IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No. 401/2004
(Arising out of SLP (Crl.) No. 3085/2003)

State of Karnataka & Anr. ……. Appellants

Versus

Dr. Praveen Bhai Togadia ……. Respondent

JUDGEMENT

ARIJIT PASAYAT, J.

Leave granted.

Though by passage of time, the basic issues seem to have become infructuous, in view of the importance and recurring nature of the legal issues involved, with consent of the learned counsel for the parties, they are taken up. For deciding the issues involved in the appeal the background facts, which are practically undisputed, run as follows:

The respondents by an order of additional district magistrate (in short, the 'ADM'), Dakshina Kannada was restrained from entering the said district and from participating in any function in the district for a period of 15 days, i.e., from 10.2.2003 to 25.2.2003. The order was dated 7.2.2003.

A function was organised at Mangalore on 13.2.2003 where several religious leaders were shown as the likely participants. On 7.2.2003, permission for holding the meeting was obtained by the organisers from the district magistrate, Mangalore. Permission was also granted by the police authorities and the corporation.

The ADM at this stage passed an order dated 7.2.2003 in MAG(2) CR 352/2002-03, and restrained the respondent as aforesaid on the ground that the district had become communally sensitive and there were several communal clashes starting from

1988 resulting in several deaths and damage to public and private properties. It was indicated in the detailed order passed, which was under challenge before the high court of Karnataka, that the respondent during his visit to another place on 18.12.2002 had delivered an inflammatory speech which incited communal feelings and communal harmony was greatly affected. The ADM felt that a similar speech by the respondent would result in stoking communal feelings vitiating harmonious social and communal atmosphere.

The respondent challenged the order in a petition under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code') before the high court taking the stand that the ADM had no jurisdiction because he was not an executive magistrate or had not been conferred with powers of an executive magistrate.

The respondent also took the stand that his speeches had nothing to do with any communal disharmony. They were made with reference to political issues which have been the subject matter of debate for several years. Only for political reasons a case was registered against him.

The petition was resisted on several grounds: firstly, it was pointed out that an alternate remedy was in-built under Section 144 of the Code and without exhausting that statutory remedy, the present respondent should not have rushed to the high court for exercise of power under Section 482 of the Code. The stand of the present respondent that the time available was very short and result of the so-called alternate remedy would not have yielded any fruitful results is incorrect.

Secondly, reference was made to several instances where on account of the action of the respondent, and his speeches and acts of organisers of the function, there were communal clashes and the district administration had to intervene to avoid disturbance of social tranquillity and communal harmony.

The high court by the impugned judgement held that the ADM did not have jurisdiction to issue the order in purported exercise of power under Section 144 of the Code. It further held that serene communal atmosphere of the state was an example of communal harmony and hope was expressed that the sensible and knowledgeable people of the state would not get swayed by any speeches touching communal issues. Accordingly, the order passed by the ADM was quashed.

In support of the appeal, Mr. Sanjay R Hegde submitted that the high court should not have interfered with an order which was aimed at maintaining law and order in the area and preventing untoward incidents. The prior conduct of the respondent in giving speeches at several places and his other activities which inflamed a violent reaction and resulted in communal clashes and hatred had been properly taken into account in passing the order under Section 144(3) of the Code and should not have been lost sight of.

In any event, the conclusions of the high court that the ADM had no power to pass the order under Section 144 of the Code is also without any legal foundation. In fact the notifications referred to by the high court clearly show that the ADM was possessed of such powers.

Per contra, learned counsel for the respondent submitted that the high court had taken the totality of the circumstances into consideration before passing order under challenge in this appeal and that on mere hypothetical assumptions that the respondent would or may deliver speeches which might destroy communal harmony, the order should not have been passed. In any event, when the ADM did not have the power to pass the order, the other grounds were really of academic interest.

Courts should not normally interfere with matters relating to law and order which is primarily the domain of the concerned administrative authorities. They are by and large the best to assess and to handle the situation depending upon the peculiar needs and necessities, within their special knowledge. Their decision may involve to some extent an element of subjectivity on the basis of materials before them. Past conduct and antecedents of a person, or group, or an organisation may certainly provide sufficient material or basis for the action contemplated on a reasonable expectation of possible turn of events, which may need to be avoided in (the) public interest and (for) maintenance of law and order.

No person, however big he may assume or claim to be, should be allowed, irrespective of the position he may assume or claim to hold in public life, to either act in a manner or make speeches which would destroy secularism recognised by the Constitution of India, 1950 (in short the 'Constitution'). Secularism is not to be confused with communal or religious concepts of an individual or a group of persons. It means that (the) State should have no religion of its own and no one could proclaim to make the State have one such, or endeavour to create a theocratic State.

Persons belonging to different religions live throughout the length and breadth of the country. Each person, whatever be his religion, must get an assurance from the State that he has the protection of law freely to profess, practice and propagate his religion and freedom of conscience. Otherwise, the rule of law will be replaced by individual perceptions of one's own presumptuous good social order.

Therefore, whenever the concerned authorities in charge of law and order find that a person's speeches or actions are likely to trigger communal antagonism and hatred resulting in fissiparous tendencies gaining foothold, undermining and affecting communal harmony, prohibitory orders need necessarily to be passed, to effectively avert such untoward happenings.

Communal harmony should not be made to suffer and be made dependent upon (the) will of an individual or a group of individuals, whatever be their religion, be it of minority or that of the majority. Persons belonging to different religions must feel assured that they can live in peace with persons belonging to other religions.

While permitting holding of a meeting organised by groups or an individual, which is likely to disturb public peace, tranquillity and orderliness, irrespective of the name, cover and methodology it may assume and adopt, the administration has a duty to find out who are the speakers and participants and also take into account previous instances and the antecedents involving or concerning those persons. If they feel that the presence or participation of any person in the meeting or congregation would be

objectionable, for some patent or latent reasons, as well as past track record of such happenings in other places involving such participants, necessary prohibitory orders can be passed.

Quick decisions and swift as well as effective action necessitated in such cases may not justify or permit the authorities to give prior opportunity or consideration at length of the pros and cons. The imminent need to intervene instantly having regard to the sensitivity and perniciously perilous consequences it may result in, if not prevented forthwith, cannot be lost sight of.

The valuable and cherished right of freedom of expression and speech may at times have to be subjected to reasonable subordination of social interests, needs and necessities to preserve the very core of democratic life: preservation of public order and rule of law. At some such grave situation at least the decision as to the need and necessity to take prohibitory actions must be left to the discretion of those entrusted with the duty of maintaining law and order, and interposition of courts, unless a concrete case of abuse or exercise of such sweeping powers for extraneous considerations by the authority concerned, or that such authority was shown to act at the behest of those in power, and interference as a matter of course and as though adjudicating an appeal, will defeat the very purpose of legislation and legislative intent.

It is useful to notice at this stage the following observations of this Court in the decision reported in *Madhu Limaye v. Sub Divisional Magistrate, Monghyr and others (1970(3) SCC 746):*

> "The gist of action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible to act absolutely and even *ex parte*, it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application. There is no general proposition that an order under Section 144, Criminal Procedure Code cannot be passed without taking evidence: see *Mst. Jagrupa Kumari v. Chobey Narain Singh (37 Cl.L.J. 95)* which, in our opinion, is correct in laying down this proposition. These fundamental facts emerge from the way the occasions for the exercise of the power are mentioned. Disturbances of public tranquillity, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have, no doubt, to be abated and prevented. We are, however, not concerned with this part of the Section and the validity of this part need not be decided here. In so far as the other parts of the Section are concerned, the keynote of the power is to free society from menace of serious disturbances of a grave character. The Section is directed against those who attempt to prevent the exercise of legal rights by others or imperil public safety and health. If that be so, the matter must fall within the restriction which the Constitution itself visualised

as permissible in the interest of public order, or in the interest of the general public. We may say, however, that annoyance must assume sufficiently grave proportions to bring the matter within interests of public order."

The high court, in our view, should not have glossed over these basic requirements by saying that the people of the locality where the meeting was to be organised were sensible and not fickle-minded to be swayed by the presence of any person in their midst or by his speeches. Such presumptive and wishful approaches at times may do greater damage than any real benefit to individual rights as also the need to protect and preserve law and order.

The court was not acting as an appellate authority over the decision of the official concerned. Unless the order passed is patently illegal and without jurisdiction or with ulterior motives and on extraneous considerations of political victimisation by those in power, normally, interference should be the exception and not the rule. The court cannot in such matters substitute its view for that of the competent authority.

Our country is the world's most heterogeneous society, with rich heritage and our Constitution is committed to high ideas of socialism, secularism and the integrity of the nation. As is well known, several races have converged in this sub-continent and they carried with them their own cultures, languages, religions and customs affording positive recognition to the noble and ideal way of live: 'Unity of Diversity'. Though these diversities created problems, in early days, they were mostly solved on the basis of human approaches and harmonious reconciliation of differences, usefully and peacefully. That is how secularism has come to be treated as a part of fundamental law and an unalienable segment of the basic structure of the country's political system.

No person, however big he may assume or claim to be, should be allowed, irrespective of the position he may assume or claim to hold in public life, to either act in a manner or make speeches which would destroy secularism recognised by the Constitution of India.

As noted in *S.R. Bommai v. Union of India etc., (1994(3) SCC 1)*, freedom of religion is granted to all persons of India. Therefore, from the point of view of the State, religion, faith or belief of a particular person has no place and (is) given no scope for imposition on individual citizen(s). Unfortunately, of late, vested interests fanning religious fundamentalism of all kinds, vying with each other, are attempting to subject the constitutional machineries of the State to great stress and strain with certain quaint ideas of religious priorities to promote their own selfish ends, unfettered and unmindful of the disharmony it may ultimately bring about, and even undermine national integration achieved with much difficulty and laudable determination of those strong spirited savants of yesteryears.

Religion cannot be mixed with secular activities of the State and fundamentalism of any kind cannot be permitted to masquerade as political philosophies to the detriment of a welfare State. Religion sans spiritual values may even be perilous and bring about chaos and anarchy all around. It is, therefore, imperative that if any individual

or group of persons, by their action or caustic and inflammatory speech are bent upon sowing seed(s) of mutual hatred, and their proposed activities are likely to create disharmony and disturb equilibrium, sacrificing public peace and tranquillity, strong action, and more so preventive actions are essentially and vitally needed to be taken.

Any speech or action which would result in ostracism of communal harmony would destroy all those high values which the Constitution aims at. Welfare of the people is the ultimate goal of all laws and State action, and above all the Constitution. They have one common object, that is to promote (the) well-being and larger interest of society as a whole and not of any individual or particular groups carrying any brand names.

It is inconceivable that there can be social well-being without communal harmony, love for each other and hatred for none. The core of religion based upon spiritual values, which the Vedas, Upanishad and Puranas were said to reveal to mankind, seem to be: "Love others, serve others, help ever, hurt never" and "*Servae Jana Sukhino Bhavantoo*". One-upmanship in the name of religion, whichever it be or at whomsoever's instance it be, would render constitutional designs countermanded and chaos, claiming its heavy toll on society and humanity as a whole, may be the inevitable evil consequences, whereof.

Coming to the other issues relating to the jurisdiction of the ADM to pass the order, reference may be made to Section 144 of the Code. Section 144 appears in Chapter X dealing with "Maintenance of Public Order and Tranquillity" and is a party of sub-chapter 'C'. The sub-chapter is titled "Urgent Cases of Nuisance or Apprehended Danger" and the Section deals with the power to issue orders in urgent cases of nuisance or apprehended danger.

The order can be passed in terms of sub-section (1) by a district magistrate or a sub-divisional magistrate or any other executive magistrate specially empowered by the state government in this behalf. The order can be passed when immediate prevention or speedy remedy is desirable. The legislative intention to preserve public peace and tranquillity without lapse of time acting emergently, if warranted, giving thereby paramount importance to societal needs by even overriding temporarily private rights keeping in view public interest, is patently inbuilt in Section 144 of the Code.

The stand of the respondent before the high court was (that) the ADM who passed the order was not covered by the categories of officials empowered to pass the order. Section 20 of the Code deals with 'executive magistrates'. Sections 20, 21 and 144 of the Code altogether deal with five classes of executive magistrates, i.e., (i) district magistrate (ii) additional district magistrate (iii) sub-divisional magistrate (iv) executive magistrate and (v) special executive magistrate.

Sub-section (1) of Section 20 provides that in every district and in every metropolitan area, the state government may appoint as many persons as it thinks fit to be executive magistrates and shall appoint one of them to be the district magistrate. Sub-section (2) of Section 20 is relevant to solve the present controversy in

this regard. It not only enables the state government to appoint any executive magistrate to be an additional district magistrate but also provides that such magistrate shall have such of the powers of a district magistrate under the Code or under any other law for the time being in force, as may be directed by the state government.

As observed by this Court in *Hari Chand Aggarwal v. The Batala Engineering Co. Ltd. and Ors., (AIR 1969SC 483)*, unless a person has been appointed under Section 20(1) of the Code he cannot be called a district magistrate, and additional district magistrate is below the rank of district magistrate. The scheme of Section 20 leaves no manner of doubt that the district magistrate and the ADM are two different and distinct authorities.

In the above noted decisions this Court was dealing with a notification delegating this Court power under Section 40 of the Defence of India Act, 1962 issued by the Central Government empowering only district magistrates to exercise by virtue of the said delegative powers under Section 29 of the said special enactment, when it rejected the claim for its exercise projected vis-à-vis additional district magistrate. But under Section 20(2) of the Code, the latter may exercise all or any of the powers of a district magistrate though the two authorities cannot be equated and the additional district magistrate cannot be called the district magistrate. The distinction is also clear from the fact that the object of appointing ADM is to relieve the district magistrate of some of his duties. The crucial question therefore is whether the ADM was an executive magistrate in terms of Section 20.

Communal harmony should not be made to suffer and be made dependent upon (the) will of an individual or a group of individuals, whatever be their religion, be it of minority or that of the majority.

Under sub-section (1) of Section 20, the state government has the power to appoint as many persons as it thinks fit to be the executive magistrates. Under subsection (2) any executive magistrate can be appointed as an additional district magistrate. Therefore, (the) first thing to be seen is whether there was any appointment of an executive magistrate as additional district magistrate.

It appears from the materials placed on record that on 27.3.1974, the government of Karnataka had appointed w.e.f 1st April, 1974, the special deputy commissioner of a district and the headquarters assistant to the deputy commissioner of a district who are appointed as executive magistrates in Government Notification dated 27.3.1974 to be additional district magistrate in such districts. The Notification is numbered HD 10 PCR 74 dated 27.3.1974. The Notification dated 27.3.1974 (Notification No. III) was issued vide 3.O. No. 539 in exercise of powers conferred under sub-section (2) of Section 20 and was in supersession of Government Notification No. HD PCR 65 dated 4.5.1968 and Notification No. HD 33 PCR 73 dated 6.12.1973.

The high court was of the view that in the Notification dated 9th July, 1974 there

was no reference to the Notification dated 27.3.1974 by which the executive magistrates were vested with power under Section 144 who are appointed under the Notification dated 27.5.1974 and which is altogether a different notification and not relatable to a Notification dated 27.3.1974. The ADM who passed the order in this case was appointed under the Notification dated 27.3.1974.

The high court felt that since the Notification dated 27.5.1974 was not before it, the inevitable conclusion was that the ADM who passed the order had no authority to pass the same. It was for the respondent who was questioning before the high court the authority of the ADM to place the materials to substantiate his claim, though nothing precludes the authority also to have placed the relevant proceedings, if there had been any such. Since the respondent whose duty it was did not produce the notification, if at all adverse inference should have been drawn against him, from the mere non-production alone, the conclusion should not have been arrived at that the ADM had no power to pass the order.

The confusion arose because of certain inaccuracies in the dates. The correct notification is dated 27.3.1974 and not 27.5.1974. On verification, it is categorically stated that there is no relevant notification dated 27.3.1974. Similarly, there is no relevant Notification dated 9.7.1974. In reality, it is dated 6.7.1974. The copies of correct notifications have been placed on record by learned counsel for the appellant-State.

Religion cannot be mixed with secular activities of the State and fundamentalism of any kind cannot be permitted to masquerade as political philosophies to the detriment of a welfare State. Religion sans spiritual values may even be perilous and bring about chaos and anarchy all around.

On consideration thereof, the inevitable conclusion which follows is that the additional district magistrate had jurisdiction by virtue of his being appointed as ADM. This position is crystal clear from reading the Notifications dated 27.3.1974 and 6.7.1974. The conclusions to the contrary arrived at by the learned single judge in the high court cannot be sustained.

During the course of hearing, learned counsel for the parties submitted that the prohibitory orders should not be allowed to be passed at the *ipse dixit* of the concerned executive officials. There must be transparent guidelines applicable. Since different factual situations warrant different approaches, no hard and fast guidelines which can have universal application can be laid down or envisaged. The situation peculiar to a particular place or locality vis-à-vis particular individual or group behaving or expecting to behave in a particular manner at a particular point of time may not be the same in all such or other eventualities in another part of the country or locality or place even in the same state.

The scheme underlying the very provisions carry sufficient in-built safeguards and the avenue of remedies available under the Code itself as well as by way of judicial

review are sufficient safeguards to control and check any unwarranted exercise or abuse in any given case and courts should ordinarily give utmost importance and primacy to the view of the competent authority, expressed objectively also, in this case without approaching the issue, as though considering the same on an appeal, as of routine, keeping in view the fact that orders of (this) nature are more preventive in nature and not punitive in their effect and consequences.

For all the reasons stated above, we are unable to approve of the orders passed by the high court in this case and they are set aside. The appeal is disposed of accordingly.

.....J.
(Doraiswamy Raju)

.....J.
(Arijit Pasayat)

New Delhi.
March 31, 2004
