ordered by the Director of Panchayats under section 102(2) of the Act by means of his letter dated November 30, 1971. It was not necessary for the Deputy Commissioner to issue notice to the petitioner before passing the order of suspension to show cause against the proposed order. The charge-sheet served on the petitioner by the Deputy Commissioner and his order appointing the District Public Grievances Officer as an Enquiry Officer to hold the enquiry into those charges cannot be said to be without jurisdiction. There is thus no merit in this petition which is dismissed with costs in favour of respondents 1 to 5. Respondent No. 6 will bear his own costs. Counsel's fee Rs. 100.

Sandhawalia, J.—I agree.

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*Before B. R. Tuli and P. S. Pattar, JJ.*

BEDI GURCHARAN SINGH AND OTHERS,—*Petitioners-Appellants.*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents.*

L.P.A. 488 of 1973.

September 24, 1974.

*Police Act (V of 1861)—Section 30—Constitution of India (1950)—Articles 14, 19 and 25—Section 30—Whether* ultra-vires Articles 14, 19(1)(*a*) *and* (*b*) *and* 25—*Public assembly to be held not on a road, public street or thoroughfare—Licence to hold such assembly—Whether necessary under section* 30.

*Held*, that section 30 of the Police Act, 1861 does not give an absolute or unguided power to the District Superintendent or the Assistant District Superintendent of Police or the Magistrate of the district or the sub-division to grant or not to grant the licence for holding a meeting at a thoroughfare. That power can be exercised only if, in the judgment of these authorities, the collection of a public assembly, if uncontrolled, would be likely to cause a breach of the peace and in no other circumstances. The section cannot, therefore, be struck down on the ground that it gives unguided or arbitrary power to the authorities mentioned therein for regulating the conduct and collection of assemblies in a thoroughfare. In case any authority passes an order which is not in accordance with the provisions of the section, that order is liable to be struck down but there is no reason to strike down the section as it is. Hence section 30 of the Act is not *ultra-vires* Article 14 of the Constitution.

*Held,* that no doubt fundamental rights have been conferred under Article 19(1)(a) and (b) and Article 25 of the Constitution of India to freedom of speech and expression, to assemble peaceably and without arms at any place and to freely profess, practise and propagate their religion, but these rights are not absolute and unfettered. According to Article 19(2) and (3) of the Constitution of India, reasonable restrictions can be imposed on the exercise of the right to freedom of speech and expression and to assemble peaceably and without arms in the interest of public order. Similarly, the freedom of conscience and the right freely to profess, practise and propagate religion is subject to public order. If such a freedom endangers public order, the authorities are within their rights to restrict that right. Moreover, the right freely to propagate religion is subject to the condition that it does not violate similar fundamental rights of the followers of other religions. No person has the right to address a congregation of another religion in order to propagate his own, if it is likely to be resented by the congregation and which may lead to the breach of peace. Such a fundamental right has to be exercised as a member of the society so that a similar right of the other members of the society is not violated. Hence section 30 is intra vires Articles 19 and 25 of the Constitution.

*Held,* that it is clear from section 30 of the Act that the licence to hold a public assembly is required only if such an assembly is to be held on the public road or in the public street or thoroughfare. If the place at which the assembly is intended to be held is neither a road nor a public street nor a thoroughfare, this section will not apply and there will be no necessity of obtaining the licence for holding the assembly at such a place.

*Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Prem Chand Jain, passed in Civil Writ No.* 3254 *of* 1971 *on 7th May,* 1973.

Hardev Singh, Advocate with Narinder Singh, Advocate, *for the appellants.*

C. B. Kaushik, Advocate, *for Advocate-General* (Haryana) *for the respondents.*

JUDGMENT

TULI, J.—Sanatanist Hindus celebrate Bawan Dwadshi Mela at Ambala in the area of Anaj Mandi every year in the month of August or September. In the Punjab Gazetteer, Volume VII, Part A 1923-24 (1925 Edition), the mention is made of this Mela in the following words:—

> "It is held in the month of Bhadon. The images of the Gods of the Hindu Pantheology from all the mandirs in

Ambala are brought out in procession to the Grain Market and from there carried in procession to Naurang Rai's tank opposite the Civil Hospital buildings. The celebration is conducted with much pomp and ceremony."

The same description is given of the Bawan Dwadshi Mela at page 45 of the Ambala District Gazetteer 1923-24 (1925 Edition). On the same page of the Gazetteer the following description is given of Pir Lakhi Shah or the Pankha fair:—

"The Pankha fair is held in the month of 'Rajab', i.e., two months before the Id. The fair is held in honour of Pir Lakhi Shah, whose tomb stands in the Grain Market at Ambala. Fans tastefully decorated are offered and hence the name of the fair. The saint is said to have flourished in the time of Qutab-Ud-Din Aibak, Sultan of Delhi. Some think that Lakhi Shah is no other than Qutab-Ud-Din Aibak himself. The fair is attended mostly by local people. It has recently gained importance among local Muhammadans probably to keep pace with the Hindus who are yearly adding to the zeal with which they celebrate the Bawan Dwadshi fair."

Before the partition of the country, the Muslims as a community outnumbered the Hindus in the district of Ambala and the Hindus and the Sikhs joined hands for celebrating the festival of Bawan Dwadshi mainly with a view to withstand the pressure from the Muslims who, on various occasions, tried to indulge in acts of violence in order to disrupt the celebrations. After the partition of the country, the Muslims migrated to Pakistan and a Sikh Gurdwara was set up at the place where the tomb of Pir Lakhi Shah existed.

(2) It has been stated in the writ petition that the organisation, to which the appellants belong, felt concerned about the manner in which many of the persons participating in the celebrations at the time of Bawan Dwadshi fair conducted themselves. There were unruly scenes and the people indulged in acts of violence and there were many a time drunken bouts. The appellants' organisation, under the circumstances, endeavoured to utilise the occasion of the fair to hold *dewan* in the area outside the Gurdwara to propagate the aspects of spiritual and social reforms to bring about the desired effect of reforming the people who gathered there. Since 1956, religious and cultural *dewans* outside the Gurdwara were

organised without any untoward incident. In 1959, however, the appellants' organisation was refused the licence to hold such *dewans* and that refusal was repeated every year when an application for a licence was made. The appellants felt aggrieved by continuous refusal of the respondents to grant them the necessary licence to hold the *dewan* and in order to establish their right to hold the *dewan* without any licence, they filed C.W. 3254 of 1971 which was dismissed by the learned Single Judge on May 7, 1973. This appeal under clause 10 of the Letters Patent has been filed against that judgment.

(3) The licence to hold the *dewan* at the place was required under section 30 of the Police Act, 1861 (hereinafter referred to as the Act). The appellants were also refused permission to use loudspeaker under the Punjab Instruments (Control of Noises) Act, 1956. Section 30 of the Act is in the following words:—

> "30. Regulation of public assemblies and processions and licensing of same. The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads or in the public streets or thoroughfares, and prescribe the routes by which and the time at which, such processions may pass.
>
> (2) He may also on being satisfied that it is intended by any person or class of persons to convene or collect an assembly in any such road, street or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the district, or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a licence.
>
> (3) On such application being made, he may issue a licence specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this section: Provided that no fee shall be charged on the application for, or grant of, any such licence.

(4) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies."

From this section it is clear that the licence to hold an assembly is required only if such an assembly is to be held on the public road or in the public street or thoroughfare. If the place at which the assembly is intended to be held is neither a road nor a public street nor a thoroughfare, section 30 of the Act will not apply and there will be no necessity of obtaining the licence from the District Magistrate. The case of the appellants is that the place where the *Dewan* is proposed to be held is neither a road nor a public street nor a thoroughfare but is a public place where the people have the right to assemble. The case of the respondents, on the other hand, is that that place is a thoroughfare and, therefore, a licence is necessary to be obtained before holding the *dewan* under section 30 of the Act. In view of the conflicting assertions with regard to the nature of the place, the learned Single Judge observed that this disputed question of fact would be better decided by a Civil Court after taking evidence. It was conceded before the learned Judge by the respondents that section 30 of the Act would only apply if the place is held to be a road, or a public street or a thoroughfare. Apart from the pleadings of the parties, there is no other material on the record to come to a definite finding whether the place is or is not a thoroughfare. The respondents do not claim it to be either a road or a public street, their plea is that this place is a thoroughfare. The appellants along with their writ petition annexed a plan of the site which shows that Anaj Mandi is a circular area divided into four sectors. The sector where the Gurdwara has been established contains many shops and the vacant space is much less than in the opposite sector where the Bawan Dwadshi fair is held. It is the admitted case of the parties that the sector wherein the Bawan Dwadshi fair is held is generally used for holding public meetings and there is a flag-post flying Congress flag. It is also admitted that political meetings have been held at this place many a time and still continue to be held. There is no dispute, therefore, that the place where the Bawan Dwadshi fair is held is a public place whereas the same cannot be said, by looking at the plan, about the place where the Gurdwara now exists. We, therefore, agree with the learned Judge that this matter should be decided in a regular suit after taking full evidence particularly because the decision will be of a far-reaching importance and will determine whether any licence has to be obtained for holding any

assembly at that place in future or not. The uncertainty about this matter will thus be eliminated for ever.

(4) Another point that has been argued before us is the constitutional validity of section 30 of the Act. It is submitted that arbitrary power has been given to the Superintendent of Police or the Assistant Superintendent of Police and the District Magistrate or the Sub-Divisional Magistrate to grant or not to grant the licence for holding assemblies at the places mentioned in the section. Reliance is placed on *Himat Lal K. Shah* v. *Commissioner of police, Ahmedabad and another* (1) wherein rule 7 framed by the Commissioner of Police under section 33(1)(o) of the Bombay Police Act, 1951, was struck down on the ground that it afforded no guidance and gave arbitrary power to the Commissioner of Police. Section 33(1)(o) of the Bombay Police Act, 1951, provides :

> "33 (1) The Commissioner and the District Magistrate, in areas under their respective charges or any part thereof, may make, alter or rescind rules or orders not inconsistent with this Act for ;
>
> * * * * *
>
> (o) regulating the conduct of and behaviour or action of persons constituting assemblies and processions on or along the streets and prescribing in the case of processions, the routes by which, the order in which and the times at which, the same may pass."

Rule 7 framed under that section by the Commissioner of Police reads as under :—

> "7. No public meeting with or without loudspeaker, shall be held on the public street within the jurisdiction of the Commissionerate of Police, Ahmedabad City, unless the necessary permission in writing has been obtained from the officer authorised by the Commissioner of Police."

It was observed that section 33(1)(o)—

> "authorises the making of rule for 'regulating' the conduct, behaviour or action of the persons who are members thereof. Rule 7 impliedly gives power to the Commissioner

(1) A.I.R. 1973 S.C. 87.

to refuse permission to hold a public meeting and, when a meeting is prohibited, there is no question of regulating the conduct, behaviour or action of persons constituting assembly, as ex-hypothesi, no assembly has been constituted. The sub-section does not authorise framing of rules to regulate the conduct, behaviour or action of persons before an assembly is constituted."

It was further observed that freedom of assembly is an essential element of any democratic system and the framers of the Constitution of India were aware that public meetings were being held in public streets and that the public had come to regard it as part of their rights and privileges as citizens. The conferment of a fundamental right of public assembly would have been an exercise in futility, if the Government and the local authorities could legally close all the normal places, where alone the vast majority of the people could exercise the right. If there is a fundamental right to hold public meeting in a public street, then a rule like rule 7, which gives an unguided discretion, practically dependent upon the subjective whim of an authority to grant or refuse permission to hold a public meeting on public street, cannot be held to be valid. There is no mention in the rule of the reasons for which an application for licence can be rejected. "Broad prophylactic rules in the area of free expression and assembly are suspect. Precision of regulation must be the touchstone in an area so closely touching our precious freedoms", as observed in *National Association for the Advancement of Colored People* v. *Button* (2).

(5) That case is clearly distinguishable from the case in hand. Section 30 of the Act does not give an absolute or unguided power to the District Superintendent or the Assistant District Superintendent of Police or the Magistrate of the district or the sub-division to grant or not to grant the licence for holding a meeting at a thoroughfare. That power can be exercised only if, in the judgment of the Magistrate of the district or a sub-division of a district, the collection of an assembly, if uncontrolled, would be likely to cause a breach of the peace and in no other circumstances. The section cannot, therefore, be struck down on the ground that it gives unguided or arbitrary power to the authorities mentioned therein

(2) (1963) 871 U.S. 415 page 438.

for regulating the conduct and collection of assemblies in a thoroughfare. In case any authority passes an order which is not in accordance with the provisions of the section, that order will be liable to be struck down but there is no reason to strike down the section as it is. The submission of the learned counsel is, therefore, repelled.

(6) Shri Hardev Singh, the learned counsel for the appellants, has then strenuously argued that the appellants have a fundamental right under Article 19(1)(a) and (b) and Article 25 of the Constitution of India to freedom of speech and expression, to assemble peaceably and without arms at any place and to freely profess, practise and propagate their religion. This right is not unfettered and absolute. According to Article 19(2) and (3), reasonable restrictions can be imposed on the exercise of the right to freedom of speech and expression and to assemble peaceably and without arms in the interest of public order. Similarly, the freedom of conscience and the right freely to profess, practise and propagate religion is subject to public order. If such a freedom endangers public order, the authorities will be within their rights to restrict that right. The appellants have filed copies of two orders passed by the District Magistrate, Ambala, in 1963. One of the orders (copy annexure 'G') recites that it had come to his notice that the rival parties intended to hold public meetings and processions on public roads, streets and thoroughfares in the area of Anaj Mandi (Grain Market) on the occasion of Bawan Dwadshi fair from 29th August, 1963 to 31st August, 1963, and on account of the intended meetings and processions of the rival parties there was likelihood of the breach of the peace in case the meetings and processions were not properly regulated and controlled. He, therefore, directed that all persons who intended to organise such meetings or processions should apply for licence as required under section 30(2) of the Act before holding such meetings or processions. Any such meeting or procession without licence would be considered unlawful and action would be taken in accordance with the provisions of law. Shri Mohan Singh Lamba, appellant filed an application requesting for a licence to hold a *dewan* on Bawan Dwadshi fair days outside Sri Guru Singh Sabha—Northern Maidan. That application was refused on the ground that agreement referred to in the application with the Sanatan Dharam Sabha, Ambala City, had been withdrawn by that organisation; the application by implication admitted that the customary right of holding the Bawan Dwadshi Mela in Anaj Mandi area vested in the Sanatan Dharam Sabha, Ambala City, alone and, in view of the prevailing tension between Hindu and Sikh Communities in Ambala City, and to prevent any consequent breach of

peace, he regretted his inability to issue a licence for holding any *dewan* in the Anaj Mandi Area, Ambala City, on the Bawan Dwadshi fair from 29th to 31st August, 1963. The applicant was, however, permitted to hold such a *dewan* anywhere else so that there was no danger of breach of peace. Similar reply was given to Shri Kartar Singh Takkar, appellant who applied for the licence to hold a *dewan* from August 29 to August 31, 1963, the dates on which the Bawan Dwadshi fair was to be held. For the subsequent years also, the permission to hold the *dewan* and to use loudspeakers on the days of Bawan Dwadshi fair was refused. It is thus clear that the particular reason stated by the District Magistrate for refusing the licence was that there was apprehension of breach of peace if the Sikhs were allowed to hold a *dewan* on the Bawan Dwadshi fair days at the site in front of the Gurdwara which was close to the site on which that fair was to be held. It has also been stated in the written statement filed by the District Magistrate in reply to the writ petition that no other Gurdwara in the entire States of Punjab and Haryana ever held such a *dewan* on Bawan Dwadshi fair days at any place whatsoever which shows that there is no particular sanctity of Bawan Dwadshi fair in the minds of the Sikh Community. If they intend to honour the Bawan *avtar*, they can join the Hindus in their celebrations as before the partition of the country. It has also to be remembered that Gurdwara Singh Sabha was established in Anaj Mandi after the partition of the country at the site where the tomb of Pir Lakhi Shah existed. It has no particular historical significance and in the city of Ambala there are historical Gurdwaras, the management of which never thought of observing Bawan Dwadshi festival.

(7) It is admitted in the petition that arrests under section 107/151, Criminal Procedure Code, were made of the organisers of Akali meetings on Bawan Dwadshi fair days which clearly shows that the judgment of the District Magistrate that there was apprehension of breach of peace if a *dewan* was permitted to be held by the Sikhs at the site was not without basis. The appellants or their organisation which runs hundreds of Gurdwaras in the States of Punjab and Haryana have never organised such a *dewan* on any other day even outside Gurdwara Singh Sabha in Anaj Mandi. The right freely to propagate religion is subject to the condition that it does not violate similar fundamental rights of the followers of other religions. It cannot be said that any person has the right to address a congregation of another religion in order to propagate his own, if it is likely to be resented by the congregation and which may lead to the breach of peace. Such a fundamental right has

to be exercised as a member of the society so that a similar right of the other members of the society is not violated. We, therefore, do not find any merit in the submission of the learned counsel that by prohibiting the appellants from holding the *dewan* on the particular days of Bawan Dwadshi fair in any way violates the fundamental rights of the appellants guaranteed under Articles 19 and 25 of the Constitution.

(8) For the reasons given above, we find no merit in this petition which is dismissed with costs.

Pattar, J.—I agree.

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*B. S. G.*

*Before M. S. Gujral and R. N. Mittal, JJ.*

V. B. SINGH,—*Petitioner.*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

C.W. 2292 of 1968.

October 16, 1974.

*Constitution of India* 1950—*Articles* 16(2) *and* (4), 341 *and* 366(24)—*Constitution (Scheduled Castes) Order* (1950)—*Declaration of Scheduled Castes under Article* 341—*Whether has relation only to the particular State or Union Territory for which the declaration is made—Member of a Caste declared to be a Scheduled Caste in one State and residing therein—Whether can be considered as belonging to the Scheduled Caste of another State—Reservation of appointments for backward class of citizens in relation to a particular State—Whether violative of Article* 16(2).

*Held*, that the definition of the "Scheduled Castes" has reference only to those castes, races or tribes as are mentioned to be Scheduled Castes under Article 341 of the Constitution of India. Under this Article the President has to specify by public notification castes, races or tribes or parts of or groups within castes, races or tribes which are to be deemed to be Scheduled Castes in relation to any State or Union Territory. The declaration has to be made in respect of a particular State or Union Territory, and where it is a State after consultation with the Governor thereof. From the use of the expressions "with respect to any State or Union Territory" and "in relation to that State or Union Territory" in Article 341(1) it is clear that the declaration of Scheduled Castes has relation only to that particular State or Union Territory for which the