
(1968) 02 OHC CK 0010
In the Orissa High Court

Satyabadi Swain

APPELLANT

Vs

Officer-in-Charge and Others

RESPONDENT

Date of Decision : 29-02-1968

Acts Referred:

Police Act, 1861 — Section 1, 30, 31

Citation : (1968) 34 CLT 448 : (1968) CriLJ 1519

Hon'ble Judges : S. Barman, C.J;S.K. Ray, J

Bench : Division Bench

Judgement

S. Barman, C.J.—The point involved in this writ petition is whether in the circumstances hereinafter stated -under Section 30 of the Police Act, 1861 (Act 5 of 1861) read with Rules 23 and 54(d) of the Orissa Police Manual-restrictive conditions can be laid in a procession license forbidding the movement of a procession to certain area⁹ in a town, that is, to the extent of prohibiting the procession from moving beyond a particular spot in the town in view of the apprehension of the Magistrate of a serious breach of the peace resulting in rioting and bloodshed, as reported to him by the Police.

2. In Cuttack town, there is a road called Mahtab Road between Taldanda Canal in the east and Dolmundi Chak on the west. There is an ESSO Petrol pump on the Mahatab Road stated to be about 600 yards from Dolmundi Chak. The petitioner represents the residents of Sankarpur village on the eastern side nearer the Taldanda Canal. They are being opposed by the residents of Haripur village near Dolmundi Chak on the west. There are also intervenes-representing the residents of the area between ESSO pump and Haripur village also opposing the petitioner's application.

3. It is claimed on behalf of the petitioner that there is a custom of bringing every year the Deity-Ganesh Mahda-from Sankarpur village upto Dolmundi Chak on the west along the Mahtab Road stated to be with the object of enabling the devotees to have a last Darshan of the Deity before immersion; the religious sentiment is that the Deity bestows benedictory looks on the devotees; and then

they take back the Deity to the Taldanda Canal and have the immersion ceremony there; all these are said to be according to the religious custom.

4. In 1986, a license is stated to have been given to the petitioners, for a procession to come, enter the Mahtab Road, go up to the Dolmundi Chak and then return to Taldanda Canal area - all as directed in the said license. It is said that there was obstruction from the people of Haripur village and the procession had to return leaving the Deity at ESSO petrol pump station. There, after, the petitioners applied to the Magistrate and ultimately on the intervention of the local authorities the Deity was under sufficient Police protection brought to the Taldanda Canal for the immersion ceremony. The matter rested there in 1966.

5. The following year in 1967, on or about September 20/21, the villagers of Sankarpur applied for a license. The immersion ceremony in that year was to take place on September 24, 1967.

6. On October 12, 1967 the petitioner Satyabadi Swain, on behalf of the villagers of Sankarpur made an application to the Additional District Magistrate. Cuttack praying that the Police of the concerned Police Station may be directed to issue a procession license to Satyabadi Swain allowing him to take his Ganesh Medha procession upto Dolmundi crossing and then back for immersion. The purpose of the Medhas being taken upto the end of Mahtab Road on the west - that is upto Dolmundi crossing-was stated to be that, according to the religious belief, the devotees of the said locality wished to have a final Dassan of the Deities. The petitioner's complaint was that he applied to the Sadar Police for issue of a procession license for taking this year (1967) Ganesh Medha (deity) of Sankarpur village, for immersion, in a procession on its usual route; the Circle Inspector, Sadar Police Station, did not issue a procession license allowing the procession to be taken upto Dolmundi crossing, and as a result Ganesh Medha had not been immersed as yet and the religious feelings of the people had been seriously wounded; that it was illegal on the part of the police to take the decision themselves, without referring the matter, under the Rules, to the Magistrate in case breach of the peace was apprehended; further it was also illegal on the part of the Police not to protect the fundamental right of a citizen to perform his religious rites and to use any public road for fear of some miscreants. In the petition the petitioner undertook that there would be no disturbance from the side of the people of Sankarpur in the said procession and that the petitioner was ready to abide by any terms that may be imposed on him to take the procession upto Dolmundi crossing.

7. On the said application the Additional Magistrate made the following order on the Sub- divisional Officer, Sadar:

S.D.O. Sadar

This trouble arose last year and we had allowed the procession to pass under sufficient Police protection and an experienced Magistrate being kept in charge of the situation. Since most of the experienced Magistrates are out for emergency

duties, the procession may be allowed to pass with adequate Police force behind and in the formed line under your direct supervision.

Sd. D. Swain 12.10.67 A.D.M.

8. The following day, October 13, 1967, the Sub-divisional Officer, Sadar, passed the following order:

13.10.67. Perused the order of the A.D.M. on the petition of the petitioner. Communicate the order to the O.I.C. Sadar P.S. The O.I.C. Salar P.S. should comply with the orders soon. A Magistrate to remain in charge if the Police would be deputed if required.

Sd. U.C. Padhi.

9. The petitioner applied for procession license on October 13, 1967. An English translation of the application is set out below:

13.10.67 Sankarpur, Cuttack 3.

To

The Officer in Charge, Sadar P.S.

Sir,

Beg to state that two Ganesh Madhas of our 1968 Cri.L.J. 96.

Sankarpur will start on procession at 7 p.m. on coming 18.10.67 and will proceed on the Mahtab Road through Chhatra Bazar till Dolmundai where the signboard of "Mahtab Road" has been placed and return from that place and reach Cbbatra Bazar Bridge over Taldanda Canal at 12 p.m. for immersion.

So. request that necessary steps may be taken for granting permission for the aforesaid two Medhas to proceed on procession on the said route.

The following drummers bearers people will go in the procession:

1. Ganesh Medhas 2 2. Drummers 20 3. Bearers 16 4. People accompanying procession 30. Yours faithfully, Sd/- Satyabadi Swain.

10. Thereafter on the same date (October 18, 1967) the Police reported to the District Magistrate through the Superintendent of Police! Cuttack, that orders be passed not to allow the Ganesh Medha to proceed upto the Dolmundi crossing and not to go beyond E3SO petrol pump as there was apprehension of serious breach of the peace resulting in rioting and bloodshed for reasons stated in the report of the Circle Inspector of Police. In the said report it was stated that as there was strong party faction and acute strained feeling between the villagers of Sankarpur and Hiripur and that several criminal cases against either party and counter-proceedings u/s 107, Criminal P.C. are pending against them, serious breach of the peace was apprehended this year (1967) at the time of taking out the prosecution, if license is granted allowing the procession to come upto

Dolmundi crossing as applied for; that under these circumstances he refused to grant the petitioner a license upto Dolmundi crossing and told that he would grant a license only upto ESSO petrol pump and prepared the license accordingly; but the petitioner did not take the license as yet, nor immersed the Ganesh Medha. The Superintendent of Police agreed with the circle Inspector and forwarded the same to the District Magistrate for issue of orders; and on the same day, the District Magistrate also approved of the same and directed the Sub-divisional Officer accordingly. In pursuance of the District Magistrate's order, as aforesaid the procession license was granted under the provisions of Section 30 and 31 of the Police Act, 1861 read with Rule 23 of the Orissa Police Manual. Vol. I.

11. The relevant terms and conditions under which the procession license was granted to the petitioner Satyabadi Swain, so far as material, are these:

License is hereby granted under the provisions of Section 30 and 31 of act V of 1861.

To

Sri Satyabadi Swain,

Sankarpur

For a procession to pass from Sankarpur to Taldanda Canal bridge.

The procession will start from Sankarpur village and come upto the ESSO petrol pump on the Mahtab Road where, without proceeding towards Dolmundi crossing, shall return to wards Taldanda Canal bridge and proceed upto that where the deities will be immersed.

Date: 14.10.67.

Hours: 7 a.m. to 2 p.m. With the procession there may not be more than

Men ... 30 Musicians ... 20 Carriers ... 16 Medhas ... 2 Date 13.10.67

Sd/-.... C.I. Sadar Cuttack.

12. On October 30, 1967 the petitioner filed the present writ petition with a prayer

To issue a writ of mandamus or any other (Suitable writ or direction to opposite party No. 1 to issue a license as per the application of the petitioner dated 18.10.67 (Annexure V) and direct the opposite party No. 2 (Sub-Divisional Officer, Cuttack) to carry out and implement the order of the A.D.M., Cuttack the superior authority, as per Annexure III.

13. The order of the Additional District Magistrate dated October 13, 1967 allowing the procession to pass upto Dolmundi crossing and then turn back again for immersion, was subsequently superseded by the District Magistrate, as the

Chief Officer charged with the administration of the district, on the report of the Circle Inspector of Police forwarded by the Superintendent of Police that there was apprehension of serious breach of the peace; and orders were accordingly passed not to allow the Ganesh Medhas to proceed upto Dolmundi crossing, that is, the procession was not allowed to go beyond the ESSO petrol pump station. The order of the District Magistrate is evidently an order passed u/s 30(2) of the Police Act. In Cuttack town the District Magistrate - and not the Additional District Magistrate-is the "chief officer charged with the executive administration of the District". There cannot be, in the same area, two chief officers within the meaning of Section 1 of the Police act. Therefore, there is no substance in the argument that the District Magistrate could have passed the order restricting the movement of the procession, after the Additional District Magistrate had allowed the procession to go upto Dolmundi crossing and turn back.

14. The real point in this case is : Could the local authorities, under the law, forbid the procession from going upto Dolmundi crossing? This required a careful examination of Section 30 of the Police act and the relevant Rules of the Orissa Police Manual.

15. Section 30 of the Police act relating to regulation of public assemblies and processions and licensing of the same and of music in the streets on festive occasions is this:

30 (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 sub division of a district, 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 license.

(3) On such application being made, he may issue a license specifying the names of the licensees 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 license.

(4) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.

16. The scheme of Section 30 is this: Sub-section (1) gives to the Police the power of regulating the conduct of processions on public roads and prescribing the routes by which and the times during which such processions may pass.

Under Sub-section (2), if the Police is satisfied that the procession, would, if left uncontrolled, be likely to cause breach of the peace, the Police would require such procession to apply for license. It is significant that the determination of the question whether such a procession, if uncontrolled, would be likely to cause a breach of the peace, is left to the "Judgment of the Magistrate". Understandably, the police is not given unfettered or absolute discretion in the matter of issuing a procession license; on the other band, before a license is granted the question whether or not a procession, if uncontrolled, would be likely to cause a breach of the peace, is left to the decision of the Magistrate and not to the Police. Sub-section (3) gives the power to the Police to impose conditions on which alone a pro-cession is to be permitted to be taken out and otherwise to give effect to Section 30 including Section (1) thereof by which the Police can regulate public assemblies and processions both as to this routes and the times as provided therein. It is not without good reasons that the police, with knowledge of local circumstances, as directly responsible for preserving law and order in the locality, has been given the power to define the conditions of the license necessary for regulating the procession. In addition to the powers conferred by Sub-sections (1) and (3) the police has been given further power under Sub-section (4) to regulate music in the streets on festive occasions. Bat these powers and indeed duties of the police are subject to the control of the Magistrate.

17. The control of the District Magistrate over the police generally in the matter of procession licenses is clear in the Orissa Police Manual. Rule 28 of the Police Manual is this:

23. Procession Licenses - The powers of a Superintendent or Assistant Superintendent or inspector (Rule 54(d)) u/s 30 of Act 5 of 1861 to License and regulate procession shall be exercised subject to the control of the District Magistrate. A model form for use as a prooes3ion license will be found in P.M. form 1. The discretion of the Police and Magistrate is not restricted in any way by this form, which is a model document having no statutory force. It is liable to alteration to suit local circumstances which may necessitate the insertion of conditions having a purely local bearing.

18. As regards the powers of the Circle Inspectors to sign the license for the Superintendent of Police, Rule 54 laying down the general duties of the Circle Inspectors, provides in Sub-clause (d) thereof as follows:

Every Inspector is appointed to perform within the limits of the sub-divisions or circle to which he is posted, all the duties of a District Superintendent under Sub-sections (3) and (4) of Section 30 of Act 5 of 1961, subject to the limitation chit he should obtain the orders of his superior officer, whenever this is found necessary.

19. In the present case, the Circle Inspector, Sadar, Cuttack, made his report to the District Magistrate through the Superintendent of Police who, along with his views, forwarded it to the District Magistrate. Thus, it is not that the report of the

Circle Inspector was acted upon without consideration by his superior officer in the first instance and ultimately by the District Magistrate who in his judgment came to the conclusion to the effect that the procession, if uncontrolled, would be likely to cause a breach of the peace. It was only then that, in implementation of the decision of the District Magistrate about the likelihood of breach of the peace, that the local Police specified the conditions in the license, namely, these:

the procession will start from Shankarpur village and come up to the ESSO petrol pump on the Mathab Road where, without proceeding towards Dolmundi crossing shall turn towards Taldanda Canal bridge and proceed upto that where the deities will be immersed.

and subject to these conditions the procession was allowed to take place.

20. In my opinion, insertion of such conditions or laying down such restrictions on the movement of the procession forbidding it from going upto Dolmundi crossing and prescribing the other necessary conditions was within the power of the local authorities conferred on them by law.

21. It is not for the Court to consider whether the District Magistrate was right in his apprehension of a likelihood of a breach of the peace, when his bona fides have not been questioned. It is a matter entirely for the local authorities to consider whether in the particular circumstances if a procession was taken out it would lead to public disturbance; whether it would be more suitable on a particular occasion to bind down a particular party and to allow the procession to be taken out up to a certain limit and not to allow it to go to a particular spot—these are matters in the discretion of the local authorities. It is not open to the Courts to take the administration in their own hands and to issue orders to the Magistrates in this respect. There is nothing in the Constitution to show that the right to take any procession as such has been guaranteed as a fundamental right; what is guaranteed is the right to assemble peacefully but without arms and the said right is also subject to such restrictions as may be imposed in the interest of the public order. It is open to the Magistrate to give any order that may be necessary to prevent obstructions of public thoroughfares or reach of the peace. In the larger interest of the public such restrictions are bound to be imposed. Thus the right of a party to take out processions is subject to the aforesaid restrictions, *Mohammad Siddiqui Vs. State of U.P. and Another*, and *Shaik Piru Bork and Others Vs. Kalandi Pati and Others*, .

22. In the view we have taken of the matter in the present case, as discussed above it is unnecessary to deal with the other points raised on behalf of the parties, including the interveners, in the course of the hearing of this writ application.

23. In the result, therefore, the petitioner is not entitled to get any relief as prayed for the writ petition accordingly fails and is dismissed. There will be no order for costs; each party to bear his own costs.

S.K. Ray, J.

24. I agree. In the view we have taken of Section 30, Police act, as investing the authorities designated in Sub-section (1) thereof with the powers and duties specified in all the sub-sections of the said section, it is open to those authorities to revise the conditions imposed in the license granted on 20.9.67 or on 12.10.67 having regard to the situation as prevalent at the time when fresh application for license is made. The Circle Inspector has no independent power to act under Sub-sections (1) and (2) of Section 30 and even u/s 54(d) of the Police Manual, assuming such rule to be legal and valid, he is to alary oat orders of the authorities specified in Section 30(1) of the Police act.