

(2014) 01 GUJ CK 0024
In the Gujarat High Court
Case No : Writ Petition (PIL) No. 337 of 2013

Shree Yogkshem Foundation for Human Dignity	APPELLANT
Vs	
State of Gujarat 2 and Others	RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Bombay Police Act, 1951 — Section 33
Constitution of India, 1950 — Article 19 19(1)(d) 21 226

Citation : (2014) 3 GLR 1867

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Vijay H. Nangesh, for the Appellant; P.K. Jani, Government Pleader with Mr. Parth Bhatt, AGP for the Opponent(s) No. 1 and Mr. Satyam Y. Chhaya, Advocate for the Opponent(s) No. 2, for the Respondent

Final Decision : Disposed Off

Judgement

J.B. Pardiwala, J.—By this writ application in the nature of a Public Interest Litigation, the petitioner, a Non Government Organization, has brought to our notice that the Ahmedabad Municipal Corporation is to host an event known as "Cyclotron" which is essentially a Cycling Race on 2nd February, 2014. According to the petitioner, a particular route in the City has been fixed for the said race and the entire road from the starting point of the race to the finishing point will be kept closed, as a result the general public will not be able to use the same. It is the case of the petitioner that the event is going to cause a lot of inconvenience to the people at large.

2. According to the petitioner, last year also such an event was hosted by the Ahmedabad Municipal Corporation and for such purpose a stretch of 105 kms. road of the city in the Western Region was blocked between 6.30 a.m. and 1.00 p.m.

3. According to the petitioner, such an action on the part of the respondents is violative of Articles-19(1)(d) and 21 of the Constitution of India.

4. In such circumstances referred to above, the petitioner has prayed for the following reliefs:

i) BE PLEASED TO issue writ of certiorari or the writ of mandamus or writ in any nature by quashing and setting aside public advertisement, dated 04/12/2013 published in "Divya Bhaskar" Daily News Paper (Annex-H) and also direct respondent authority to held Cyclotron/Marathon competition in Stadium like Police Stadium, Malek Saban Stadium, Sardar Patel Stadium, Motera Stadium or Cyclotron shall be organized in River Front passage in the interest of Justice.

ii. BE PLEASED TO issue writ of certiorari or the writ of mandamus or writ in any nature by calling upon the respondent authorities to justify their action of organized Cyclotron on public road by totally blocking the whole public road in the interest of Justice.

iii. BE PLEASED TO issue writ of certiorari or the writ of mandamus or writ in any nature by issuing the directive and/or guideline with regard to Cyclotron on public road in the interest of Justice.

iv. BE PLEASED TO direct respondent authority to held Cyclotron by keeping alternative option as per application dated 30/11/2013 (Annex-G) by keeping one side of the road for Cyclotron and other side of road for public in the interest of justice.

v. Pending, admission, till final disposal of this Writ Petition BE PLEASED TO direct respondent authority not to block the whole public road by putting barricades with the help of police in the interest of justice.

vi. BE PLEASED TO grant any other and further relief as may be deem fit and proper in the interest of justice.

5. Mr. Nangesh, the learned advocate appearing for the petitioner submitted that the authorities may proceed ahead with the event, but in no circumstances the entire road be blocked. Mr. Nangesh submitted that at least one portion of the road should be kept open for the people to use the same. Mr. Nangesh submitted that the event may be for 5 to 6 hours but during this interregnum period many marriage processions may have to pass through including people who may have to reach the railway station, airport, or other public places like hospitals etc. Mr. Nangesh further submitted that although an alternative route may be available for the people at large, yet such a route proves to be very cumbersome and many times confusing as there is no one to guide the people.

Mr. Nangesh lastly submitted that if at all the respondents are anxious or eager to host such an event, then such event should be at a place like a Stadium or far away from the City, but at least not in the heart of the city.

Mr. Nangesh submitted that despite the pendency of this Public Interest Litigation, the Police Commissioner, Ahmedabad City proceeded ahead with issue of a Notification u/s. 33 of the Bombay Police Act so far as the closure of a

particular route is concerned and providing of the alternative route for the public to pass through the same.

Mr. Nangesh, in such circumstances would submit that there being merit in this petition, the same deserves consideration and the respondents be restrained from hosting such an event.

Mr. Nangesh in support of his submissions placed strong reliance on a decision rendered by this very bench in the case of Jigneshbhai Gaswami v. State of Gujarat (Writ Petition (PIL) No. 9 of 2012, decided on 25th July, 2012. In the said case, we directed the State-respondent to incorporate in the Rules and Instructions a specific direction regarding smooth passage of traffic, so that the rights of the ordinary citizen are in no way affected and at the same time, the action of the State in maintaining security of the high dignitaries would not violate Article 21 of the Constitution of India.

6. On the other hand this petition has been opposed by the respondents. An affidavit-in-reply has been filed on behalf of the Ahmedabad Municipal Corporation duly sworn by one of its Deputy Municipal Commissioners inter alia stating as under:

I say and submit that the present public interest litigation inter alia regards itself with ensuring that an optional road is kept open while the critically viewed "cyclotron" is underway. The "cyclotron" referred to in the present PIL is essentially a cycling road race. The sports event is popularly referred to as the "Arvind Sabarmati Cyclotron" and the said event is a second in its series (the first known to have been held in 2013). The event has been welcomed with immense enthusiasm and has witnessed 1574 registered participants till date which includes international professional cyclists.

At the outset it is required to be submitted that India and the Indian populi are not entirely alien to the concept of a Cyclotron. Tour de India -a nationally acclaimed professional stage race which has assured India a place on the international calendar of events has been organized annually since 2012. Its first edition was held in 3 cities New Delhi, Srinagar and Mumbai, whereas its second more recent edition of 2013 was held in Delhi Mumbai and Jaipur. The regional editions of the said event are a regular on the cycling event circuit since 2010, which includes Tour de Delhi and Tour de Mumbai. The said stage bicycle road race has been recognized by the International Cycling Union (UCI) which is the world governing body for sports cycling and oversees international competitive cycling events. Tour de India can be thus termed as an Indian leg serving to be a counterpart to the prestigious Grand Tour a UCI World Tour which comprises of the internationally renowned Tour de France. It will be noteworthy that all of these competitive cycling events both national and international are road races which would primarily mean that these cycling events are mostly and largely held on public roads ranging from the worlds most celebrated street - A venue des Champs-Elysees of Paris, France to the Worli Sea Link of Mumbai. It will also be

pertinent to note that these road cycle events are rather viewed with pride elsewhere than nuisance as depicted in the present PIL.

It is submitted that agitations as canvassed by the present PIL come as a surprise more particularly when public roads in Ahmedabad have been used for sporting activities since 2010. It is submitted that the city of Ahmedabad has been host not only to a Cyclotron (as recently as in 2013) but also to similar such sporting events viz. the popular Sabarmati Marathon - a foot race. It may be known that the said Sabarmati Marathon has been annually organized since 1010 (a more recent held on the 05/01/2014) and there have not been traceable agitations of this proportion against the same although the foot race is also held on public streets. It is equally embarrassing to note that such events predominantly symbolic for their noble cause which includes encouraging spirit of sportsmanship and solidarity, spreading health awareness and environmentalism etc. are viewed more as a besetment than anything else. Unsubstantiated and vague references of how blood bags could not reach hospitals for hours and how doctors could not attend a Dermatology Conference held possibly at one of the 3 mentioned venues are resorted upon as bad precedents to make the organizing of this gallant sporting event seem disastrous and gore.

It is submitted that at this stage it would rather be necessary to rely upon factual aspects concerning the Arvind Sabarmati Cyclotron than the more unsupported elusive resorts of the PIL. It would be useful to note that organization of an event of this magnitude cannot actually be as casual as it is allegedly being attempted to be shown. The demarked route for the cycle race is a result of conscientious consultation with an expert committee comprising of the members of the Ahmedabad Cycling Club, Shri Atul Karwal, Inspector General of Police, the Dy. Commissioner of Police (Traffic) and officials of the Respondent Corporation not below the rank of Assistant Municipal Commissioner. The route has been adjudged after carefully considering several parameters of the race such as safety, smooth to and fro momentum of the participant cyclists, appropriate diametric to accommodate all rider categories (amateurs, differently abled, children, professional athletes), nutritional arrangements, emergency services, allied aids etc. The 105 km race route is to necessarily be barricaded for ensuring safety of the riders which comprises of people of all ages and diversities and that there cannot be any compromises or relaxation in so far as such fortification of the route is concerned. It is also relevant that the 105 kms is a total of the to-and-fro distance which begins from the River Front, Vallabh Sadan through C.G. Road, 132 ft. ring road towards Sattadhar Cross roads via Drive in Road across the Science city onto the Bopal-Shilaj Road up till the Thol Bird Sanctuary and back. A copy of the topography of the race route is marked and annexed hereto as ANNEXURE R1. The entire route is over an arterial thoroughfare to ensure convenience and distinguished to-fro ride. While both lanes shall remain barricaded during the race, ingress of vehicles in emergent cases shall exceptionally be permitted. In any case since the tenure of the race would be from 0530 hrs. to 1030 hrs., the traffic restraint on the race route would be to

only that time of the day which also is a Sunday. The race route is also amply and adequately publicized so that the citizens are not taken by surprise or disgruntled by the cooperation expected from them during the early hours of a Sunday.

It is submitted that the race route is spread across 5 major road stretches viz. the Ashram Road, the C.G. Road, the 132 feet Ring Road, the Drive in Road and the Science City Road. There is only a 1.2 kms stretch of the Ashram Road which shall be cordoned during the race hours. This stretch of the road is mostly inhibited by commercial establishments which shall largely remain shut all through-out the race tenure. The about 5 kms* on the C.G. Road which follows thereafter is well equipped with 2 cross over access at either ends being the Stadium underpass and Parimal underpass. It shall be noteworthy that in the said stretch over the C.G. Road there are more than 5 hospitals on earlier sides, of which two are multi-specialty hospitals. Next on the route is a 5 kms* stretch of the 132 feet ring road. The said stretch of the 132 feet ring road is also well-appointed with two cross over access being at Vejalpur Fly over and the Shivranjani Fly Over. This stretch of the 132 feet ring road with dense residential population is also sufficiently aided with several health facilities on either side. The race route from the 132 feet ring road then progresses onto the Drive In Road for the next over 7 Kms. The Satellite Road and Sargam Marg serve as an alternative to the Drive In Road on its East whereas the Vivekanand Marg affords to be its substitute on the West. The East and West pockets split by the Drive In Road respectively have about 2 multi-specialty hospitals each. The race route is then lead to the Science City Road via Neeti Marg through Sola Road. The S.G. Road running perpendicular to the Science City Road suffices as an auxiliary commute for the residents of the vicinity. Either sides of the Science city Road are well connected through internal paved streets to the S.G. Road. The Sola Civil Hospital situated alongside the S.G. Road on the north of the Science city Road is a major repository for medical, para medical and emergency and/or trauma services. The later part of the race route up to Thol is a 15 km odd approach road to the State Highway 135 largely occupied by industrial establishments. In the said manner appropriate and sufficient assiduousness is afforded while determining the race route. Major concerns of the citizenry such as medical emergency services, commute to airport/railway stations are appropriately met with while essentially not considering that the race day is a Sunday. V Copies of the maps of the discussed 5 major stretches of roads demonstrating alternative routes, cross over accesses and medical aides are annexed hereto and marked as ANNEXURE R2.

It is submitted that in the above factual and actual premise it can hardly be said that the fortification of the race route for the Arvind Sabarmati Cyclotron would impinge upon the quintessential right to life of the citizens as insouciantly canvassed in the PIL. Needless to say that there hardly can be a curtailment of the Right to Freedom of speech and expression or its elementary facets considering that the race is to be held in the early hours of a Sunday morning

which is observed as a rest day in most of the governmental/non-governmental organizations.

7. Mr. Prashant Desai, the learned Senior Advocate assisted by Mr. Satyam Chhaya, the learned Advocate for the Ahmedabad Municipal Corporation submitted that the suggestion of the petitioner that one side of the road should be kept open for the public and the other side be used for the event is not feasible and practical. According to Mr. Desai, the same would not be in the interest of the people at large including the participants in the Cyclotron because of every possibility of an untoward incident occurring like accident. Mr. Desai submitted that the event has received an overwhelming response and around 1574 participants have registered themselves which includes International Professional Cyclists. Mr. Desai also submitted that the Event is hosted predominantly with the avowed object of encouraging the spirit of sportsmanship and solidarity including creating the awareness towards health and environment.

Mr. Desai also submitted that the alternative route has been widely publicized and the same has been fixed after an effective consultation with the Committee of experts comprising of the Inspector General of Police, the Deputy Commissioner of Police (Traffic) and officials of the Corporation not below the rank of the Assistant Municipal Commissioner.

Mr. Desai also submitted that the route has been adjudged after carefully considering the various facets of the event such as safety, smooth to-and-fro momentum of the participants, appropriate diameter to accommodate all categories of the participants which includes amateurs, disabled, children, professional athletes etc.

In such circumstances referred to above Mr. Desai would submit that the apprehension expressed by the petitioner in public interest as regards the inconvenience likely to be caused to the people is not well founded and there being no merit in this petition, the same may be dismissed.

8. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our determination in this petition is whether we should restrain the Ahmedabad Municipal Corporation from hosting the event known as Cyclotron (a cycle race) scheduled to be held on 2nd February, 2014.

9. Ordinarily, the court would allow a litigation in public interest if it is found -

i) that the impugned action is violative of any of the rights enshrined in Part III of the Constitution of India or any other legal right and relief is sought for its enforcement.

ii) that the action complained of is palpably illegal or mala fide and affects the group of persons who are not in a position to protect their own interest on account of poverty, incapacity or ignorance.

iii) that the person or a group of persons were approaching the Court in public interest for redressal of public injury arising from the breach of public duty or from violation of some provisions of the Constitutional law.

iv) that such person or group of persons is not a busy body or a meddlesome inter-loper and have not approached with mala fide intention of vindicating their personal vengeance or grievance.

v) that the process of public interest litigation was not being abused by politicians or other busy bodies for political or unrelated objective. Every default on the part of the State or Public Authority being not justifiable in such in such litigation.

vi) that the litigation initiated in public interest was such that if not remedied or prevented would weaken the faith of the common man in the institution of the judiciary and the democratic set up of the country.

vii) that the State action was being tried to be covered under the carpet and intended to be thrown out on technicalities.

viii) public interest litigation may be initiated either upon a petition filed or on the basis of a letter or other information received but upon satisfaction that the information laid before the Court was of such a nature which required examination.

ix) that the person approaching the Court has come with clean hands, clean heart and clean objectives.

10. Under Article 226 of the Constitution, a High Court is empowered to issue directions, orders or writs for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. The words "any other purpose" have been interpreted by the Supreme Court and by several other High Courts in India to mean "a legal right". Therefore, before a Court can issue directions, orders or writs, it must be satisfied that a fundamental right or any other legal right of the petitioner has been infringed.

11. There need not be any debate on the well settled proposition of law that the citizens have a right under Article 19(1)(d) of the Constitution of India to move freely within the territory of India. However, there are two core issues which need to be addressed. First, whether restricting the movements of the people on a particular road to facilitate an event like Cyclotron for a period of 5 hours i.e. from 5.30 A.M. to 10.30 A.M. on a Sunday, and that too by providing an alternative route by itself could be said to be an action on the part of the authorities violative of Article 19(1)(d) of the Constitution of India.

12. Secondly, the inconvenience which might be caused to the people due to such a restriction by itself could be said to be violative of the legal right to use the road.

The fundamental right that had been guaranteed by Article 19(1)(d) of the

Constitution was one to move freely through out the territory of India. That does not mean the use of any particular road for that purpose. The right contemplated there has for its object the removal of all internal barriers in the country and to make India as a whole the abode of the citizens of India. This provision is thus complimentary to Article 5, which provides a single citizenship. Sub-clause (5) of Article 19 of the Constitution provides that nothing in the sub-clause (1)(d) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any scheduled tribes.

13. From the above, it is evident that the restrictions could therefore, be imposed provided they are reasonable. Any action providing for such reasonable restrictions including a Notification in that regard issued by the Commissioner of Police u/s 33 of the Bombay Police Act, could not therefore, be "ultra vires" of the Constitution.

14. The right of the public in a road is merely to pass and re-pass. Such right can be restricted at the time of such events like Cyclotron. In our opinion, the use of the public way can be regulated by the State and for that purpose, reasonable restrictions can be imposed.

15. A restriction cannot be said to be unreasonable merely because in a given case, it operates harshly. In determining whether there is any unfairness involved, the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed, the disproportion of the imposition, the prevailing condition at the relevant time, enter into judicial verdict.

16. The case on hand is not one in which the Notification u/s. 33 of the Bombay Police Act has been issued on account of some demonstrations or processions to be conducted in the entire City by political persons, organizations, thereby bringing a grinding halt to the moment of vehicular traffic on public roads which ultimately would disrupt the normal run of traffic. Under no circumstances the processionists and demonstrators shall be allowed to obstruct the road completely so that it would be impossible for others to use the road. However, in the present case it is not possible to accede or accept the suggestion made on behalf of the petitioner that a part of the road should be kept open for the people to use taking into consideration the nature of the event which is a cycle race.

17. In our opinion the stance of the Corporation is quite justified that the same would not be in the interest of both, the people at large as well as the participants in the race.

18. For this very reason, the authorities of the Corporation in consultation with the police department have chalked-out an alternative route for the people to use during the interregnum period of five hours.

Mr. Desai, the learned Senior Advocate appearing for the Corporation placed

before us a map indicating the route which has been fixed for the event and which would remain close from 5.30 in the morning to 10.30 as well as the alternative route. On perusal of the same we find that the alternative route is running almost parallel to the route which is the subject matter of this petition and therefore, in such circumstances we are of the opinion that the people would not be put to any inconvenience by closure of a particular road. Mr. Desai has also given an assurance that all possible steps shall be taken to see that minimum inconvenience is caused to the people at large and the people would also be guided at all possible points of the alternative route.

19. The term "Regulation of Traffic" in Sec. 33 of the Bombay Police Act, 1951 includes prohibition of plying or parking of vehicles on a particular area during particular period. It also includes prohibition of traffic on a particular route and diversion of that traffic to another route. In such circumstances we cannot, therefore, hold that the Notification issued by the Police Commissioner is in excess of the powers conferred by Sec. 33 of the Act.

20. The reliance placed on the decision of this very bench in the case of Jigneshbhai Dhirendrabhai Gaswami (*supra*) is of no avail to the petitioner.

In the said case the issue involved was altogether different. It was one relating to the right of people to move freely with minimal period of detention during the period when a high dignitary like Chief Minister of the State was to pass through a particular route. In the said case the grievance redressed was that whenever the Chief Minister of the State was to pass through a particular route the police would stop the traffic to a grinding halt for a long period. This could be quite frequently in different parts of the City. While deciding the said matter we noticed that the rules and instructions in that regard were also framed in a very vague manner capable of being abused. We also noticed that unbridled power had been given to the Police Authorities to detain the running vehicles and pedestrians in the name of security arrangement without providing any guidelines as to the time of detention of the vehicles or making alternative ways of public and meeting their emergent situation.

21. In such circumstances, we directed the State Government to constitute a High Power committee of Experts who would find-out the ways of removing the difficulties faced by the ordinary citizen and at the same time, take full measures in protecting the securities of the high dignitaries.

22. In our opinion the ratio of this decision relied upon on behalf of the petitioner is not applicable in the present case and relying on the same it cannot be argued that even for an event like Cyclotron no permission can be granted by the authorities concerned for closing a particular route and diverting the same to some alternative route for a particular period of time.

23. In the overall view of the matter we are not convinced with the case of the petitioner mainly for the following reasons:

- i) The event is to take place on 2nd February, 2014 which is a Sunday. Being a Sunday people will have some respite as Offices and schools would remain closed.
- ii) The event would start at 5.30 A.M and will come to an end at around 10.30 A.M.
- iii) An alternative route has been provided by the authorities which runs almost parallel to the route which would remain closed on the day of the event from 5.30 A.M to 10.30 A.M.
- iv) The event Cyclotron is organized once in a year with the object of encouraging the spirit of sportsmanship and solidarity including creating awareness towards health and environment.
- v) The alternative route as well as the route fixed for the event has been quite widely publicized so as to make the people aware of the same as they may not be caught by surprise at the last minute.
- vi) The route is spread across 5 major road stretches, namely, Ashram Road, C.G. Road, 132 feet ring road, Drive-in Road and the Science City Road. This stretch of the road is mainly a commercial area which would remain closed, being a Sunday, and at least surely between 5.30 A.M and 10.30 A.M.

24. Before parting, we deem it necessary to direct the respondents to ensure that all possible endeavours be made to see that the barricades are removed and the road is made open by 11 O'clock for the people to use the same and most importantly the authorities shall depute officers at important points of the alternative route provided so as to guide the people to reach at a particular destination. The authorities shall keep on giving publicity to the alternative route till the last, with a view to see that minimum inconvenience is caused.

25. We hope and trust that the authorities of the AMC conjointly with the authorities of the Police Department, shall take due care and precautions to ensure that minimum inconvenience is caused to the people at large so as to eliminate the impression which a common man carries in his mind that on the day of such events lot of hardship would be caused. For the foregoing reasons, we are of the opinion that no case has been made out by the petitioner for grant of any relief as prayed for in this petition.

With the above observations and directions, this petition is disposed of. In the facts and circumstances of the case, there shall be no order as to costs.