

Sukhdev Sahai and ors. Vs. District Magistrate, Delhi and anr.

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Court : Delhi

Decided On : Dec-24-1970

Reported in : AIR1971Delhi237

Judge : Hardayal Hardy and M.R.A. Ansari, JJ.

Acts : [Bombay Police Act, 1951](#) - Sections 33; [Constitution of India](#) - Article 19(1)

Appeal No. : Civil Writ No. 577 of 1970

Appellant : Sukhdev Sahai and ors.

Respondent : District Magistrate, Delhi and anr.

Advocate for Def. : B. Kishore and ; J.P. Gupta, Advs.

Advocate for Pet/Ap. : Madan Bhatia, Adv

Judgement :

M.R.A. Ansari, J.

1. The present petition is filed under Article 226 of the Constitution challenging the validity of the order dated 11-5-1970 of the District Magistrate, Delhi, respondent No. 1, herein, passed under Section 33 of the [Bombay Police Act, 1951](#) as extended to Delhi (hereinafter referred to as the Act), prohibiting the plying and parking of trucks on certain roads except during a specified period.

2. The petitioners, who are 37 in number, are carrying on business of transport of goods by trucks. They have their offices as well as their godowns in the following streets, namely:-

(i) The street at the back of Cloth Market up to Tilak Bazar

(ii) The street Nahar Saadat Khan from Pili Kothi to Cloth Market

(iii) Naya Bans up to Katra Bariyan. The customers bring their goods to the godown of the petitioners situated in the streets mentioned above, book them at the offices of the petitioners for transport to various destinations and the goods are kept in the godowns of the petitioners and loaded on the trucks which, for that purpose, have to come to the godowns of the petitioners. Similarly, goods which are brought in the trucks from outside Delhi, are unloaded and kept in the godowns of the petitioners from where the consignees take delivery of their goods and for that purpose also, the trucks of the petitioners have to come to their godowns.

3. It would appear that for the first time, the respondent No. 1 passed an order dated 19-9-1967 prohibiting the plying and parking of trucks on various roads including those where the petitioners have their offices and godowns from 08.00 hours to 12.00 hours and from 16.00 hours to 20.00 hours. The petitioners and others, who were affected by this order made representations to respondent No. 1 as a result of which the latter, by his order dated 16-11-1967, modified his earlier orders to this extent, namely, that the plying and parking of trucks was prohibited from 08.30 hours to 10.30 hours and from 16.30 hours to 20.00 hours. Then, on 11-5-1970, respondent No. 1 passed the impugned order prohibiting the plying and parking of trucks on the roads in which the petitioners have their godowns except during the period 12 noon to 4 P.M.

4. According to the petitioners, the said order was illegal on the following main grounds:-

1. The order has placed a wholly unreasonable restriction on the petitioners' fundamental right to carry on their trade and therefore the order is in violation of

Article 19 of the Constitution;

2. The order is discriminatory in nature inasmuch as it permits heavy passenger vehicles to ply in the area and also permits the plying and parking of trucks in other areas where other persons were carrying the business of road transport similar to that of the petitioners and is, therefore, violative of Article 14 of the Constitution;

3. The order is mala fide as the real object of the order is to squeeze out the transport business of the petitioners from the area where they are now carrying on their business; and

4. The order is in excess of the power conferred on respondent NO. 1 under Section 33 of the Act inasmuch as that section merely empowers him to regulate the traffic but not to prohibit it altogether.

5. In the counter-affidavit filed by respondent No. he denied that the order passed by him was bad on any of the grounds mentioned by the petitioners. It was stated by him that the impugned order was one of the orders which the Delhi Administration had to pass from time to time in order to regulate and control the traffic in the city and to reduce and eliminate traffic hazards. It was asserted by him that this order was passed on the basis of surveys made and data collected by the traffic authorities and also after inspection of the area at different times of the day and night. If such surveys and inspections in the future made it necessary in the interests of public safety to curtail or ban the plying of even passenger buses in this area, it was submitted, the Administration would not hesitate from doing so even in respect of passenger buses. It was further submitted that the plying and parking of trucks on the roads covered by the impugned order in view of the safety and convenience of the residents of the locality.

6. As there was controversy between the respondents regarding the nature of the area covered by the impugned order and also as regards the nature of the traffic in the said area, a local commissioner was appointed by this Court to inspect the area covered by the impugned order during the night time and to submit his report. The important observations made by the learned local commissioner may briefly be stated:

(i) The lane situated begins the Cloth Market up Tilak Bazar is 6 1/2 meters wide near the entrance and narrows down gradually up to 4 1/2 meters and on account of the narrow width of this lane, vehicles entering the lane from the Tilak Bazar Chowk could not take a turn but had to back out of the lane.

(ii) The lane that begins from Pili Kothi at the point marked A in the plan filed by the Commissioner is 6 meters wide at the beginning, widens up to 10 meters in the middle and again narrows down to 6 1/2 meters. In this lane also, the trucks cannot make a turn but had to back out.

(iii) Apart from the offices and godowns of the transport companies, there were also other shops and business houses in this area and there were also residential flats on the upper storeys of the buildings occupied by the offices and godowns of the transport companies.

(iv) The noise created by the trucks was considerable.

(v) Apart from some private cars which were parked at some places, there was no other traffic or other activity observed in the areas at the time of the inspection.

It may be stated that the local commissioner inspected the area between 12 midnight and 2 A.M.

7. The petitioners, no doubt, have under Article 19 of the Constitution the fundamental right to carry on business of transport of goods on a public high way and the existence of such a right has been recognised by the Supreme Court in *Saghir Ahmad v. State of U.P.*, : [1955]1SCR707 . But this right is subject to reasonable restrictions and as held by the Supreme Court in *Cooverjee B. Bharucha v. Excise Commissioner*, : [1954]1SCR873 , the question whether the restrictions imposed by a particular legislation on the exercise of the fundamental right under Article 19(1)(g) are reasonable or not would depend on the nature of the trade and the conditions prevalent in it. The only question therefore, is whether the restrictions placed by the impugned order are reasonable, regard being had to the nature of the business and to the interests of the public. The petitioners themselves do not claim an unrestricted right to ply and park their

trucks on the roads covered by the impugned order during all hours of the day and night. When respondent No. 1 passed the order dated 19-9-1967 prohibiting the plying and parking of trucks on the various roads specified in that order between 8 A.M. to 12 Noon and 4 P.M. and 8 P.M. they made representations to respondent No. 1 as a result of which the latter passed another order dated 16-11-1967 modifying the earlier order by restricting the prohibition regarding the plying and parking of trucks to the period 8.30 A.M. to 10.30 A.M. and 6.30 P.M. to 8 P.M. The petitioners have admitted in para 14 of their petition that the modified order eased the situation created by the earlier order. The question therefore boils down to this, namely, whether the period during which the petitioners are permitted by the impugned order to ply and park their trucks is so short as to amount to an unreasonable restriction on the right of the petitioners to carrying on their business.

8. The regulation of traffic is primarily the concern of the Delhi Administration and in what manner the traffic is to be regulated and the period during which the plying and parking of heavy motor vehicles like trucks is to be permitted or prohibited are matters which lie within the province of respondent No.1 and the High Court cannot take upon itself such duties. We cannot interfere with the orders of the Delhi Administration merely on the ground that in our view a longer period of time might have been allowed for the plying and parking of trucks than what was allowed by respondent No. 1. We can only interfere if we are of the view that the period permitted under the impugned order for the plying and parking of trucks is so short that it amounts to an unreasonable restriction of the petitioner's right to carrying on their business. In considering this question, we have to take not only of the interests of the petitioners but also of other citizens who also have a right to reside in the same locality and also to use the roads in the same locality without inconvenience and hazard. The report of the local commissioner shows that the upper storeys of the buildings in the area are used as residential flats and that there are also shops, cinema houses, tea stalls and other business premises in the area. All these persons have an equal right along with the petitioners to carry on their business and also to reside in safety and convenience. The report of the local commissioner also shows that the area in question consists of very narrow roads. The plying and parking of trucks on such roads would in effect prevent the

other persons from using the road in safety or residing in the area in convenience. The parking and plying of trucks during the day time is likely to jeopardise the safety and convenience of the other residents of the locality and the plying and parking of trucks during the night will certainly amount to a nuisance. Under these circumstances, it is not possible for us to say that the impugned order by which the plying and parking of trucks is restricted to a period of four hours during the day amounts to an unreasonable restriction on the petitioners' fundamental rights. The impugned order thereforee cannot be challenged as being violate of Article 19(1)(g) of the Constitution.

9. We see no merit in the other contentions of the petitioners also. It is contended that Section 33 of the Act merely empowers respondent No. 1 to regulate the traffic and does not empower him to prohibit the traffic and that inasmuch as the impugned order prohibits the plying and parking of trucks during the day and the night except for a short period of four hours during the day, the impugned order amounts to an order prohibiting the plying and parking of trucks. We need not in this case decide whether the total prohibition of plying and parking of trucks during any period of the day and the night in the area covered by the impugned order could be passed under the Act because there is no such total prohibition. But regulation of traffic does imply the prohibition of the plying or parking of motor vehicles in a particular area during a particular period and it may also amount to regulation of traffic when such traffic is altogether prohibited on certain roads and is diverted to other routes. We cannot thereforee, hod that the impugned order is in excess of the powers conferred on respondent No. 1 by Section 33 of the Act.

10. It is contended that the impugned order was passed only on the basis that the plying and parking of trucks would obstruct other traffic and endanger the safety of other road users and that the report of the local commissioner, on the other hand, shows that at least during the nights, there was no other traffic in the area and that, thereforee, there was no real justification for passing the impugned order. The reasons given in the impugned order are in general terms and these reasons include the convenience and safety of the public using these lanes. Safety and convenience of the persons who reside in the upper storeys of the buildings in the area are relevant factors which have to be taken into consideration and which in

our view justify the passing of the impugned order.

11. There is hardly any basis for the allegations of the petitioner either that the impugned order was mala fide or that it was discriminatory in nature. It is stated that the impugned order was passed only with a view to drive out the petitioners from their business. It is quite possible that as a result of the impugned order the petitioners may have ultimately to shift their business to some other locality. But, it cannot be said that the impugned order was passed with the intention of driving out the petitioners from their business. The result of the impugned order cannot be said to be the motive of the order. The petitioners were no doubt able to point out that in a number of other localities where transport business similar to that of the petitioners was carried out on, there was no prohibition regarding the plying and parking of trucks. But the learned counsel for the respondent brought to our notice the fact that in a number of other localities similar restrictions had been placed. It cannot, therefore, be said that only the petitioners were subjected to such restrictions. Merely because restrictions were placed in respect of some areas in the city and not in other areas does not mean that there was any discrimination against the petitioners.

12. We have no doubt that the Delhi Administration will re-examine the position from time to time in the future as it has been doing in the past for the regulation of the traffic and that it would also relax the restrictions now placed under the impugned order when it is satisfied that such relaxation may be made without endangering the safety and convenience of the public. But for the present we see no valid reason to interfere with the impugned order. The result is that the petition is dismissed but under the circumstances, there shall be no order to costs.

13. Petition dismissed.