

MAHESH TRAVELS & TOURS & ANR. ETC.

v.

COMMISSIONER OF POLICE & ORS.

MAY 1, 1989

[R.S. PATHAK, C.J. AND G.L. OZA, J.]

Bombay Police Act, 1951: Section 67—Police authorities—Right of—To prepare and enforce roster system for operating launch services.

Port of Bombay Passenger Boat Rules, 1962: Rules 4, 6, 7 and 19—Regulation of the use of landing place by launches—Framing of roster and its imposition—Only method of regulation.

The appellants were operating launch services for joy rides, film shooting, etc. from Appollo Pier or Gateway of India to Elephanta Island in Bombay. Respondent 7 was a cooperative association of launch owners also engaged in the same activities. The members belonging to the associations were operating launch services turn by turn on voluntary roster system to avoid unhealthy competition.

When efforts were made by the police and the Port Trust Authorities to resolve the difference in the operation of launch services between the association and the appellants failed, a roster system was chalked out on the direction of the Deputy Conservator of Bombay Port Trust which was sought to be enforced by the police. When some employees working in the launches were arrested for failure to act according to the roster system, the appellants filed writ petitions claiming that the police and the Port Trust Authorities had no authority to compel them to follow the roster system.

The High Court dismissed the writ petitions holding that the Bombay Port Trust Rules conferred powers upon the Deputy Conservator to give directions for berthing and for mooring and unmooring the vessels in the Port, and that apart the police and the Port Trust Authority had adequate powers under the Port of Bombay Passenger Boat Rules, 1962 and section 67 of the Bombay Police Act to regulate the manner in which the launches carried Passengers.

In the appeals to this Court, it was contended on behalf of the appellants that: (1) the Deputy Conservator of Bombay Port Trust, respondent No. 3 was not empowered in law to devise an order of the

- A imposition of a roster, and that this action was beyond the powers conferred by the Indian Ports Act 1908, the Bombay Port Rules and the Port of Bombay Passengers Rules 1962. (2) Respondent No. 3 had purported to act under Rules 4 and 19 of the Bombay Port Rules, Rule 4 of the Port of Bombay Passenger Boat Rules, and section 7 of the Bombay Police Act in having the roster system enforced by the Inspector of Police. (3) The roster has tendency to prohibit trade and the power to regulate is being misused as a power to prohibit. (4) The imposition of the roster is too severe a measure to deal with the simple problem of overcrowding and chaos and touting for passengers, (5) The provocation for devising and imposing a roster was the complaint made by the appellant's trade rivals. and (6) The roster has been prepared and is being enforced without recourse to any statutory provision enabling respondent No. 3 to devise it and impose it.
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Dismissing the appeals, the Court,

- D HELD: 1. The roster system provides for the regulation of traffic, so that each launch obtains an opportunity of access to the landing place. This is not a distribution of business, but a distribution of the time for which the landing place can be used, and therefore, a regulation of the use of the landing place. The roster is intended to give effect to Rule 4 of the Port of Bombay Passenger Boats Rules, 1962. There is no reason why recourse to a roster system should be considered as unreasonable. [830C, F]
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2. The dominant purpose of the regulation of the use of the landing place by the launches is to prevent congestion and a possible breach of peace. The real purpose that the roster is intended to serve, is to ensure the even flow of traffic at landing places. [830H; 831A]

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Smt. S.R. Venkataraman v. Union of India & Anr., [1979] 2 SCC 491; *Brownells Limited v. The Ironmongers' Wages Board—Brownells Limited v. The Drapers' Wages Board*, [1950] 81 C.L.R. 108 and *Hanson v. Radcliffe Urban District Council*, [1922] 2 Ch. 490 inapplicable.

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3. All the launches owners have equitable access to the landing place and if the other conditions for plying the launches, such as holding of a proper licence, are satisfied, there is no reason why the launches, turn by turn, cannot avail of the facility of an equitable opportunity to use the landing place. [831C-D]

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4(a) There is no excessive invasion of the appellants Fundamental Right to carry on business. [831E]

4(b) What should be the duration for which the appellants may be allowed to use the landing place, and what should be the turn in which such user may be permitted is essentially a matter for the judgment of the authorities concerned. It is not possible for the Court to adjudicate on this point. [831E-F]

5. The disputes between the parties in relation to the application of the roster is not a matter on which this Court will readily enter. [831G]

6. The imposition of a roster is reasonable and the power to impose a roster can be spelt out from the powers conferred on the authorities under the relevant statutory provisions. The roster is only one method of regulation. [831H; 832A]

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 3008-3009 of 1984.

From the Judgment and Order dated 28.11.83 of the Bombay High Court in Appeal No. 880 of 1983.

Kapil Sibal, Harish Gajtiani, Rajiv Datta and Nitin Rout for the appellants.

Shanti Bhushan, J. Makhija, Mrs. A.K. Verma and D.N. Misra for Respondent Nos. 3 and 4.

G.B. Sathe and A.S. Bhasme for Respondent Nos. 1, 2 and 5.

K.K. Sanghi, Brij Bhushan and Anil Kumar Gupta for Respondent No. 7.

The Judgment of the Court was delivered by

PATHAK, CJ: These appeals are directed against an order of the Bombay High Court dismissing *in limine* the appeals filed by the appellants herein against the judgment of a Single Judge dismissing their writ petitions challenging the right of the police authorities to prepare and enforce a roster system for operating launch services between Gateway of India at Bombay and Elephanta Island.

- A The appellants are operating launch services for joy rides, film shootings, etc. from Apollo Pier or Gateway of India to Elephanta Island, and respondent No. 7 is a cooperative association of launch owners also engaged in the same activity. It appears that originally the appellants were desirous of acquiring membership of this association but were denied entry, and thereafter it was the association which
- B wanted the appellants to join its membership but the appellants declined the offer. The members belonging to the association were operating launch services turn by turn on a voluntary roster system to avoid unhealthy competition. It appears that when the efforts made by the police and the Port Trust Authorities to resolve the differences in the operation of launch services between the association and the appellants failed, a roster system was chalked out on the direction of
- C the Deputy Conservator of Bombay Port Trust (Respondent No. 3) which was sought to be enforced by the police. When some employees working in their launches were arrested for failure to act according to the roster system, the appellants filed writ petitions claiming that the police and the Port Trust authorities had no authority to compel them
- D to follow the roster system. The High Court dismissed the writ petitions holding that the Bombay Port Rules conferred powers upon the Deputy Conservator to give directions for berthing and for mooring and unmooring the vessels in the Port and, that apart, the police and the Port Trust authorities had adequate powers under the Port of Bombay Passenger Boat Rules, 1962 and Section 67 of the Bombay
- E Police Act to regulate the manner in which the launches carried passengers.

The only point for consideration in these appeals is whether the Deputy Conservator of Bombay Port Trust and/or the police had the power to prepare and enforce the roster system.

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The Port of Bombay Passenger Boat Rules, 1962 have been framed by the Central Government in exercise of powers conferred by Section 6(1)(k) of the Indian Ports Act 1908:

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6(1) "The Government may, in addition to any rules which it may make under any other enactment for the time being in force, make such rules, consistent with this Act, as it thinks necessary for any of the following purposes, namely:

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(k) for licensing and regulating catamarans plying for hire, and flats and cargo, passenger and other boats plying, whether for hire or not, and whether regularly or only occasionally, in or partly within and partly without any such port and for licensing and regulating the crews of any such vessels, and for determining the quantity of cargo or number of passengers or of the crew to be carried by any such vessels; and may by such rules provide for the fees payable in respect of any such license, and in the case of vessels plying for hire, for the rates of hire to be charged and the conditions under which such vessels shall be compelled to ply for hire, and further for the conditions under which any licence may be revoked;"

Rule 4 of the Port of Bombay Passenger Boat Rules, 1962 prescribes that boats plying for hire shall not lay beside the landing place longer than necessary and shall obey orders of the police for regulating the traffic. Rule 6 forbids the tindals and the boatmen to tout for hire near the landing place.

Rule 4 of the Bombay Port Rules framed by the Bombay Port Trust in exercise of powers conferred under the Indian Ports Act, 1908 prescribes that all vessels within the port shall be bound to take up such berths as may be appointed for them by the Deputy Conservator and shall change their berths when required by the authorities. Rule 19 thereof provides that all vessels within the port shall moor and unmoor or anchor in accordance with the orders of the Deputy Conservator.

Clauses (b) and (c) of Section 67 of the Bombay Police Act, 1951 provide:

67. "It shall be the duty of a Police Officer—

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(b) to keep order in the streets and at and within public bathing, washing and landing places, fairs, temples and all other places of public resort and in the neighbourhood of places of public worship, during the time of public worship;

(c) to regulate resort to public bathing, washing and landing places, to prevent overcrowding thereat and in public

- A ferry-boats and, to the best of his ability, to prevent the infraction of any rule or order lawfully made for observance by the public at any such place or on any such boat."

It is contended by learned counsel for the appellants that the Deputy Conservator of Bombay Port Trust, respondent No. 3 is not empowered in law to devise an order of the imposition of a roster. It is urged that this action is beyond the powers conferred by the Indian Ports Act, the Bombay Ports Rules and the Port of Bombay Passenger Boat Rules. We see no force in this contention. The roster system provides for the regulation of traffic, so that each launch obtains an opportunity of access to the landing place. This is not a distribution of business but a distribution of the time for which the landing place can be used, and therefore, a regulation of the use of the landing place. Rule 4 of the Port of Bombay Passenger Boats Rules, 1962 provides that boats plying for hire should not lay along side landing places longer than necessary and must obey the orders of the police for regulating traffic. The boat shall not be laid longer than actually necessary to embark or land passengers and their luggage, but must be kept off at a distance of at least 30 metres from the landing place or gangway ladders so as not to obstruct the approach thereto. The licencees or other attendants of the boat are required to obey all orders given to them by the police for the regulation of the traffic at the landing places or gangways of vessels. Consistent with the provisions of Rule 4, which are plainly intended for the maintenance of order, is rule 6 which prohibits tindals and boatmen tout for hire near the landing places to the annoyance of people passing by, and rule 7 prohibits them from carrying on the business of a hawker. The roster is intended to give effect to Rule 4, and we see no reason why recourse to a roster system should be considered as unreasonable.

The second contention of learned counsel for the appellants is that the respondent No. 3 has purported to act under Rules 4 and 19 of the Bombay Port Rules, Rule 4 of the Passenger Boat Rules and s. 67 of the Bombay Police Act in having the roster system enforced by the Inspector of Police. We have considered those provisions, but we are not convinced that the context in which those provisions operate is in any manner inconsistent with the framing of a roster and its imposition for regulating the use of the landing place by the launches. On the contrary, they contemplate a situation, and provide for just the exercise of power, which underlies the adoption of a roster system. The dominant purpose of the regulation of the use of the landing place by the launches is to prevent congestion and a possible breach of peace.

The submission that the roster has been devised for the purpose of bringing about a distribution of passengers ignores the real purpose that the roster is intended to serve, namely to ensure the even flow of traffic at landing places. An attempt has been made to show that the roster was prompted by malice, and we are referred to *Smt. S.R. Venkataraman v. Union of India & Anr.*, [1979] 2 SCC 491, but we see nothing to support the plea. We cannot accept that an ulterior motive—the regulation of business—is behind the roster. *Brownells Limited v. The Ironmongers' Wages Board*, *Brownells Limited v. The Drapers' Wages Board*, [1950] 81 C.L.R. 108 and *Hanson v. Radcliffe Urban District Council*, [1922] 2 Ch. 490 do not help the appellants.

It is then urged that the roster has the tendency to prohibit trade and the power to regulate is being misused as a power to prohibit. There is a fallacy in the argument. There is no prohibition of the business at all. All the launch owners have equitable access to the landing place and if the other conditions for plying the launches, such as holding of a proper licence, are satisfied, there is no reason why the launches, turn by turn, cannot avail of the facility of an equitable opportunity to use the landing place.

It is said then that the imposition of the roster is too severe a measure to deal with the simple problem of overcrowding and chaos and touting for passengers. This is a matter for the judgment of the authority concerned and ex-facie we do not see any ground for holding that the roster system is not reasonable in the circumstances. There is no excessive invasion of the appellants' Fundamental Right to carry on their business. What should be the duration for which the appellants may be allowed to use the landing place, and what should be the turn in which such user may be permitted is essentially a matter for the judgment of the authorities concerned. It is not possible for the Court to adjudicate on this point.

Learned counsel for the appellants complains that the provocation for devising and imposing a roster was the complaint made by the appellants' trade rivals. The disputes between the parties in relation to the application of the roster is not a matter on which this Court will readily enter.

Finally, it is contended for the appellants that the roster has been prepared and is being imposed without recourse to any statutory provision enabling the third respondent to devise it and impose it. It seems to us that the imposition of a roster is reasonable and the power to

- A impose a roster can be spelt out from the powers conferred on the authorities under the statutory provisions already referred to. The roster is only one method of regulation. It may be feasible and fruitful in a certain set of circumstances. In another set of circumstances it may be more appropriate to adopt some other principle for resolving the problem of a large number of launches using a limited landing place.
- B is apparent that passengers can be invited into the launches only when a boat is standing against the jetty, and it would be a matter for the launch owner to ensure that he has a sufficient number of passengers by the time indicated in the roster for berthing his launch at the landing place. It must be remembered that Rule 4 envisages an opportunity to the owner of the boat to embark passengers. The opportunity is not intended for the purpose of keeping the boat at the landing place for so long a period of time that it can fill up with passengers. The time period is to be determined by the need to keep the traffic moving. The circumstances that the boat may come in and stay no longer than is necessary to pick up the passengers indicates that the emphasis is on the maintenance of orderly traffic and the prevention of congestion at the landing place.
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We see no substance in these appeals and we are of opinion that they must be dismissed.

- E A number of suggestions were made by learned counsel for the appellants by way of settling the controversy between the parties in regard to the use of the landing place and devising arrangements for securing optimum access for each boat. These suggestions, it seems to us, can be made before respondent No. 3, and it is open to him to consider what would be the most equitable arrangement.

- F In the result the appeals are dismissed but there is no order as to costs.

N.V.K.

Appeals dismissed.