

(1963) 12 MAD CK 0030

In the Madras High Court

Case No : Writ App. No"s. 216 to 219 of 1962

The State of Madras

APPELLANT

Vs

Murray and Co. and Others

RESPONDENT

Date of Decision : 16-12-1963

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(6), 226

Citation : AIR 1965 Mad 301 : (1964) ILR (Mad) 33 : (1964) 77 LW 542

Hon'ble Judges : S. Ramachandra Iyer, C.J.;Ramakrishnan, J

Bench : Division Bench

Judgement

S. Ramachandra Iyer, C.J.

(1) These appeals are filed by the Sate of Madras, under Cl. 15 Letters Patent, from the judgment of Srinivasan J., directing the issue of a writ of

mandamus to the Government to permit the plying of handcars in that part of the Mount Road lying between the Round Tana and Gemini

Roundabout, subject to such regulations as the Commission of Police might impose as to the weight and capacity of the handcars and relative to

their movement within certain hours of the day. The judgment was restricted in its operation to the passage over the road to the handcars

belonging to the respondents, to these appeals, and which were employed by them in connection with the business; but even in regard to them, it

was declared that it will be open to the Commissioner, by providing passes or otherwise, to restrict the passage of these handcars.

(2) On 20-3-1962, the Commissioner of Police Madras, issued a notification by virtue of the powers conferred on him under Motor Vehicles Act

and the Madras Traffic Rules, regulating traffic generally and imposing certain restrictions on vehicular traffic over the section of the Mount Road

referred to earlier. The notification, inter alia, stated:

As per orders of the Government of Madras in 53162/Tr. I/60 dated 28-1-1960, handcarts bullock carts, jutkas, hand and cycle rickshaws and

bullock trucks are not permitted to ply on Mount Road from Round Tana to Gemini Roundabout between 7-30 hrs to 20-00 hrs. But they will

take alternative routes as suggested here under, or other routes whichever is easier without touching Mount Road." This ban on the slow moving

traffic was part of a comprehensive scheme contained in the notification, whereby passage of vehicle was regulated by providing six lanes over the

road; separate bus stops were provided for the city and mofussil stage carriages, certain streets opening into that part of the Mount Road were

declared one-way streets; speed limits were prescribed; automatically operating signals were installed. Though conceived as an experimental

measure, the notification was the outcome of much study of the problem and it was intended to facilitate smooth passage of fast moving vehicles in

the context of the ever increasing volume of such traffic.

(3) We shall now refer to the circumstances that led to the notification. The question of effective regulation of traffic over the main road, which

provide access not merely to the business places situated therein but also serve as the sole connecting link between the highways leading up to

Madras, from the south, west and north of the City, appears to have engaged the attention of the Government for quite a long time. Traffic

congestion, apart from its inconvenience, is not uncommon the cause of road accidents. Regulation of traffic is one of the essential duties of the police.

Modern methods of traffic control have to be adopted in the interests of the public generally. It has been estimated that nearly 55000 vehicles pass

through the Mount Road between 8 a. m. and 8 p. m. roughly about 75 vehicles per minute. With the increasing prosperity of the country and of

the tempo of business activity, the problem is bound to present itself in a more acute form hereafter, particularly as the registration of motor vehicles

has of late been showing a steady increase. The technical aspect of the question formed the subject matter of study by the Traffic Department

Committee appointed by the Government in the year 1960. Traffic surveys were undertaken by it and the requisite information was collected.

It was found that the number of vehicles, at any given time, that passed through

the Mount Road was the heaviest between the Round Tana and the Gemini Roundabout. Of them, 50 to 55 per cent were motor vehicles, 43 to 48 per cent were cycles and the remaining accounted for the slow moving bullock-carts, handcarts, rickshaws etc. Several causes were found to be responsible for the traffic delays and congestion; they were, slow moving handcarts and bullock-carts, faulty location of the bus stops and taxi stands, indiscriminate and haphazard parking, uncontrolled cross traffic, both vehicular and pedestrian, and indiscriminate vehicular turns. The scheme combines in the notification sought to remove or minimise the influence of these causes with the object of securing a smooth and orderly passage of traffic and avoidance of accidents. The regulation of the various matters referred to above, except in regard to the slow moving traffic, will not have any serious impact upon the rights of the individual; but a restriction on the movement of the handcarts and bullock-carts etc. will undoubtedly have its repercussions on those employed in the business of either drawing or driving such carts, and also on the business facilities enjoyed by those who employ them.

(4) Since 15-7-1958, there had been a restriction on slow moving vehicles over practically the same part of the Mount Road. They were not allowed to ply from Wellington Bridge to the Gemini Roundabout from 10 a.m. to 11 a.m. and from 4 p.m. to 6 p.m. which was then altered to 4-30 p.m. to 6-30-p.m. Under the notification in question, the slow moving traffic was totally prohibited from using the Mount Road between the places referred to in the beginning from 7-30 a.m. to 8 p.m. The effect of it was that the business houses situate in that part of the road, those which employed or depended on slow moving conveyances for their business could not get their services during day time; their customers could not employ these means for transport of their goods; more noticeably than others, the less fortunate among the public who earned their honest daily bread by pulling handcarts or driving slow moving vehicles were deprived of their occupation that part of the Road.

(5) The several respondents to these appeals, who are carrying on business in Mount Road and whose business premises abut or have access only to that part of the Road, feeling aggrieved by the notification applied to this Court under Art. 226 of the Constitution for the issue of a writ of

mandamus or other appropriate writ to direct the Commissioner of Police not to give effect to the notification, inasmuch as that, if allowed to come into force, would interfere with the carrying on of their business, which depended on the employment of handcarts to take goods to and out of their premises. The appellant contested the petitions on the ground that such restrictions were made under the authority of law and one in public interests, being reasonably necessary for the regulation of traffic and avoidance of accidents. Srinivasan J., who heard the applications, was not convinced that the wholesale prohibition of the use of handcarts, was at all necessary to secure the result aimed, namely, the adequate control of traffic over the Mount Road. The learned Judge further found that in imposing such restrictions, the authorities had paid little attention to the interests of the persons carrying on business in that locality, and that it was not a reasonable restriction coming within Art. 19(6) of the Constitution. In that view, the learned Judge directed the issue of a writ on the lines referred to above.

(6) The learned Government pleader complains that the reasoning in the judgment and the directions given, are so wide and absolute that even if circumstances were to change and the traffic congestion over the road assumes a dangerous proportion, it would be incompetent for the Government to revert the passage of slow moving vehicles over it. We are, however, unable to find anything in that judgment to warrant such an interpretation. Whenever any law is impugned as unreasonably imposing restrictions on rights guaranteed by the Constitution, its validity has to be judged in the circumstances and conditions prevailing at the time when it is enacted. Further, there is and can be no absolute standards of testing the reasonableness of an encroachment made by law not the rights, except in relation to the context on which it is made. What would be unreasonable at one time and in certain circumstances might be perfectly reasonable at a later time or in a different situation. The relevant point for consideration of the legality of such limitations by law on individual rights, will be the circumstances existing at the time of the making of law. That this was what the learned Judge set before himself is plain from the following observations:

Merely to say that to encourage this bullock-cart mentality will not conduce to progress is not a proper answer. At no time during this lengthy

investigation by the Traffic department were the affected interest consulted. If, for instance, even at the commencement of this investigation, it had

been brought to the notice of these firms that a stage might be reached when there would be a total prohibition of his form of transport on the road,

which at that time had been permitted during certain hours of the day it may very well be that those firms would have adjusted themselves suitably.

But, on the other hand, this restriction was brought into force overnight and not progressively as would perhaps have been desirable.

It is needless to point out that the invalidity of the notification, in so far as it kept out of the road the necessary to go so far in the circumstances

existing or perhaps in the foreseeable immediate future. Where the difficulties in regulation of traffic become more acute or were such determination

is demonstrably attributable to slow moving traffic, Government will have to think of not permitting certain types of vehicles on the road. What is

necessary in all such cases is that there should be a balancing of the conflicting claims of the citizens' rights with the mischief to the public sought to

be cured.

(7) There was at no time any dispute in the present case that regulation of traffic over the Mount Road was essential. The Government gave their

earnest consideration to the subject of regulation. They had collected relevant statistics and they found that several causes contributed to the

congestion of traffic over a part of that road. It can be readily conceded that the slow moving traffic, if permitted, indiscriminately or during peak

hours, to ply over the road, would have a tendency to create a traffic dead lock. But it cannot follow from that, if such traffic were allowed over a

particular part of the road or over such part during particular hours of the day or otherwise reasonably restricted, the evil will necessarily continue

to exist. It is plain from the record that the prohibition of slow moving traffic was made, as it was thought that it contributed as much for the traffic,

dead-lock as the several other causes referred to earlier.

(8) The right to ply a vehicle over a public road is a fundamental right, particularly when it is associated with the carrying on of a business by a

citizen. While other causes specified alone might be removed, this one cannot be done except in conformity with Art. 19(6) of the Constitution.

The restriction of a right under Art. 19(1) must, in order to be valid, have the

quality of reasonableness and be of necessary in the interest of the public. It will not be enough to say that as an efficient regulation of traffic is essential in the interest of the public, any human right that stands in the way of the achievement of that object should be done away with. It is necessary first to find out whether the invasion of that right is essential in the interests of the public, in order to remedy the evil. Then, the restriction sought to be imposed should correlate to the evil and be reasonably necessary for securing the remedy. It must not be arbitrarily imposed without due care and consideration, or in excess of the needs of the situation.

Patanjali Sastri C. J. dealing with the question of reasonableness, in *State of Madras Vs. V.G. Row*, observed :

.....that is to say, the court should consider not only factors such as the duration and the extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorised. It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard., or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.

Prima facie, any law which in the fact of it violates a fundamental right e.g. of the kind guaranteed under Art. 19(1)(g) of the Constitution, will have to be held to be invalid, unless those who support the legislation or the law which imposes it, can bring it within the purview of clause (6) of that

Article: see *Saghir Ahmad Vs. The State of U.P. and Others*, .

(9) We have, therefore, to see whether the Government has placed sufficient materials before the court to establish that the restriction imposed upon handcarts comes within clause (6) of Art. 19. The concept of a reasonableness in order to test any law impinging on any of the fundamental rights, is to see whether it is reasonable. It is not, however, a static concept but an elastic one the standard being determinable according to necessity and of public zeal in the particular situation when the law is imposed.

(10) It cannot be denied that restriction have to be and must be imposed by law

to regulate the right to ply vehicles on highways. Such restrictions will undoubtedly have to interfere with individual rights in one way or another. what one has to see, therefore, is whether the restriction imposed is correlated to the evil which it seeks to avoid. As has been pointed out in *Ramji Lal Modi Vs. The State of U.P.*, the words "in the interests of the general public" occurring in sub-clause (6) of Art. 19, are much wider than the words "for the maintenance of the interests of the public". Speaking broadly, it must be competent for the authority enacting the law or issuing the notification, to curb tendencies or potential developments reasonably apprehended which would create the mischief sought to be prevented. Preventive legislation for anticipated evil is not unknown; the question of its legality depends on the need for it and whether the provisions do not unduly interfere with human rights. It is not necessary, therefore, that actual mischief should have been done or the evil should be existing before the regulation is imposed; for what is attempted is the avoidance of the evil.

This has to be distinguished from a case where the need for the restriction is not apparent but where it is imposed by way of an experiment to see whether the infringement on fundamental rights would yield beneficial results to the public. It was claimed before the learned Judge that unless the department were given a chance to carry through the experiment, it would not be in a position "to find out what are the difficulties and inconveniences which are actually experienced and which require any steps by way of remedying the same." This claim on the part of the States has, if we may so, correctly been repelled by *Srinivasan J. In New State Ice Co. v. Ernest A. Liebmann*, (1932) 76 Law Ed 747 the Supreme Court of America held that an unreasonable or arbitrary interference or restriction could not be saved from the condemnation merely by calling it experiment.

(11) It now falls to be considered whether the deprivation of a business facility to the respondents or the right of passage in the Mount Road to those who, for a living, have to take slow moving transport, is either an existing evil or its total prevention is essential in order to secure free passage of vehicles on that Road.

(12) The learned Government pleader has contended that as the notification in question was promulgated with a view to prevent traffic accidents in

future, it must be regarded as reasonable; particularly for the reason that in the coming years the number of vehicles that pass over the Mount Road might be even four times as much as they do now. The contention is more or less speculative. While it can reasonably be assumed that the number of vehicles might increase, it cannot follow that all of them would pass during particular hours over the Mount Road. Again, there might be other measures adopted for relieving traffic congestion over the road. For example, the Government may be able to provide circular roads at the Corporation limits, which would facilitate the diversion of traffic which come from up country with a view to go to places beyond the city. Again the business of using or employing handcarts or other slow moving vehicles might itself get into desuetude. The legality of the notification has, therefore, to be considered, as the indeed the learned Government pleader contended at one stage of his arguments, only in the light of facts and circumstances now existing or can be anticipated reasonably in the immediate future.

(13) There are certain broad and objective tests for finding out whether any restriction imposed on a fundamental right is reasonable or not. First, it has to be seen whether there is any proximate connection or nexus between the restriction imposed and the evil sought to be remedied. As we pointed out, the congestion of traffic over the Mount Road was found to be the result of a number of factors; in other words, it was not attributable solely to the existence of the slow moving traffic over the road. The Traffic Authorities were not at the time when the notification was issued in a position to judge whether even after the introduction of the six-lane system, if the slow moving traffic were to be segregated to one portion of the road, the congestion would still exist. Again, there was little before them to point out, that it was the existence of these slow moving vehicles that inspired the efficiency of the traffic regulation. It is no doubt true that one of the improvements suggested is the installation of automatic signals, which will change every thirty seconds. It may not perhaps be possible, at the places where such signals are placed, for slower vehicles to clear the signal within the time permitted. But that defect can be remedied, as it would not be impossible to provide for human control over the part of the road used by those vehicles.

(14) Secondly, even where the restriction imposed is held to have a nexus or relation to the object which the law-making body seeks to achieve,

the restriction, unless it be within the necessary limits, will be unreasonable. Neither an excessive invasion of rights nor an arbitrary one can ever be

regarded as reasonable. We cannot do better, in this connection, than adopt the following observation of the learned Judge.

It is the evil that is sought to be checked that can regulate the measure of control and in imposing any restriction, the Constitution clearly prohibits

the imposition of a restriction of an arbitrary or excessive nature, a restriction more than what is necessary to check the evil in the interests of the

public".

This leads us to the third aspect of reasonableness, namely, whether the restriction has been imposed with care and deliberation. The following

observation of the Supreme Court in *Chintaman Rao Vs. The State of Madhya Pradesh*, will be found apposite in this connection.

The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an

excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the

choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of

reasonableness and unless it strikes a proper balance between the freedom guaranteed in Art. 19(1)(g) and the social control permitted by clause

(6) of Art. 19 it must be held to be wanting in that quality.

In the instant case there is nothing to show that, in order to secure a free passage of fast moving vehicles, it was essential to eliminate during day

time the slow moving ones. There was no materials then available to show that the allowance of the passage of handcarts etc., over one or two of

the six lanes during certain hours of the day would still leave the congestion unabated to a material degree. When, therefore, it was decided to

prohibit their passage, it would not have been possible for the authorities to come to the conclusion that in order to secure the object they had in

view it was essential that the rights of individuals concerned should be interfered with. It is not as we said, the case of the Department that the sold

or major factor in traffic congestion was the existence or these vehicles on the

road; nor can it be said that their segregation would achieve the anticipated result. As the learned Judge has pointed out, the Traffic authorities appear to have come to the conclusion that their success of the system of automatic traffic control depended on the absence of slow moving traffic and that therefore it should be prohibited. That is hardly the correct way of dealing with rights guaranteed under the Constitution; what has to be seen is whether the restriction is necessary, and, if so, to what extent, to remove the evil of congestion of traffic and not that, for adopting a particular device of traffic regulation, even fundamental rights mean nothing and should give way.

(15) It is a matter for gratification that subsequent to the pronouncement of the judgment by Srinivasan J., the Commissioner of Police permitted the movement of all slow moving traffic over the road in question during particular hours of the day, thus implementing in its true spirit the order passed by this court. Such traffic has been passing and repassing Mount Road during day time for nearly 18 months before these appeals have come before us, with no appreciable inconvenience to any. During the course of the arguments we asked the learned Government pleader whether he could give information about any reported traffic deadlock or inconvenience occasioned by the allowance of slow moving traffic during that period, or of any accident which resulted by reason of permitting such traffic to pass. The Deputy Commissioner of Police (Traffic) was also present in court. Time was also given to obtain the information, but the learned Government Pleader was not able to point out a single instance in which dislocation or congestion of traffic was attributable to the passing of slow moving vehicles over the road. This incidentally proves the wisdom of the direction given by the learned Judge. Apart from that consideration, we are of opinion that the prohibition of slow moving traffic was the result of no more than certain empirical conclusions reached by the authorities, more or less on an experimental basis, without due consideration of the rights that would be affected by the restraints.

(16) We agree, therefore, with the learned Judge that the impugned notification, in so far as it totally prohibits the passage of hand carts during day time, would be invalid. This will not prejudice the Commissioner of Police to regulate the time during which such carts or other slow moving

vehicles should be allowed to pass, and also to regulate the weight and capacity of such carts.

(17) The learned Judge has, however, restricted the relief given by him to handcarts used in connection with the business of the firms that applied

for the issue of the writs. We are by no means sure that it is a correct approach to the matter. The order of the Commissioner was intended to

apply to all slow moving vehicles; the restrictions contained in the notification will affect not merely the respondents to these appeals, but others

who, for carrying on their business, use the type of vehicles prohibited by the notification. The challenge to the validity of the notification will be

common to all and there would perhaps be no sound reason to restrict the benefit of the judgment to the respondents alone. It is not however

necessary to pursue the matter a subsequent to the judgment of the learned Judge, the Commissioner of Police had allowed, during certain

prescribed hours, not merely the handcarts belonging to the respondents, but all slow moving vehicles generally.

(18) The appeals fail and are dismissed. There will be no order as to costs.

(19) Appeals dismissed.