
(1979) 08 KAR CK 0022
In the Karnataka High Court
Case No : W.P. 9360/79

Sri Vidya Ganapathi Mandali

APPELLANT

Vs

Dy. Commr. of Mysore and Others

RESPONDENT

Date of Decision : 29-08-1979

Acts Referred:

Karnataka Police Act, 1963 — Section 31(1)(O)

Citation : (1980) 1 KarLJ 246

Hon'ble Judges : Puttaswamy, J

Judgement

1. An association called Sree Vidya Ganapathi Mandali of Chamarajanagar Town is the petitioner before me. One of the objects of the petitioner is to instal an idol of Lord Ganapathi every year in that town. According to Hindu rites and customs, an idol is installed on the Vinayaka Chaturthi day, poojas are performed regularly and on an auspicious day, the idol is carried in a chariot and is immersed in a nearby tank, pond or river of the village, town or city. During the year 1978 Vinayaka Chaturthi day, fell on 6-9-1978, on which day the petitioner had installed an idol at Gurunanja Setty's choultry of car street of the town. After the week long celebrations, the petitioner had decided to carry that idol in a chariot on 17-9 1978 passing through several streets of the town and thereafter immerse the same in water. Evidently on a reference made thereto on 16-9-1978. respondent No. 3 by his Endorsement No. 282/78 dated 20/21-9-1978 (Ext-D) informed the petitioner that it was not advisable to take the procession on two streets viz., Kadakpur Mohalla and Harijan street from the point of view of maintenance of law and order. He, however, directed the petitioner, to approach respondent No. I and obtain his permission under S. 31(1) (o) of the Karnataka Police Act, 1963 (Karnataka Act No. 4 of 1964) (hereinafter referred to as "the Act") for taking out a procession of the idol on the aforesaid streets. In compliance with the aforesaid direction, the petitioner without immersing the idol on 17-9-1978 or thereafter, approached respondent No. 1 for his permission under S. 31(1)(o) of the Act. On that application respondent No. 1 by his order No. MAG.MLO. 256/78-79 dated 24th January,

1979 (Ext-G) has accorded permission to the petitioner, to carry the idol in procession on the several streets mentioned in that order except on the aforesaid two streets objected to by respondent No. 2. An application made by the petitioner for furnishing reasons for refusing permission on the aforesaid two streets, has been rejected by respondent No. 1 on the ground that their disclosure was not in the public interest. In these circumstances, the petitioner without immersing the idol installed on 6-9-1978 so far, has approached this Court under Art 226 of the Constitution for an appropriate writ to the respondents to carry the idol on the aforesaid two streets and other streets. The petitioner has urged that S. 31(1)(o) of the Act, does not permit respondent No. 1 to prohibit the procession on the aforesaid two streets and other streets.

3. The respondents have resisted the case of the petitioner. In a common return, the respondents have asserted that Kadakapur Mohalla was exclusively or predominantly inhabited by Muslims and the petitioner has been prohibited from carrying the chariot in procession in the interest of maintaining law and order, public peace and tranquility in the town. They have asserted that the road portion in front of the mosque situated in Kadakapur Mohalla is narrow. So far as the Harijan colony/street is concerned nothing special is stated, but from the documents produced by the respondents it appears that the authorities apprehend breach of peace if a procession is taken in that colony or street also. While drawing reference to certain unfortunate events that took place at Kadakapur Mohalla in the year 1970 in connection with a similar procession, the respondents have urged that S. 31(1)(o) of the Act empowers them to prohibit a procession on any street or road to maintain public peace and tranquility. The petitioner has not denied the unfortunate events in connection with a similar procession in the year 1970.

4. Shri H. Subramanya Jois, learned counsel for the petitioner, contended that S. 31(1)(o) of the Act does not authorise the prohibition of a procession on any street or road, but only permits its regulation. He maintained that this legal position is concluded by the ruling of the Supreme Court in *Himatlal K. Shah v. Commissioner of Police, Ahmedabad*, A.I.R. 1973 S.C. 87.

5. Shri S.G. Doddakale Gowda, learned Government Advocate, contended that the word "regulating" occurring in S. 31(1)(o) of the Act implies the power of prohibition of a procession and the ruling of the Supreme Court in *Himat Lal K. Shah's*, A.I.R. 1973 S.C. 87, case, which did not deal with the true scope and ambit of S. 33(1) (o) of the Bombay Police Act of 1951 or S. 31(o) of the Act, does not conclude the question. In support of his contention Shri Doddakale Gowda strongly relied on the ruling of the Supreme Court in *Narendra Kumar v. The Union of India*, A.I.R. 1960 S.C. 430 and the ruling of the High Court of Punjab in *L. Arjandas Duggal v. State of Punjab*, A.I.R. 1958 Pun. 400

6. There is no dispute that respondent No. 1 has prohibited the petitioner from taking out a procession on the two streets or areas in the purported exercise of his power under S. 31(1)(o) of the Act. But the question is, whether the same is

legally permissible or not. If it is legally permissible, this Court will not be justified in interfering with the power exercised by respondent No. 1, whose bona fides are beyond a shadow of doubt.

7. Firstly, the meaning of a term has to be ascertained from the context in which it occurs and that the meaning attached to the same word in another statute or context cannot be a safe guide in ascertaining the meaning of that very term in another statute. Secondly, the meaning of the term has to be ascertained by reading the statute as a whole. Bearing these well established principles in mind, I should ascertain the true scope and ambit of S. 31(1)(o) of the Act.

8. The opening part of S. 31(1) and clause (o) of that section that is material for our purpose read thus:

"Power to make orders for regulation of traffic and for preservation or order in public places, etc.-(1) The Commissioner and the District Magistrate, in areas under their respective charges or any part thereof, may make, alter or rescind orders not inconsistent with this Act, for- x x x x x

(o) regulating the conduct of any behaviour or action of persons, constituting assemblies and processions on or along the streets and prescribing in the case of processions, the routes by which, the order in which and the times at which the same may pass.

The opening part confers power on the Commissioner and the District Magistrate in the areas under their respective charges or in any part thereof, to make alter or rescind orders that are not inconsistent with the Act for the various matters enumerated with considerable detail in the various clauses of that section. Clause (o) empowers the Commissioner or the District Magistrate as the case may be to make an order regulating the conduct of and behaviour or action of persons, constituting assemblies and processions on or along the streets and prescribing in the case of processions, the routes by which, the order in which and the times at which the same may pass. In clause (o), the Legislature has deliberately used the word "regulating" on "regulation; while in the other two clauses that immediately follow that clause and certain other clauses of sub-section (I), it has deliberately used the word "prohibiting" or "prohibit". The words "regulating" or "regulate" or "prohibiting" or "prohibit" which are not defined in the Act, and are not also terms of art are used in their ordinary sense. In deliberately employing those terms in the Act, the legislature must be presumed to be aware of the distinction and difference in the meaning of those terms. Unless there are compelling reasons, it is not permissible to hold that the legislature has used the terms "regulating" or "prohibiting" as meaning one and the same and as interchangeable. On this analysis alone, I am of the view that clause (o) only permits regulating of assemblies and processions and not of prohibiting them.

9. In interpreting the words "reasonable restrictions" occurring in sub-articles (2) to (6) of Art. 19 of the Constitution, the Supreme Court and the High Court of Punjab in the cases relied on by Shri Doddakalc Gowda, have ruled that the word

"restrictions" would include prohibition also. While the words in a Constitution Act are generally given a wide and liberal meaning, that is not the position in interpreting an enactment of the legislature. To borrow the classical words of Chief Justice Marshall in *McCulloch v. Maryland*, (1819) 4 Wh. 316, a Constitution is expounded which is not the position in interpreting an enactment of legislature. In any event, the meaning attached to a word in another enactment, more so in a Constitution Act, cannot be applied to the words occurring in another enactment. Acceptance of the argument of the learned Government Advocate, would virtually amount to re-writing the statute which is not permissible. For these reasons, *Narendra Kumar's*, A.I.R. 1960 S.C. 430 and *L. Arjandas Duggal's*, A.I.R. 1958 Pun. 400, cases, are of no assistance to the learned Government Advocate.

10. The words "regulate" and "prohibit" are defined in the Webster's New International Dictionary (Second Edition unabridged) as under:

"regulate"-(1) To govern or direct according to rule; as, laws which regulate the succession of seasons; more narrowly, to bring under the control of law or constituted authority; to make regulations for or concerning; as, to regulate the industries of a country or the production of wheat. (2) To reduce to order, method, or uniformity; to regularize; as, to regulate one's habits or the operations of the bowels; also, Obs., to discipline.

(3) To fix the time, amount, degree, or rate of, by adjusting, rectifying, etc.; as, to regulate temperature, pressure Or speed; also, to adjust so as to work accurately or regularly; as, to regulate a clock, a carburettor, or a meter".

"prohibit"-(1) To forbid by authority or command; to interdict; as, the law prohibits the sale of opiates or men from selling opiates;-now commonly followed by from with the verbal nouning. (2) To stop or prevent (a person); to render impossible (an action); to hinder; debar." In the former, the thing is controlled or adjusted to an order, but in the latter the thing is forbidden or prevented. When a thing is regulated it continues to exist but when a thing is prohibited it does not exist. When an assembly or a procession is regulated, they will exist, but when they are prohibited they do not exist, in which event the question of regulating or controlling them will not arise. Regulating and prohibiting an assembly or procession at one and the same time is simply incongruous and incompatible. The distinction between the two is neatly stated in Law Lexicon of British India compiled and edited by P. Ramanatha Aiyar in these words:

"Prohibition of a Business" and "Regulating a Business". The "prohibition" of a business is to prevent the business being engaged in or carried on, entirely or partially, and is incongruous with "regulate", which implies that the business regulated may be engaged in and carried on subject to established rules or methods".

The opinion of Mathew, J. in *Himat Lal K. Shah's*, A.I.R. 1973 S.C. 87, case at para 52 quoting with approval, the meaning given to the word "regulate" in

Municipal Corporation of the City of Toronto v Virgo, 1896 A.C. 88, Attorney General for Ontario v. Attorney General for the Dominion, 1896 A.C. 348, and Birmingham and Midland Motor Omnibus Company Limited v. Worcestershire County Council, (1967) 1 WLR 409, is also to the same effect.

10. In *Vijiaraghava chariar v. Emperor*, (1903) ILR 26 Mad. 544, Benson, J. described a procession as an assembly in motion which statement has been approved by the majority in *Himatlal K. Shah's*, A.I.R. 1973 S.C. 87, case. On this statement of law, there does not appear to be any distinction and difference between an assembly or a procession. But in order to examine the contention of the learned Government Advocate, I will assume that the two are separate and distinct.

10. Sri Doddale Gowda alternatively urged that under the latter part of clause (o) of S. 31(1) of the Act, it is permissible for the authority to direct the procession to reach the destination on streets/roads other than the one sought by the petitioner. He maintained that the expression "route" permits such a diversion.

11. The word "street" has been defined in S. 2(2) of the Act, but the word "route" occurring in the latter part of clause(o) has not been defined. In Webster's New International Dictionary (Second edition-unabridged) the word "route has been defined as under:

"route"-(1) The course or way which is or is to be travelled or passed; a course; road; path; march.

(2) A trodden or usual way; hence, a routine. Race.

(3) Mil. An order (no longer used in the United States Army) for troops to march from one place to another, esp. that part of the order which indicates the location of headquarters for each evening.

(4) Med. The path in, or part of, the body through which a remedy is administered; as, the alimentary or subcutaneous route".

A route is different from a street/road or highway. Ordinarily a route means a way taken from one terminus to another on a particular street/road or highway. (See *Kelani Valley Motor Transit Company Ltd. v. Colombo Ratnapura Ominibns Company Ltd*, (1946) Appeal cases 338.

An illustration will make the point better. A procession proposes to start from Mysore and reach Bangalore passing through Srirangapatna, Mandya, Maddur, Channapatna and Ramanagaram and return to Mysore passing through the same places. For that procession, the line of travel from Mysore to Bangalore on the aforesaid intermediate places is the route. The terminals and the intermediate places are equally important. Any two places can be reached by more than one intermediate point But by reason of that only to hold that the route of the procession is maintained, so long as it is permitted to move on any other intermediate point or places would be doing violence to the term "route".

12. Shri Doddakale Gowda placed before me an extreme example of a place or a portion of the" specified route being infested with epidemic diseases in justifying the authority to divert the procession from passing through those places. Nobody can suggest that the authority should not divert the procession in such circumstances. But the question is under what provision the same can be diverted. In my view, such a diversion, cannot be enforced under S. 31(1)(o) of the Act but probably can be made under S. 42 of Act and other Public Health laws.

13. Let me now examine whether the ruling of the Supreme Court in Himatlal K. Shah's case, A.I.R. 1973 S.C. 87, concludes the controversy or not.

14. In Himatlal K. Shah's, A.I.R. 1973 S.C. 87, case the appellant sought for permission to hold meetings at Ahmedabad in connection with the All India students strike sponsored by the All India students federation and sought the permission of the Commissioner of Police Ahmedabad, who refused the same. He therefore, moved the Gujarat High Court challenging the validity of Section 33(o) of the Bombay Police Act of 1951 and Rule 7 of the Rules framed there-under. The scheme and object of the Bombay Police Act and the provisions made therein are analogous to the Karnataka Police Act. The High Court taking the view that "regulating" implies "prohibition", upheld the validity of S. 33(o) and Rule 7 of the Rules. On appeal the Supreme Court reversed the judgment of the Gujarat High Court, and held that Rule 7 which conferred arbitrary and unguided power was ultra vires of the Act and upheld the validity of S. 33(o) of the Bombay Police Act, which is in pari materia with S. 31(1)(o) of the Act. In examining the validity of S. 33 (o) of the Bombay Police Act, the Supreme Court had necessarily to ascertain the true scope and ambit of that provision, though it did not directly arise for determination. The learned Chief Justice speaking for himself, A.N. Ray, J. (as he then was) and Jaganmohan Reddy, J. observed on the scope and ambit of S. 33(o) in these words:

"Coming to the first point raised by the learned counsel, it seems to us that the word "regulating" in Section 33 (o) would include the power to prescribe that permission in writing should be taken a few days before the holding of a meeting on a public street. Under Section 33(o) no rule could be prescribed prohibiting all meetings or processions. The section proceeds on the basis that the public has a right to hold assemblies and processions on and along streets though it is necessary to regulate the conduct and behaviour or action of persons constituting such assemblies or processions in order to safeguard the rights of citizens and in order to preserve public order. The word "regulate", according to Shorter Oxford Dictionary means, "to control, govern, or direct by rule or regulations; to subject to guidance or restrictions."

Mathew, J. who agreed with the conclusions of the majority for different reasons, expressed on the scope and ambit of Section 33(o) of the Bombay Police Act in these words:

"What the sub-section provides is making of rules for "regulating" the conduct and behaviour, or action of persons constituting assemblies. The sub-section presupposes an assembly and authorises the making of rules for "regulating" the conduct, behaviour or action of the persons who are members thereof. Rule 7 impliedly gives power to the Commissioner to refuse permission to hold a public meeting and, when a meeting is prohibited, there is no question of regulating the conduct, behaviour or action of persons constituting the assembly, ex-hypothesi, no assembly has been constituted."

"A power to "regulate" does not normally include a power to prohibit (See *Municipal Corporation of the City of Toronto v. Virgo*, 1896 AC 88, *Attorney General for Ontario v. Attorney General for the Dominion*, 1896 AC 348. A power to regulate implies the continued existence of that which is to be regulated (See *Birmingham and Midland Motor Omnibus Co, Ltd., v. Worcester shine County Council*, (1967)1 WLR 409. If rule 7 authorises the Commissioner to prohibit a public meeting, is it consistent with the sub-section which authorises only "regulating the conduct....."? When the Legislature wanted to give the rule-making authority a power to frame rules prohibiting an activity, it has taken care to do so by the appropriate word. For instance, sub-section (p) of S. 33(1) speaks of

"prohibiting" the hanging or placing of any cord or pole across a street.....". Sub-section (q) of S. 33(1) relates to prohibiting.....the placing of building materials.....in any street". In these sub-sections, the word "prohibit" is used to show that the rule making authority has power to pass a rule prohibiting the activities therein mentioned. Similarly sub-section (x) of S. 33 (1) provides for "regulating or prohibiting the sale of any ticket.....", The juxtaposition of these words is a further indication to show that the legislature intended different connotations to the words. I am not saying that a power to regulate can never include a power to prohibit. But the context here does not compel such a reading".

Beg, J. (as he then was) in a separate opinion, did not express himself on the scope and ambit of S. 33(o) of the Bombay Police Act. From the above passages, it will be seen that in *Himatlal K. Shah's*, A.I.R. 1973 S.C. 87, case, the Supreme Court has authoritatively pronounced that "regulating" under S. 31(1)(o) of the Act does not imply prohibition and only permits control of assemblies and processions. In any event, the pronouncement of the Supreme Court on the question is considered obiter dicta and is therefore, binding on all Courts and authorities. I am therefore, of the opinion that the construction of S. 31(1)(o) of the Act is concluded in *Himatlal K. Shah's* case, A.I.R. 1973 S.C. 87.

16. Earlier I have noticed that respondent No. 1 had exercised his power only under S. 31(1)(o) of the Act and not under any other provision of the Act. On the conclusion reached by me, it was not open to respondent No. 1 to prohibit the petitioner from taking out the procession on the two streets viz., Kadakapur Mohalla and Harijan colony exercising his power under S. 31(1)(o) of the Act and

in so doing, he has acted without jurisdiction and illegally. But, the next question is whether this Court should issue a mandamus to respondent No. 1 to permit the petitioner to take out the procession on the aforesaid two streets without examining the conditions to be imposed by him under that clause. In my opinion, such a course is not permissible and the proper order to be made in the circumstances, is to direct respondent No. 1 to permit the petitioner to take out the procession on the streets/areas specified by it, regulating the conduct of and behaviour of persons, the order in which and the times at which the same should pass on such streets or areas. But, this does not prevent respondent No. 1 from exercising his power of prohibiting the procession if the circumstances so justify under any other provision of law.

17. In the result, I issue a writ in the nature of mandamus to respondent No. 1 to permit the petitioner to take out the procession on the streets specified by it, but regulating the same in accordance with S. 31(1)(o) of the Act, with all such expedition as is possible in the circumstances and in any event within a period of three weeks from the date of receipt of the order/writ of this Court.

18. Rule issued is made absolute.

19. In the circumstances of the case, I direct the parties to bear their own costs.

20. Let copies of this order be communicated to the respondents within three days from this day. A copy of this order be also furnished to the learned Government Advocate, within the same time.