
(1986) 04 PAT CK 0046
In the Patna High Court
Case No : C.W.J.C. No. 299 of 1986 (R)

Sri Mahabir Mandir Samiti and Another	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 10-04-1986

Acts Referred:

Constitution of India, 1950 — Article 19
Police Act, 1861 — Section 30

Citation : (1986) PLJR 635

Hon'ble Judges : N.P. Singh, J;Abhiram Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.P. Singh and Abhiram Singh, JJ.—This application was originally filed on behalf of the petitioners for a writ of mandamus directing the respondents to grant a licence to the petitioners for taking out Ramnavami procession on the basis of the application filed. On 7.3.1986 this Court directed the respondents that the order should be passed on the application filed on behalf of the petitioners by 20th March, 1986, so that in case the petitioners are desirous to make any grievance against the order so passed they may challenge the same before this Court. This case was adjourned to 24.3.86.

2. We are informed that a licence has been granted on 15.3.1986 to the petitioners in respect of taking out the Ramnavami procession. Now the grievance which has been made on behalf of the petitioners is that the licence has not been granted through the routes for which application had been made.

3. A counter affidavit has been filed on behalf of the Superintendent of Police, Ranchi and the Officer-in-charge of Doranda Police Station, In that counter affidavits a map has been annexed showing the routes through which the procession has to pass on the basis of the licence granted to the petitioners. The petitioners have no other objection to the said licence except that the procession has not been allowed to pass through Bazar road which connects Yunus Chowk

with Jhanda Chowk. The distance of that road is about 468 feet in length and 18 feet in width.

4. On behalf of the petitioners it was urged that there was no reasonable justification on the part of the respondent-authority to deny the right to the petitioners to take out the procession through the Bazar road afore-said.

5. From the counter affidavit as well as from the supplementary counter affidavit filed on behalf of the respondents aforesaid it appears that never licence has been granted for taking-out the Ramnavami procession through this Bazar road, till today except in the years 1974 and 1978. It has been stated on affidavit by the Officer-in-charge of Doranda Police-Station that in the years 1974 and 1978 when the Ramnavami procession was allowed to pass through this Bazar road there was a communal riot and on each occasion one or more persons were killed for which different cases had been registered. From the map it appears that there is a Masjid on this road. The respondents have stated in the counter affidavit that apprehending trouble this year as well, the request of the petitioners to take out the Ramnavami procession through that Bazar road has not been accepted. In that connection a copy of the intelligence report has also been annexed to the counter affidavit to show that if the Ramnavami procession is allowed to pass through that Bazar road, there may be a communal tension or riot.

6. On behalf of the petitioners it was submitted that the petitioners and the persons who are likely to join the Ramnavami procession aforesaid have a fundamental right guaranteed under the Constitution to freely assemble and to take out a procession through the roads of the town. There cannot be any dispute that in view of Article 19 of the Constitution all citizens have the right to assemble peace-, fully and to move freely throughout the territory of India including different roads of the town of Ranchi. But all these rights are subject to reasonable restrictions.

7. Sub-section (1) of section 30 of the Police Act, 1961 (hereinafter referred to as "the Act"), is as follows:--

The District Superintendent or Assistant 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.

In view of the statutory provisions there cannot be any dispute that the District Superintendent of Police has been vested with the powers to regulate the passing of a procession on the public roads and for that purpose he can prescribe routes by which and the time at which such procession may pass. In view of the aforesaid statutory provisions and till the power is exercised in a bona fide manner, taking; into consideration the larger interest of the public and the society, this Court cannot interfere with the order passed by the Superintendent of Police. However, the matter will be different where any such restriction is

being imposed in exercise of the powers for some ulterior purpose, lacking in bona fides.

8 Learned counsel for the petitioners, perhaps, in view of the aforesaid statutory provisions, could not challenge the right of the respondents to regulate the route of the Ramnavami procession. However, according to the petitioners, the restriction imposed on the procession from going through the Bazar road is not reasonable and needs to be interfered by this Court.

9. It may be mentioned at the outset that there is no allegation of mala fide against any of the respondents in the writ application. It may also be pointed out that the statements made in the counter affidavit that since 1974 the Ramnavami procession has passed through this Bazar road only twice, i.e. in the years 1974 and 1978, when there was a communal riot and breach of peace, has not been controverted by filing any rejoinder to that counter affidavit. Respondents have also annexed an intelligence report for this year from which it appears that authorities apprehend some trouble, if the Ramnavami procession is allowed to pass through this Bazar road. It is well known that any preventive action or decision of the executive connected with maintenance of law and order or public order cannot be examined by this Court as a Court of Appeal. What preventive actions should be taken in apprehension of certain event can be contemplated by actual functionaries.

10. On behalf of the petitioners reference was made to a Bench decision of this Court in the case of Pooja Samiti Fulwaria v. State (1985 BBCJ 351 : 1985 PLJR 408) where the Bench observed that when there was a customary right of the Hindus of taking out a procession, it should not be restricted on objection raised by any other community. We have already pointed out that the petitioners have never taken out the Ramnavami procession through this road in last 11 years except in the years 1974 and 1978 when there were riots. Apart from that, whether a group of persons have a customary right to pass through a particular road has to be established on the materials produced before a Court. We are not inclined to hold that the petitioners have established any such customary right which is being interfered with by the respondents.

11. The learned Advocate General has pointed out from the map as to how the procession shall start and how it will touch all the Akharas and temples lying on different routes. It has been stated that neither there is any Akhara nor a temple in the Bazar road through which the Ramnavami procession has not been allowed to pass.

12. On behalf of the petitioners it was also urged that in the earlier writ application filed in connection with grant of licence, this Court in the case of Sri Mahabir Mandal Samiti v. The State of Bihar and others (C.W.J.C. 175, 1978(R) disposed of on 6.7.1981) had directed the authorities to dispose of the application for licence to take out the Ramnavami procession sufficiently in advance by a reasoned order. It has been pointed out that while granting the

licence no reason has been mentioned why the procession has not been allowed to pass through Bazar road aforesaid. It was submitted that the reasons given in the counter affidavit cannot be taken into consideration. In this connection reliance was placed on the judgment of the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, where it has been observed that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. That observation was made in connection with the Representation of People Act. In our opinion, the aforesaid observation has no bearing in connection with the grant of licence by executive authorities taking into consideration the law and order problem. However, it would have been advisable, in view of the earlier direction of this Court, to mention in the order granting licence the reasons why the procession has not been allowed to pass through the Bazar road.

13. Under the circumstance mentioned above, we are left with no option but to dismiss this writ application at the stage of admission itself. efore we part with this order we make it clear that we have not expressed any final opinion on the alleged right of the petitioners to take out a procession through the road in question. We have passed this order on the basis of the conditions existing this year.