
(1872) 09 CAL CK 0004

Calcutta High Court

Case No: None

In Re: Bykuntram
Shaha Roy and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 9, 1872

Judgement

Sir Richard Couch, Kt. C.J.

1. The question referred to the Full Bench is (reads). We are of opinion that this question ought to be answered in the affirmative. S. 63 of Act XXV of 1861 runs as follows (reads). The above provisions clearly show that it is lawful for a Magistrate to issue a written order to any person directing him to abstain from any particular act, or to hold any property in his possession or under his management subject to any particular condition if such Magistrate shall be satisfied that such direction is likely to prevent a riot or an affray. The word "certain" placed before the word act, and afterwards repeated twice in the expression, "to take certain order with certain property in his possession," leaves no reasonable doubt in our minds that the Legislature intended to give full and ample powers to the Magistrate, the chief officer entrusted with the duty of preserving the peace of the district, to restrain any person from doing any act, or to command him to hold any property in his possession subject to any condition, whenever such Magistrate shall consider that such a course of procedure is likely to prevent, or even tends to prevent, a riot or an affray. No doubt, the powers conferred upon the Magistrate by this section ought, like all other powers of discretion created by law, to be exercised in a reasonable manner, and it may further be admitted that the Magistrate is bound, before he issues the order, to satisfy himself upon reasonable grounds that that order is likely to prevent, or tends to prevent, a riot or an affray. But if a Magistrate, after exercising the necessary discretion, issues an order directing a particular landholder not to hold a hat on a particular spot on a particular day, up on the ground that the holding of the hat at that particular place and time by that particular individual is likely to lead to a serious breach of the peace, we cannot, upon a proper construction of s. 62, say that the order is null and void for want of jurisdiction or power. The law gives a very wide discretion to the

Magistrate in matters-affecting the public tranquility, and it is not for us to entail that discretion by construing the Act in a manner contrary to the plain and obvious meaning of the words in which it is expressed. It has been argued that the powers vested in the Magistrate by s. 62 must be confined to those acts and modes of enjoyment of property only which are in themselves unlawful; and that, as there is nothing inherently illegal in a man holding a hat on his own land on any particular day he chooses, the order passed by the Magistrate in this case must be set aside as void for want of power. But not only is this restricted construction not supported by the actual words of the section, but its adoption might in many cases lead to the most dangerous consequences. A particular act or a particular mode of enjoyment of property might be perfectly innocent and lawful in itself. But the act may be done, or the property enjoyed, in that particular mode under circumstances calculated to lead to a serious breach of the peace, attended even with loss of human life; and it would be by no means proper or desirable to hold that even in such cases the chief peace officer of the district has no power to issue an order such as that contemplated by s. 62.

2. Whether a zemindar is in all cases entitled to establish a hat on his own land, but in close proximity to a previously established hat belonging to another zemindar, is a question upon which we need not express any opinion. Nor is it necessary for us to determine the question whether the Magistrate has in this particular case exercised his discretion in a proper manner, or whether his order as it stands requires any amendment either as to the duration of the injunction or otherwise for these questions have not been referred to us by the Division Bench, Assuming however that there is nothing unlawful in zemindar holding a hat on his own land on any day he choose as and assuming also that the mere fact of his holding a hat on such a spot and on such a day, would not be sufficient to warrant a Magistrate in coming to the conclusion that a breach of the peace is likely to take place, it seems to us clear that there may be other circumstances connected with the holding of the hat at that particular place and time which would fully justify a Magistrate in issuing an order under s. 62, at least for a limited period of time, if the Magistrate is satisfied, after a reasonable exercise of the discretion vested in him by that section, that such an order is necessary for the preservation of the public peace. It is stated in one of the cases mentioned in the order of reference that a Magistrate has no power under s. 62 to issue an order that would interfere with any one's right to enjoy his own property in any lawful manner he pleases. Whether a Magistrate can under that section, issue such an order as would be utterly destructive of a man's right of property is not a question which we are called upon, in this case, to determine one way or the other. It is sufficient for us, for the purposes of this reference, to say that it is quite within the power of the Magistrate under s. 62 to modify the enjoyment of such rights, at least for a temporary period, by imposing upon the owner of the property such conditions as the Magistrate, after taking into consideration all the facts and surrounding circumstances of each particular case, shall consider necessary to prevent a riot or an affray. Every individual right is, to a certain extent, subject to the general interests of society; and after giving our best consideration to the question referred to us, we feel ourselves bound to

come to the conclusion that the Legislature has purposely vested the Magistrate with powers sufficient to cover a case like the one mentioned in the order of reference. It is notorious that in this country, rival hats are frequent sources of riot and affray; and there is something in the nature of such hats, namely, the assemblage of large crowds of men on both Bides, which may be said to have a certain tendency to lead to a breach of the peace. We do not mean to say that such general facts alone are sufficient to justify the exercise of the discretion vested in the Magistrate by s. 62. But we think that there may be other circumstances connected with those general facts, as for instance, the existence of bitter hostility between the owners of the rival hats, the preparations already made by them for the commission of a breach of the peace, &c., which might render it absolutely necessary to exercise that discretion for the preservation of public tranquility.

(1) Act XXV of 1861, s. 62.--"It shall be lawful for any Magistrate by a written order to direct any person to abstain from a certain act, or to take certain order with certain property in his possession, or under his management, whenever such Magistrate shall consider that such direction is likely to prevent, or tends to prevent, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, or is likely to prevent, or tends to prevent, danger to human life, health, or safety, or is likely to prevent, or tends to prevent, a riot or an affray."

Act X of 1872, s. 518.--"A Magistrate of the district, or a Magistrate of a division of a district, or any Magistrate specially empowered, may, by a written order, direct any person to abstain from a certain Act, or to take certain order with certain property in his possession or under his management, whenever such Magistrate considers that such direction is likely, to prevent, or tends to prevent, obstruction, annoyance, or injury or risk of obstruction, annoyance, or injury to any persons lawfully employed, or danger to human life, health, or safety, or a riot or an affray."