. The letters were ordered to be treated as original petitions. Notices were ordered to the Secretary Home (B) Department and the Advocate General, with a copy of the petition in the first of the Original Petitions, requiring the Government to file a statement indicating their stand with respect to the manner in which the Government proposed to tackle the problem resulting from blocking of roads to facilitate processions conducted in cities by political parties, religious congregations, trade unions etc. so as not to obstruct the right of others for passage along the streets. In O. P. No. 1162 of 1984 notice was issued on 10-2-1984. Shri T.P. Kelu Nambiar, Advocate, was requested to assist the Court to find a way to reconcile the conflicting rights of the urban citizenry when a

mass demonstration attempts to paralyse its normal life. The other three Original Petitions were ordered to be posted along with O. P. Nos. 779 and 1162 of 1984. The matter again came up for hearing on 19-7-1984 and 23-7-1984. The Home Secretary was required to file a counter-affidavit with copy to counsel Shri T. P. Kelu Nambiar.

3. In the counter-affidavit filed on behalf of the Government of Kerala, it was stated, that "the Government has taken a decision and instructions have been given to the police authorities to regulate as far as practicable the Jathas of political parties or labourers or religious organisations in such a way as not to obstruct or in any other way interfere with the public using the road in vehicles as well as on foot. The police will be vigilant as to keep up these instructions issued by the Government and these directions will not infringe the Constitutional provisions in any way, but on the other hand, these directions will preserve the Constitutional rights of every citizen to use the public road and public place for the purpose for which it is meant".

4. The eternal conflict between the right of a multitude of people to assemble and demonstrate on roads and highways and that of city dwellers to assert their individual right of passage and access had come up for consideration of Courts in India and abroad,

5. The right guaranteed to the citizens to assemble peaceably and without arms does not authorise any one to insist that he has a fundamental right to conduct a procession or a demonstration on populous urban roads without any control or regulation. There is nothing in the Constitution to show that the right to take any procession as such has been guaranteed by the Constitution as a fundamental right. What is guaranteed is only the right to assemble peacefully and without arms and the said right is also subject to such restrictions as may be imposed in the interest of the public order. In the larger interest of the public restrictions are bound to be imposed (vide *Satyabadi Swain Vs. Officer-in-Charge and Others*, . As was observed by the Supreme Court repeated in *State of Madras Vs. V.G. Row*, and in *Babulal Parate Vs. State of Maharashtra and Others*, etc., there are no absolute in our Constitution even in respect of fundamental rights. Even the fundamental rights under Article 19(1) are subject to the restrictions placed in the subsequent clauses of Article 19. Even though there are no such restrictive provisions in the Constitution of the United States, the United States Supreme Court has held that the privileges and immunities conferred by die Constitution are subject to Social Control by resort to the doctrine of police power. The right to assemble comprehended by Article 19(I)(b) cannot therefore justify a claim of unrestricted freedom to hold demonstrations and processions on the streets and highways. It is only a right which is subject to restrictions imposed in the interests of public order.

6. The law in England appears to be that "it does not amount to a common law nuisance to march or conduct a procession through the streets of a town, so long, presumably, as the procession allows other people reasonable room for

passage and behaves in a non-violent and sensible manner (Vide Hubbard v. Pitt (1975) 1 AER 1056. Processions may use the streets for passage on lawful occasions and for lawful object; and provided the user is reasonable, there is no nuisance (R. v. Clark (No. 2) (1963) 3 All ER 884. A submission was made in (1975) 1 All ER 1056, that the right to demonstrate and picketing in public streets has acquired a more elastic and liberal content with the passage of time, and such obstructions as are caused as a result thereof shall no longer be treated as nuisance or obstruction. Dealing with the submission it was stated :

"Whereas the passage of years may make a difference in the utterances which are regarded as obscene, defamatory, contemptuous or even seditious, no such alteration is possible in the law of highways. A judge might well be justified in treating as no longer defamatory a word or description which authority shows to have been so considered many years ago, either because the language or the mores of right-thinking members of society has changed, but the only changes time legitimates in relation to highway law are changes in the modes of user for passage. Freedom of expression was never one of the attributes of highway dedication, and nothing is better settled than that it is impossible to obtain a prescriptive right to obstruct a highway."

Dealing with obstructions occasioned by stationary assembly on highways, it was observed :

"I think that the true reason why demonstrations involving stationary assemblies on the highway are permitted is not that they are not illegal; it is that they are matters in respect of which the remedies available are simply not put into operation."

7. The concluding caveat on this aspect as contained in Hubbard's case (1975) 1 All ER 1056 seems to be apposite in our country as well. It was observed :

"It is not, and I hope never will be, the law that the democratic right of political expression is sufficient warrant for the performance of facts which, in the absence of any political content, would plainly be illegal. And where a private individual does not feel himself bound by political considerations, but on the other hand takes the view that he has suffered damage and wishes to prevent a use of the highway for which that highway was not dedicated and which amounts to a common law nuisance, it seems to me that the Courts can and should intervene. A man's right to enjoy his property which abuts on the highway and to have access to that property both for himself and his invitees is a right which is fully entitled to the support of the Courts if and when the Courts are asked to support it."

We have now been asked to support the right of the petitioners and the urban citizenry in general, a right to enjoy the property which abuts the highways. They seek to have free access to their property and injunctions against far too frequent invasions of such right for long periods in an absolutely unreasonable manner, for assertion of their right of passage along the highways. To find an

answer is not easy : but to find one seems absolutely essential.

8. When the case was taken up for final hearing on 3-6-1985, the Advocate General submitted, that according to him, it will be more desirable that a statute is enacted for the purpose of regulating the use of public thoroughfares in such a manner as not to infringe upon the rights of others. Shri Kelu Nambiar, submitted that he was able to discover only one statute dealing with the matter, viz., the Public Order Act, 1936 of the United Kingdom to which there is a passing reference in a decision reported in *Flockhart v. Robertson* (1950) 1 All ER 1091. Shri Kelu Nambiar submitted that it will be desirable that a similar statute is enacted in our State also, specifically enabling and empowering the District Administration, including the police, to regulate the use of public places in such a manner as not to infringe upon the rights of other citizens.

9. The preamble to the Public Order Act, 1936, indicates that it was "an Act to prohibit the wearing of uniforms in connection with political objects and the maintenance by private persons of associations of military or similar character; and to make further provision for the preservation of public order on the occasion of public processions and meetings in public places." Section 3 of that Act deals with powers for the preservation of public order on the occasion of processions, and is in the following terms.

"3. (1) If the Chief Officer of police, having regard to the time or place at which and the circumstances in which any public procession is taking place or is intended to take place and to the route taken or proposed to be taken by the procession, has reasonable ground for apprehending that the procession may occasion serious public disorder, he may give directions imposing upon the persons organising or taking part in the procession such conditions as appear to him necessary for the preservation of public order, including conditions prescribing the route to be taken by the procession and conditions prohibiting the procession from entering any public place specified in the directions :

Provided that no conditions restricting the display of flags, banners, or emblems shall be imposed under this sub-section except such as are reasonably necessary to prevent risk of a breach of the peace.

(2) If at any time the chief officer of police is of opinion that by reason of particular circumstances existing in any borough or urban district or in any part thereof the powers conferred on him by the last foregoing subsection will not be sufficient to enable him to prevent serious public disorder being occasioned by the holding of public processions in that borough, district or part, he shall apply to the council of the borough or district an order prohibiting for such period not exceeding three months as may be specified in the application the holding of all public processions or of any class of public procession so specified either in the borough or urban district or in that part thereof, as the case may be, and upon receipt of the application the council may, with the consent of a Secretary of State, make an order either in terms of the application or with such modifications

as may be approved by the Secretary of State.

This sub-section shall not apply within the City of London as defined for the purposes of the Acts relating to the City police or within the Metropolitan police district.

(3) If at any time the Commissioner of the City of London police or the Commissioner of police of the Metropolis is of opinion that, by reason of particular circumstances existing in his police area or in any part thereof, the powers conferred on him by Sub-section (1) of this section will not be sufficient to enable him to prevent serious public disorder being occasioned by the holding of public processions in that area or part, he may, with the consent of the Secretary of State, make an order prohibiting for such period not exceeding three months as may be specified in the order the holding of all public processions or of any class of public procession so specified either in the police area or in that part thereof, as the case may be.

(4) Any person who knowingly fails to comply with any directions given or conditions imposed under this section, or organises or assists in organising any public procession held or intended to be held in contravention of an order made under this section or incites any person to take part in such a procession, shall be guilty of an offence."

10. We are satisfied that it may be desirable that specific provisions are made by enactment in the nature of the Public Order Act, 1936 of the United Kingdom to regulate the conduct of public processions along public streets and other public places in such a manner as to cause no obstruction to the normal pedestrian or vehicular traffic even when processions are going on. It is true that there are provisions in the Cr.P.C. dealing with public tranquillity. It may even be possible that action can be taken u/s 133 of the Cr.P.C. for removal of any unlawful obstruction from any public place.-Section 144 of the Code also empowers the Magistrate to issue orders in urgent cases of nuisance or apprehended danger. Nevertheless, it seems to us to be desirable that a special enactment taking power to impose effective regulations in this regard is promulgated by the State Government.

11. We should, however, add that it is not the absence of the required number of statutes on the relevant subjects that is the real cause of the complaint of the petitioners. There seems to be a growing impression that effective strength of organisations can be demonstrated only by holding the public to ransom for long periods of time; he who does it the longest being treated as the best. In doing so, these organisations appear to insist that no law shall stand in the way of their expediency. The law enforcement agencies are understandably inactive, their anxiety being not to involve themselves in controversies, which may have political overtones. Instead of acting as law enforcing agencies, they take the role of spectators. Unless there is a change in attitude on the part of the enforcement agencies, any law, however laudable its object may be, is likely

only to compound the problem. It is our earnest desire that along with the enactment of a law to regulate Public Order, the Governmental agencies inculcate in themselves an anxiety to see that laws are observed scrupulously and their breaches are dealt with firmly, however high the law-breaker be, and whatever be the consequences of "action enjoined by law.

12. We should not part with this case without expressing our deep sense of gratitude for the assistance rendered to Court in tackling this issue of great moment to the public by Shri T.P. Kelu Nambiar, who assisted us on our request.

The Original Petitions are disposed of in the light of the assurances contained in the counter-affidavit, and the submission of the Advocate General that the State-Government will take up forthwith the enactment of a law to regulate the use of public places by public processions, political, religious and otherwise, in such a manner as not to obstruct the use of public streets and other public places by the ordinary citizens. We should reiterate that it is not the enactment of one more law to gather dust in the statute book that is important: it is the effective enforcement of such laws as we have even now that provides visible guarantee to the much harassed urban citizenry.

Communicate a copy of this judgment to the Chief Secretary to Government, Kerala State, Trivandrum, directly forthwith.