PETITIONER:
HIMAT LAL K. SHAH

Vs.

RESPONDENT:
COMMISSIONER OF POLICE, AHMEDABAD & ANR.

DATE OF JUDGMENT15/09/1972

BENCH:
SIKRI, S.M. (CJ)
BENCH:
SIKRI, S.M. (CJ)
RAY, A.N.
REDDY, P. JAGANMOHAN
MATHEW, KUTTYIL KURIEN
BEG, M. HAMEEDULLAH

CITATION:
1973 AIR 87 1973 SCR (2) 266
1973 SCC (1) 227
CITATOR INFO :
RF 1973 SC 106 (140)
D 1974 SC1940 (46)
RF 1975 SC1505 (2)
R 1989 SC1988 (31)

ACT:
Constitution of India, 1950, Arts. 19(1) (a), (b) and (d)-Right of citizens to hold public meetings on public streets-If fundamental right.
Bombay Police Act, 1951, s. 33(1) (O) and r. 7 of Rules framed thereunder-Rule requiring prior permission for holding meetings-Rules if ultra vires section-Rule, if violates fundamental rights.

HEADNOTE:
The appellant whose application for permission to hold a public meeting on a public street was rejected contended in a writ petition in the High Court, (1) that the rules framed by the first respondent under s.33(1) (O) of the Bombay police Act. 1951, were ultra vires section in that the sub-section does not authorise framing of rules requiring prior permission for holding meetings and (2) that the sub-section and the rules were violative of the fundamental rights guaranteed under art.19(1) (a)and (b) of the constitution. The High Court dismissed the petition.
HELD : (per Curiam) : Rule 7 of the rules is void. [283F; 293E; 299D]
(Per S. M.Sikri, C.J., A.N. Ray and P. Jaganmohan Reddy,JJ):
(1)The impugned rules are not ultra vies s/33 (1) in so far as they require prior permission for holding meetings, [280B-C]
Sub-section 33 (1) (0) proceeds on the basis that the public has a right to hold assemblies and take processions on and, along sawn though It is necessary to regulate the conduct and behaviour or action of' persons constituting such assemblies or processions in order to safeguard the rights of citizens and in order to preserve public order. The word 'regulate' would include the power to prescribe that

permission in writing should be taken a few days before the holding of a meeting on a public street. The impugned rules do not prohibit the holding of meetings but only prescribe that permission should be taken. [275B-E]

(2)(a) Section 33(1) (0) does not violate Art. 19(1) (b), and Art. 19(i) (a) is not attracted to the facts of 'the case. The dub-section has nothing to do with the formation of assemblies and processions but only deals with persons as members of assemblies and processions. The subsection enables the Commissioner to make rules to regulate the assemblies and processions. Without such rules, in crowded public streets, it would be impossible for citizens to enjoy their various rights. Indeed, the section may be said to have been enacted in aid of the rights under Art. 19 (1) (a) and 19(1) (d). [281B-D]

(b)It could not be contended by the 'respondent that as under the Common Law of England no one has a right to hold a meeting on a highway, and the same law prevails in India. and therefore, the word 'regulate' means a right to prohibit the holding of a meeting also. In India, the law has developed on slightly different lines, and a citizen in India had, before the Constitution, a right to hold meetings on public streets subject to the control of the appropriate authority regarding the time and place of the meetings and subject to considerations of public

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order While prior to the coming into force of the Constitution, the right to assemble could have been abridged or taken away by law, after the coming into force of the Constitution, the right cannot be abridged except by imposing reasonable restrictions. There is nothing wrong in requiring prior permission to be obtained before holding a public meeting a public street, for the Tight which flows from Art. 19(1)(b) is not a right to hold a meeting at any place and time. But, the State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order. in the present case, however, r. 7 does not give any guidance to the officer authorised by the Commissioner of Police as to the circumstances in which he can refuse permission to hold a public meeting. The officer cannot be expected to read the marginal note to s. 33 or to look at the scheme of the Act to spell out the limitations on his discretion. Therefore, the rule, which confers arbitrary powers on the authorised officer must be struck down. The other rules which merely lay down the procedure for obtaining permission cannot survive, but, it is not necessary to strike them down, for, 'without r. 7, they cannot operate. Rule's 14 and 15 deal both with processions and public meetings and their validity, in so far as processions are concerned, is not affected. [281D-G; 282H; 283A-C]

Parthasaradiayyangar- v. Chinnakrishna Ayyangar, I.L.R. [1882] 5 Mad. 304, Sundram Chetti v. The Queen I.L.R. [1883] 6 Mad. 203, Sudagopachariar v. A. Rama Rao, I.L.R. [1903] 26 Mad. 376, Vijiraghava Chariar v. Emperor, I.L.R. [1903] 26 Mad, 554 Hasan v. Muhameed Zaman, 52 J.A. 61, Chandu Sajan Patil v. Nyahalchand, A.I.R. 1950 Bom. 192, Shaikh Piru Bux v. Kalandi Pati, (Civil Appeal No. 25 of 1966 dated October 29, 1968, Saghir Ahmad v. State of U.P., [1955] 1 S.C.R. 107, C.S.S. Motor Service v. State of Madras, [1952] 2 M.L.J. 894, Railway Board v. Narinjan Singh, [1969] 3 S.C.R. 548, Babulal Parata v. State of Maharashtra, [1961] S.C.R. 423, Cox v. Louisiana, 13 L. Ed. 21, 471, Hagua v. C.I.O. 83 L. Ed. 1423, Blackwell's Law of Meetings (9th Edn. P. 5)

and Dicey's Law of the Constitution (10th Ed.) p.p. 271-72, referred to,
(Per K. K. Mathew J.): (1) What s. 33 (1) (O) provides is making of rules for regulating' the conduct and behaviour, or action of persons constituting assemblies. The sub-section presupposes, an assembly and authorises the making of rules for 'regulating' the conduct, behaviour or action of the persons who arc members thereof. A power to regulate implies the continued existence of that which is to be regulated. The power normally doe,, not include a power to prohibit. The juxtaposition, of the words 'regulating' and 'prohibiting' in s. 33 (1) (x) and the express rant of a power to prohibit to the rule making authority in s. 33 (1) (p) and (q) indicate that the context in which r. 7 occurs shows that a power to prohibit is not contemplated by the power to regulate. But r. 7 impliedly gives power to the Commissioner of Police to refuse permission to hold a public meeting. Therefore, r. 7 is ultra vires s. 33 (1) (0). [285B-E, F-H]
Toronto v. Virgo [1896] A.C. 88, Ontario v. Canada [1896] A.C. 348 and Birmingam and Midland Motor Motor Omnibus Co. Ltd. v. Worcestershire County Council, [1967] 1 W.L.R. 409, referred to.
(2)Also the right to hold public meeting in a public street is a fundamental right and r. 7, which gives an unguided discretion dependent on the subjective whim of the authority to grant or refuse permission to, hold such a meeting, cannot be held to be valid. [293E]
Freedom of assembly is an essential element of a democratic system. The basic assumption in a democratic polity is that Government shall
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based on the consent of the governed. But the consent of the governed implies not only that the consent shall be free but also that it shall be grounded on adequate information and discussion. At the root of this concept lies the citizens right to meet face to face with others for the ,discussion of their ideas and problems, and public streets are the 'natural' places for expression of opinion and dissemination of ideas. [291E-H]
Public procession are prima facie legal but a public meeting is not one of the uses for which highways have been dedicated. Public meeting in open places and public streets form'& part of the tradition of our national life. In the pro-Independence days such meetings have been held in open spaces and public streets and the people have come to regard it as a part of the privileges and immunities. The framers of the Constitution were aware that public meetings were being held in public streets and that the public have come to regard it as part of their. rights and privileges as citizens, perhaps erroneously, but this error was grounded on the solid substratum of continued practice over the years and communist error farit jus. In the U.S. also the basis of' a citizens privilege to use streets and parks for communication of views, was the continued de facto exercise of the right over a number of years, and fundamental rights in India of free speech and assembly are modelled on the Bill of Rights of the U.S. Constitution. But a. public meeting will be a nuisance if it appreciably obstructs the road. The real problem is reconciling the city's function of providing for the. exigencies of traffic in its streets and for the recreation of the public in its parks, with its other obligations of providing adequate places for public discussion in order to safeguard the guaranteed right of public assembly. The state and local authorities have a

virtual. monopoly of every open space at which an outdoor meeting can be held, and they can close the street-,, ,and park,, entirely to public meetings, the practical result would be that it would be impossible to hold any open-air meetings in any large city. and the conferment of a fundamental right of public assembly would then become an exercise in futility. [290A-C-; 292A-H]

However, the power of the appropriate authority--to impose reasonable regulations, in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with the fundamental right of assembly. A system of licensing as regards the time and the manner of holding public meetings on public streets will not be regarded as an abridgement of the fundamental right of public assembly or of free speech if definite standards are provided by the law for the guidance of the licensing authority. But 'in r. 7, there is no mention of the reasons for which an application for a licence can be rejected. The vesting of such unregulated discretionary power in a licensing authority has a ways been considered is bad. [293B-D]

Saghir Ahmad v' The State of U.P. and, Others, [1965] 1 S.C.R. 707, Ex-parte Laws, [1888] 21 Q.B.D. 191, Reg. v. Cuninghame Craham and Burns, (1886-90) Cox's Cr. Law Cases, Vol. 16. 420, [1912] 2 Car s. 674, 677, Gill v., Carson and Nield, [1917] 2 K.B. 674, 677, De Morgan v. Metropolitan Board of Works, [1880] 5 Q.B.D, 155, Beatty v. Gillhanks. [1882] 9 Q.B.D. 308 Burden v. Rigler and another (1911) L.R. I K.B. 377. Harrison v. Duke of Ratland, (1893) 1 Q.B. 142, Manzur Hasan v. Muhammad Zaman 52 I.A. 61, Chandu Salan Patil v. Nyahal Chand A.I.R. 1950 Bom. 192, Lowdens v. Keaveney, (1903) 2 I.R. 82, Davis v. Messachusetts. 167 U.S. 43 (1097) Hague v., C.I.O. 307,U.S. 496, Kunz v. New York, 340 U.S. 290 Shuttlesworth v. Birmingham, 394 U.S. 147, Express Newspapers (Private) Ltd. and Another v. The Union of India and Others, [1959] S.C.R. 12, Niemotko v. Maryland, 340 U.S. 208, NAACR v.
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Button, 371 U.S. 415 (1968), Dicey's Law of Constitution (10th Ed.) pp. 271-72, Halsbury's Law of England (Hailsham Ed.) Vol. 16 p. 362 Public Meetings and Processions by Goodhart, Cambridge Law of Journal (1936-38), Vol. 6, 171 referred to.

(Per M. H. Beg, J.): (1) In view of the definition of public street in s. 2(15) of the Bombay Police Act, which is wider than the commonly accepted meaning of a 'public street' and the purposes for which it is deemed to be dedicated, the public can hold a meeting at a place falling under the definition of street. The term 'public meeting' is generally used for a gathering of persons who stand or take their seats at a particular place so as to be addressed by somebody. ;Such a meeting, if held on a highway, must necessarily interfere with the user of the highway by others who want to use it for the purpose for which the highway is dedicated. If this is so, the Commissioner of Police could be authorised to regulate it in the manner contemplated by r. 7, provided there are sufficient safeguards, against misuse of such a power. [297C-E; 298E-G]

(2)In the matter of holding public: meetings on a public street the law in India is not different from the law n England. There is no separate. right of 'public meeting' let alone a constitutional fundamental right attached to public streets which are dedicated for the particular purpose of. passing and repassing. Any recognition of a right to hold a meeting will obviously be inconsistent with

the purpose for which public streets ire dedicated. A meeting held on a highway will not necessarily be 'illegal. it may be sanctioned by custom or rest on permission; but a mere erroneous assumption can never form the basis of a right unless buttressed by something stronger. It is also true that there is a well recognised right of taking, out processions on public thoroughfares in India as an incident of the well-. understood right of their user by the public. But, the right to take out a procession is different from the right to hold a public meeting and the, former could root be converted and expanded into the latter. The right to hold a public meeting may be linked with or even flow out of rights under Art. 19(1) (a) and (b), yet the right to hold a meeting at a particular. place must rest on the proof of user of that place for the exercise of a, fundamental right and, the right to such a user must be established in each particular case quite apart from and independently of the fundamental, rights, guaranteed by Art. 19(1). The law in U.S. as laid down in Hague v. C.I.O. (307 U.S. 496) also appears to be that whatever rights can be properly exercised by members of the public on a public thoroughfare may be exercised there but the others could be exercised in a park where a public meeting could be held. Even otherwise whatever may be the law in U.S., there is no authority for the proposition that there is an unconditional right of holding a public meeting at every public place, much less on a public thoroughfare or street in India as a necessary incident of the. fundamental rights either of free speech or of assembly. [294D-G; 295B-D297E-H]

Although, the right to hold a public meeting at a public place may not be a fundamental right by itself, yet, it is so closely connected with fundamental rights that a power to regulate it should not be left in a nebulous state. it should be hedged round with sufficient safeguards against its misuse even if it is to be exercised by the Commissioner of Police. But, r. 7 is so worded as to enable the Commissioner to give or refuse permission to hold a public meeting at a place failing within the definition of "a street" without giving reasons for either a refusal or a permission. it will, therefore. be possible for him, under the guise of powers given by this rule. to discriminate. when the rule does not indicate the circumstances in which permission may be given or refused. The rule of law that the Constitution contemplates demands the existence of adequate means to check posibili-

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ties of misuse of every kind of power lodged in officials of the St-ate. Therefore, the rule should be struck down as contravening Art. 14, although, if the repercussions on the rights guaranteed by Art. 19(1) (a) and (b) were also taken into account, it could be struck down as an unreasonable restriction on those rights as well. [298G-H; 299A-G]

Saghir Ahmmed v. State of U.P., A.I.R. 1954 S.C. 720, Municipal Board, Manglaur v. Shri Mahadeoji Maharaj, [1965] 2 S.C.R. 242, Lakshmidhar Misra & Ors. v. Bengalal A.I.R. 1950 P.C. 56 Halsbury's Laws of England (3rd Ed.) Vol. 19, p. 73 Blackwell's Law of Meetings (9th Ed.) p. 5 and Dicey's Law of Constitution (10th Ed.) pp. 271-72, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 152 of 1970.

Appeal by certificate from the judgment and order dated

December 12, 1969 of the Gujarat High Court at Ahmedabad in Special Criminal Application No. 42 of 1969.

M. K. Ramamurthi, J. Ramamurthy, for the appellant.

B. Sen, P. Ramesh and S. P. Nayar, for the respondents.

The Judgment of Sikri C.J., Ray and Jaganmohan Reddy, JJ. was delivered by Sikri, C.J. Mathew, and Beg, JJ. delivered separate opinions.

Sikri, C.J. This appeal by certificate granted by the Gujarat High Court raises an important question as to the right of citizens in India to hold public meetings on public streets, and the restrictions which can be placed on that right.

On August 30, 1969 the appellant made an application to the Police Commissioner, Ahmedabad, for permission to hold a public meeting near Panch Kuva Darwaja, Ahmedabad, on September 4, 1969 at 8.00 p.m. in connection with the All India students' strike sponsored by All India Students Federation, to be organised on September 5, 1969.

On September 2, 1969, this permission was refused because the "application was not sent 5 days before the day of the meeting as required by notification of the Commissioner of Police, No. 982/66 dated February 15, 1966. "The appellant was also informed that "holding a meeting with or without loudspeaker, without the permission, amounts to an offence."

On August 30, 1969 the appellant had also applied for permission to hold another public meeting on September 5, 1969. The Deputy Police Commissioner informed him on September 2. 1969, that the permission "cannot be granted inasmuch as a meeting was held on 7-8--69 under a similar permission whereafter certain elements had indulged in rioteering and caused mischief to private and public properties, regarding which a crime

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also has been registered". He was also informed that "in view of the present position, it is not possible to grant such permission in order to maintain law and order." He was further asked to note that "holding meeting with or without a loudspeaker without permission amounts to an offence."

The appellant thereupon filed a petition under Art. 226 of the Constitution, on September 3, 1969, praying inter alia.

(1) to quash the orders mentioned above;

(2) to declare s.33(o) read with s.33(y) of the Bombay Police Act (hereinafter called the Act) void;

(3) to declare the rules Nos. 7 to 11, 14 and 15 of the Rules for Processions and Public Meetings hereinafter called the Rules) void; and

(4) to declare that the petitioner was entitled to hold public meetings on September 4, 1969 and September 5, 1969 without obtaining permission from the respondent.

By the time the case was heard, the two impugned orders had become infructuous by lapse of time. The High Court, however. examined the other contentions raised before it because it felt that the organization, of which the appellant was an office bearer, had to organise meetings on a number of occasions and every time the question of applying for permission would arise.

The relevant statutory provisions that applied to Ahmedabad are as follows :

Bombay Police Act, 1951

"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;

(n)licensing, controlling or, in order to prevent the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers in the vicinity, prohibiting the playing of music, the beating of drums, tom-toms or other instruments and blowing or sounding of horns or other noisy instruments in or near streets or public places;

(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;

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(y)prescribing the procedure in accordance with which any licence or permission sought to be obtained or required under this Act should be applied for and fixing the fees to be charged for any such licence or permission."

In exercise of the powers, conferred by Clauses (n), (o) and. (y) of sub-section (1) of Section 33 of the Bombay Police Act, 1951 (Bom. Act XXII of 1951) read with Section 4 of the Bombay State Commissioners of Police Act of 1959 (Bom. Act LVI of 1959), the Commissioner of Police, Ahmedabad City, with the previous sanction of the Government of Gujarat, made the following rules for conduct, behaviour and action of persons desirous of conducting processions or holding or convening public meetings in the areas covered by the Commissionerate of Police, Ahmedabad City. Rules (1) to (6) deal with processions. Rule (6) may be reproduced.

"6. Subject to the, provisions of the foregoing rules and subject to the imposition of such conditions as may be deemed necessary, a permission shall be granted, unless the officer concerned is of opinion that the pro-cession proposed to be organised or taken out shall be prohibited, in which case he shall forth with refer the application together with his report thereon for the orders of the Commissioner of Police, Ahmedabad City.

No permission shall be required for a bonafide religious or marriage procession consisting of less than 100 or a funeral procession of a person who has died a natural death."

Rules (7) to (13) deal with holding of public meetings. Rule (14) and Rule (15) apply to both processions and public meeting. Rules (7), (8), (9), (11) and (14) are reproduced below. Rule (15) makes the infringment of rules and conditions punishable.

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

(8). The, application for permission shall be made in writing and shall be signed by the persons who intend to organise or promote such a meeting.

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(9). The application shall be made to the officer

authorised to issue permission not less than 5 days before the time, at which the public meeting is to start.
(11). The applicant or his representative shall remain present during the Public Meeting with the permission granted to him and shall produce the same for inspection by any Police Officer whenever required.
(14). The organiser or organisers of the procession or the public meeting shall on demand furnish a security of such amount as fixed by the Commissioner of Police or any officer authorised by the Commissioner of police in this behalf, for the due observance of the conditions of the permission."
Before the High Court, it was urged on behalf of the appellant as follows :
" (1). Sub-clause (o) of section 3 3 (1) of the Bombay Police Act does not empower the Commissioner of Police to frame rules requiring any person to obtain prior permission for holding a meeting and the rule so framed is in excess of the rule making power and is Consequently invalid.
(2)Sub-clause (0) of Section 33(1) of the Bombay Police Act suffers from the vice of excessive delegation of legislative powers, and is ultra vires Article 14 in that it confers uncontrolled, naked and arbitrary powers on the Commissioner of Police to grant or refuse permission at his sweet will and pleasure without laying down any guiding principles.
(3)Sub-clause (o) of section 33(1) and the Rules framed thereunder are ultra vires Articles 19(1) (a) and 1 9 (11) (b) inasmuch as they put a total ban on the fundamental rights of freedom of speech and freedom to assemble peaceably; and even if it be held that the rules put restriction on the exercise of the said fundamental rights, the same are unreasonable."
The High Court held, regarding the first ground, that the word 'regulating' "implies prohibition and, therefore, the rule providing for prior permission which may enable the commissioner of Police to prohibit a meeting from taking place would fall within the ambit of clause (o). The provision contained in clause (y) would not abridge the meaning of the word 'regulating' in clause (o)."
19-L348Sup C.I./73
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The second contention was repelled by the High Court on the ground that "a detailed examination of the various provisions of the Act clearly indicates the policy underlying the Act and provides clear guidance to the officers who have to exercise powers of framing Rules conferred onthem." The High Court observed that "it cannot besaid that clause (o) confers naked, uncontrolled and arbitrary powers on the Commissioner of Police to grant or refuse permission at his sweet will and pleasure."
Regarding the third ground it was held that the Rules imposed reasonable restrictions and were covered by Art. 19(2).
The learned counsel for the appellant submitted before us the following propositions :-
(1) Rules 7, 13. 14 and 15 promulgated by the Commissioner of Police on October 21, 1965 are ultra vires section 33 (1) (o) of the Bombay Police Act, 1951, as in force in Gujarat, inasmuch has the said provisions do not authorise framing of rules requiring the prior permission for holding meetings.
(2)Section 33 (1) (o) of the Act is unconstitutional as it infringes Art. 19(1) (a) and (b). The restrictions are wide enough to cover restrictions both within and without the

limit of permissible legislative action affecting such rights.
(3)In any event the section and the. rules impose unreasonable restrictions on the fundamental right guaranteed to the appellants under Art. 19(1) (a) & (b) because

(a) the ambit of power conferred on the Executive is very large and uncontrolled;
(b) such power is open to be exercised arbitrarily.
(c) the restrictions imposed are excessive;
(d) the procedure and manner of imposition are not fair and just;
(e) there are no sufficient safeguards against the misuse of power conferred and there is no right of representation;
(f) the section and the rules suffer from vagueness:
(g) the restrictions are not narrowly drawn to prevent the supposed evil and do not satisfy the touchstone for legislation dealing with basic freedom, namely, precision;
(h) in delegating powers to the Executive to impose restrictions the legislature has not provided adequate standards to pass scrutiny by accepted tests.

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(4) The, impugned section And rules violate Art.14 as they enable the authorities to discriminate between persons without just classification.
(5)Section 33(1)(o) suffers from the vice of excessive delegation of legislative powers and is therefore void.
Coming to the first point raised by the learned counsel, it seems to us that the word 'regulating In s. 33(0) would include the power to prescribed that permission in writing should be taken a few days before the holding of a meeting on a public street. Under s. 35(o) In(.) rule could be prescribed prohibiting all meetings or processions. The section proceeds on the basis that the public has 'a right to hold assemblies and processions on and along streets though it is necessary to regulate the conduct and behaviour or action of persons constituting such assemblies or processions in order to safeguard the rights of citizens and in order to preserve public order. The word 'regulate'. according to Shorter Oxford Dictionary, means, "to control, govern, or direct by rule or regulations to subject to guidance or restrictions".
The impugned Rules do not prohibit the holding of meetings but only prescribe that permission should be taken although it is not stated on what grounds permission could be refused. We shall deal with this aspect a little later.
It was urged before us that according to the Common Law of England no one has a right to hold a meeting on a highway and the same law prevails in India and, therefore, we should read the word "regulating" to mean a right to prohibit the holding of a meeting also. 'Reference was made to Halsbury, Third Edition, volume 19, where it is stated that "the right of the public is a right to pass along a highway for the purpose of legitimate travel, not to be on it except so far as their presence is attributed to a reasonable and proper use of the highway as such. (page 73. para 107).
On page 276 it is stated that "the right of passage does not include the right torace upon the highway, and to do so is an indictable nuisance,nor is there any right to organise or take part in a processionor meeting which naturally

results in an obstruction and is an unreasonable user of the highway." In the footnote it is stated that "the right of the public on the highway is 'a right of passage in a reasonable manner and there is no right to hold meetings in the highway."

Reference was also made to Blackwell's Law of Meetings (9th edn. p. 5), wherein it is stated as follows :-

> "There appears to exist a view that the public has a right to hold meetings for political and other purposes
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> on the highway. This is an erroneous assumption. A public highway exists for the purpose of free, passage and free passage only, and for purposes reasonably incidental to this right. There can be no claim on the part of persons who desire to assemble for the purpose of holding a meeting to do so on the highway. The claim is irreconcilable with the purpose for which a highway exists."
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> It is further stated at p. 6 as follows
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> "Although there is no right on the part of the public to bold meetings on a highway, a meeting is not necessarily unlawful because it is held on a highway. Thus, it has been held that a meeting on a public highway may be a lawful meeting within s. 1(1) of the Public Meeting Act 1908. Whether or not it is unlawful depends upon the circumstances in which it is held, e.g., whether or not an obstruction is caused. But the only clear right of the public on the highway is the right to pass and repass over it, although many other things go by tolerance."

We may mention that Dicey took a slightly different position. According to Dicey'os Law of the Constitution (Tenth Edition) pages 271-72

> "The right of assembling is nothing more than a result of the view taken by the courts as to individual liberty of person and individual liberty of speech. There is no special law allowing A, B and C to meet together either in the open air or elsewhere for a lawful purpose, but the right of A to go where he pleases so that he does not commit a trespass, and to say what he likes to 13 so that his talk is not libellous or seditious, the right of B to do the like, and the existence of the same rights of C, D, E and F, and so on ad infinitum, lead to the consequence that A, B, C, D and a thousand or ten thousand other persons, may (as a general rule) meet together in any place where otherwise they each have a right to be for a lawful purpose and in a lawful manner. A has a right to walk down the High Street or to go on to a common. B has the same right. C, D and all their friends have the same right to go there also. In other words. A, B, C and D and ten thousand such, have a right to hold a public meeting; and as A may say to B that he thinks an Act ought to be passed abolishing the House of Lords, or that the House of Lords are bound to reject any bill modifying the Consti-
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> tution of their House, and as B may make the same remark to. any of his friends, the result ensues that A and ten thousand more may hold a public meeting either to support the Government or to encourage the resistance of the Peers. Here then you have in substance that right of public meeting for political and other purposes which is constantly treated in foreign countries as a special privilege to be exercised only subject to careful restrictions".

It is not necessary to refer to the English authorities on the point because in India the law has developed on slightly different lines, especially with regard to processions, and the Statutes of the country have treated the right to take out processions and hold meetings on streets in a similar fashion.

In Parthasaradiayyangar v. Chinnakrishna Ayyangar(1) it was held that persons were "entitled to conduct religious processions through public streets so that they do not interfere with the ordinary use of such streets by the public and subject to such directions as the Magistrates' may lawfully give to prevent obstruction of the thoroughfare or breaches of the public peace." Reference was made in this judgment (p. 306) to an earlier decision where the Sadar Court, in Appeal 141 of 1857 (M.S.D. 1857, p. 219) had declared that "the right to pass in procession through the public streets of a town in such a way as the Magistrate might not object to as dangerous to the public safety, was a right inherent in every subject of the state."

In Sundram Chetti v. The Queen(2), after referring to certain orders of the Government and judicial opinion, the Court observed :

> " Both acknowledged the existence in every citizen of the right to use a public highway for processional as well as for ordinary purpose,%. Both recognised in the Magistrate a power to suspend and regulate, and in the police a power to regulate the exercise of the right."

In Sadagopacharior v. A. Rama Rao(3), the head-note reads

> "The right to conduct religious processions through the public streets is a right inherent in every person, provided he does not, thereby, invade the rights of

(1) I.L.R. (1882) 5 Mad. 304; 309. (2) I.L.R. (1883) 6 Mad. 203; 215,219. (3) T.L.R. (1903) 26 Mad. 376.

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> property enjoyed by others, or cause a public nuisance or interfere, with the ordinary use of the streets by the public, and subject to directions or prohibitions for the prevention of obstructions to thoroughfares or breaches (if the peace."

In Vijiaraghav'a Chariar v. Emperior(l) there was a difference of opinion. Benson, J., observed at page 585

> "No doubt a highway is primarily intended for the use of individuals passing and re-passing along it in pursuit of their ordinary avocations, but in every country, and especially in India, highways have, from time immemorial, been used for the passing and re-passing of processions as well as 'of individuals and there is nothing illegal in a procession or assembly engaging in worship

while passing along a highway, an more than in an individual doing so."

Benson, J. further observed at p. 587, as follows :

"The practice of using the public highways for religious processions has existed in India for thousands of years. History, literature and tradition all tell us that religious processions to the village shrines formed a feature of the national life from the very earliest times. That atone is sufficient to raise a presumption that it is lawful and to throw on those who allege it to be unlawful the onus of showing that it is forbidden by law, but this it admittedly is not. The law recognizes the use of the highway by processions as lawful: and gives the Magistrate and superior officers of police power to direct the conduct of assemblies and processions through the public streets and to regulate the use of music in connection with them, and to prevent obstructions on the occasion of such assemblies and processions..... The law recognises religious processions as lawful just as much as it recognizes other processions..... It is more reasonable to suppose that he would dedicate the highway to the purposes for which, in accordance with the custom of the country, it would he required by the people. The penal law of India extends a special protection against voluntary disturbances to all assemblies lawfully engaged in religious worship. A procession is but an assembly in motion and if it is, a religious procession., it is, in my judgment,

(1) I.L.R. (1903) 26 mad. 554.

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entitled to the special protection given by the Penal Code assemblies lawfully engaged in religious worship."

We have referred to these cases in detail because they were approved of by the Privy Council in Manzur Hasan v. Muhammed Zaman(l). In that case the Privy Council held :

"In India, there is a right to conduct a religious procession with its appropriate observances through a public street so that it does not interfere with the ordinary use of the street by the public, and subject to lawful directions by the magistrates. A civil suit for a declaration lies against those who interfere with a religious procession or its appropriate observance."

In Chandu Sajan Patil v. Nvahalehand(2) the Full Bench held that a citizen had an inherent right to conduct a nonreligious procession through a public road.

This Court followed the decision of the Privy Council in Shaikh Piru Bux v. Kalandi Pati (3). It is true these decisions primarily deal with processions but the statutes of the country, notably the Police Acts, deal with assemblies and processions on the same basis, and as pointed out by Benson, J., a procession is but an assembly in motion.

This Court considered the question of the right of citizens to carry on motor transport business on highways in Saghir Ahmmad v. State of U.P.(4). The following passage from

the judgment of Venkatarama Ayyar J., in C.S.S. Motor Service v. State Madras(5) was approved :

> "The true position then is, that all public streets and roads vest in the State, but that the State holds them as trustees on behalf of the public. The members of the public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user, as may be requisite for protecting the rights of the public generally; .... but subject to such limitations the right of a citizen to carry on business in transport vehicles on public pathways can not be denied to him on the ground that the State owns the highways."

(1) 52 I.A. 61 (2) A.I.R. 1950 Bom. 192.
(3) Civil Appeal No. 25 of 1966; Judgment dated October 29, 1968).
(4) [1955] 1 S.C.R. 707, (5) [1952] 2 M.L, J. 894
of
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We are unable to appreciate how this passage militates against the contentions of the appellant. The Court was not then concerned 'with the use of public streets for processions or meetings.

It seems to us that it follows from the above discussion that in India a citizen had, before the Constitution, a right to hold meetings on public streets subject to the control of the appropriate authority regarding the time and place of the meeting and subject to considerations of public order. Therefore, we are unable to hold that the impugned rules are ultra vires s. 3 3 (1) of the Bombay Police Act insofar as they require prior permission for holding meetings.

This takes us to points, (2) and (3) mentioned above. It is not surprising that the Constitution-makers conferred a fundamental right on all citizens 'to assemble peaceably and without arms'. While prior to the coming into force of the Constitution the right to assemble could have been abridged or taken away by law, now that cannot be done except by imposing reasonable restrictions within Art. 19(3). But it is urged that the right to assemble does not mean that that right can be exercised at any and every place. This Court held in Railway, Board v. Narinjan Singh(1) that there is no fundamental right for any one to hold meetings in government premises. It was observed

> "The fact that the citizens of this country have freedom of speech, freedom to assemble peaceably and freedom to form associations or unions does not mean that they can exercise those freedoms in whatever place they please."

This is true but nevertheless the State cannot by law abridge or take away the right of assembly by prohibiting assembly on every public street or public place. The State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order.

This Court in Babulal Parate v. State of Matharashtra 2 rightly observed :

> "The right of citizens to take out processions or to hold public meetings flows from the

right in Art. 19(1) (b) to assemble peaceably and without arms and the right to move anywhere in the territory of India."

(1) [1969] 3 C.R 548, 554.
(2) [1961] 3 S.C.R. 423; 438.

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If the right to hold public meetings flows from Art. 19 (1) (b and Art. 19 (1) (d) it is obvious that the State cannot impose unreasonable restrictions. It must be, kept in mind that Art. 19(1)(b), read with Art. 13, protects citizens against State action. It has nothing to do with the right to assemble on private streets or property without the consent of the owners or occupiers of the private property. This leads us to consider whether s. 3 3 (1) (o) of the Act and the rules violate Art. 19(1) (b). We do not think Art. 19(1) (a) is attracted on the facts of the case.

We cannot appreciate how s. 33(1)(o) violates Art. 19(1) (b). It enables the Commissioner to make rules to regulate the assemblies and processions. Without such rules, in crowdedpublic streets it would be impossible for citizens to enjoy their various rights. Indeed s. 33(1)(o) may be said to have beenenacted in aid of the rights under Art. 19(1) (a) and 19(1)(d).

We may mention that the sub-section has nothing to do with the formation of assemblies and processions. It deals with persons ,is members of the assemblies and processions.

The real point in this case is whether the impugned rules violate Art. 19(1)(b). Rule 7 does not give any guidance to the officer authorised by the Commissioner of Police as to the circumstances in which he can refuse permission to hold a public meeting. Prima facie, to give an arbitrary discretion to an officer is an unreasonable restriction. It was urged that the Marginal Note of s. 33-power to make rules for regulation of traffic and for preservation of order in public place, etc.-will guide the officer. It is doubtful whether a marginal note can be used for this purpose, for we cannot imagine the officer referring to the marginal note of the section and then deciding that his discretion is limited, specially as the marginal note ends with 'etcetera'. It is also too much to expect him to look at the scheme of the Act and decide that his discretion is limited.

We may in this connection refer to Cox v. Louisians(l). After starting that "from all evidence before us it appears that the authorities in Baton Rouge, permit or prohibit parades or street meetings in their completely uncontrolled discretion" it was observed

"This Court has recognized that the lodging of such broad discretion in a public official allows him to determine which expressions of view will be permitted and which will not. This thus sanctions a device for the

(1) 13 L.Ed. 2d.471; 486 paras 15,16,17.

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suppression of the communication of ideas and permits the official to act as a censor. See Saia v. New York, supra, 334 US at 562, 92 Led at 1578. Also inherent in such a system allowing parades or meetings only with the prior permission of an official is the obvious danger to the right of a person of group not to be denied equal protection of the laws. See Niemotko v. Maryland, supra, 340 US at 272, 284, 95 Led at 270, 277; cf Yick Wo. v. Hopkins, 118 US 356, 30 L ed 220, 6 S Ct 1064.

> It is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups either by use of a statute providing a system of broad discretionary licensing power or, as in this case, the equivalent of such a system by selective enforcement of an extremely broad prohibitory statute."
>
> "It is, of course, undisputed that appropriate, limited discretion, under properly drawn statutes or ordinances, concerning the time, place, duration, of manner of use of the streets for public assemblies may be vested in administrative officials, provided that such limited discretion is "exercised with 'uniformity of method of treatment upon the facts of each application, free from improper or inappropriate considerations and from unfair discrimination'. . . and with a systematic, consistent and just order of treatment, with reference to the convenience of public use of the highways..... Cox v. New Hampshire, supra, 312 US at 576, 85 L ed-at 105, 133 ALR 1396. See Poulos v. New Hampshire, supra.
>
> "But here it is clear that the practice in Baton Rouge allowing unfettered discretion in local officials in the regulation of the use of the streets for peaceful parades and meetings is an unwarranted abridgment of appellant's freedom of speech and assembly secured to him by the First Amendment, as applied to the States by the Fourteenth Amendment."

These extracts clearly bring out the dangers of conferring arbitrary discretionary powers.

We may make it clear that there is nothing wrong in requiring previous permission to be obtained before holding a public meeting on a public street, for the right which flows from Art.
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19 (1) (b) is not a right to hold a meeting at any place and time. It is a right which can be regulated in the interest of all so that all can enjoy the right.

In our view rule 7 confers arbitrary powers on the officer authorised by the Commissioner of Police and must be struck down. The other Rules cannot survive because they merely lay down the procedure for obtaining permission but it is not necessary to strike them down for without Rule 7 they cannot operate. Rule 14 and Rule 15 deal both with processions and public meetings. Nothing we have said affects the validity of these two rules as, far as processions are concerned.

In view of this conclusion it is not necessary to decide the other points raised by the learned counsel for the appellants.

A number of other American cases were referred to in the course of arguments but we do not find it useful to refer to an of them in detail. It is, however, interesting to note that in the United States of America the right to use streets and parks And public places "has from ancient time been a part of the privileges, immunities, rights and

liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied." (vide Roberts, J., in Hague v. C.I.O. (83 L. Ed. 1423 at 1436-37)]. This passage was cited with approval in Shuttlesworth v. Birmingham (22 L. Ed. 2.nd, 162 at 168).

In the result we set aside the judgment of the High Court, allow the appeal and declare that r. 7 of the Rules framed by Commissioner of Police, Ahmedabad, is void as it infringes Art. 19(1)(b) of the Constitution. We need hardly say that it will be open to the Commissioner of Police, Ahmedabad, to frame a proper rule or rules.

MATHEW, J. I agree with the conclusion of my Lord the chief Justice but my reasons for that conclusion are different.

The appellant filed an application tinder Art. 226 of the Constitution in the High Court of Gujarat at Ahmedabad, praying for a declaration that orders contained in Annexures, A and 'B' to that application, by which the Deputy Commissioner of Police Special Branch Ahmmadabad the 2nd respondent refused to grant permission to the appellant to hold public meetings near Panch Kuva Darwaja on the 4th and 5th September 1969, were invalid and that rules 7 to 11, 14 and 15 framed under s.3(1)

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of the Bombay Police Act, 1951, as applied to Saurashtra area in Gujarat which prescribe the requirement of prior permission and the method of applying for the same, etc., were ultra vires the sub-section and violative of his fundamental right under Art. 19(1) (a) and (b). The Court found that the principal prayer in the application, namely, the challenge to the validity of the two orders, had become infructuous by lapse of time as the dates on which the intended meetings were to be held had long since passed but considered the question whether rules 7 to 11, 14 and 15 were intra vires section 33(1) and whether they would violate the fundamental rights of the applicant under Art. 19(1) (a) and (b) of the Constitution. The Court dismissed the application holding that the rules were intra vires the sub-section under which they were framed and that they did not violate the fundamental rights of the petitioner under Art. 19 (1) (a) or (b) This appeal is by certificate from that judgment.

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;
>
> xx xx xx xx xx xx xx xx xx xx
>
> (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 of the Rules framed by the Commissioner of Police under s. 33 (1) (o) provides :
>
> "7. No public meeting with or without loud-speaker, 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."

The appellant submitted that S. 33(1)(o) did not empower the Commissioner or the District Magistrate to frame a rule requiring a person to obtain prior permission for conducting a public meeting on a public street, as such a rule would imply that the Commissioner or the District Magistrate has power to refuse permission for. holding such a meeting as a power to permit

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normally implies a power not to permit and so, the rule is bad. (It was under rule 7 that the Commissioner refused permission to hold meetings on the 4th and 5th September, 1969).

What the sub-section provides is making of rules for 'regulating' the conduct and behaviour, or action of persons constituting assemblies. The sub-section presupposes an assembly and 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 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 or persons before an assembly is constituted. Before an assembly is constituted, every member of the public is a potential member of it, because every such member, if he so choose. right become a member of the assembly. Does, then, the sub-section authorise the making of rules to regulate the conduct, behaviour or action of every such member, before he becomes a member of the assembly ? I think not.

A power to "regulate' does not normally include a power to prohibit (see Toronto v. Virao(l), Ontario v. Canada(2). A power to regulate implies the continued existence of that which is to be regulated (see Birmingham and Midland Motor Omnibus Col. Ltd. v. Worcestershire County Council(). If rule I authorises the Commissioner to prohibit a public meeting, is it consistent with the sub-section which authorizes only "regulating the conduct.,. . . " ? When the Legislature wanted to give the rule making authority a power to frame rules prohibiting an activity, it has taken care to do so by the appropriate word . For instance, sub-section (p) of s. 33(1) speaks of "prohibiting the hanging or placing of any cord or pole across a street. . . . ", subsection (q) of s. 33 (1) relates to "prohibiting the placing of building materials in any street". In these sub-sections, the word 'prohibit' is used to show that the rule making authority has power to pass a rule prohibiting the activities therein mentioned. Similarly sub-section (x) of s. 3 3 (1) provides for "regulating or prohibiting the sale of any ticket The juxtaposition of these words is a further indication to show that the legislature intended different connotations to the words. I am not saying that a power to regulate can never include a power to prohibit. But the context here does not compel such

(1) [1896] A.C. 88.
(2) [1896] A.C. 348.
(3) [1967] 1 W.L.H. 409.

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a reading. Rule 7 is, therefore, ultra vires the sub-section. Even if the rule is ultra vires the sub-section the appellant will not be entitled to hold public meetings

on the street in question unless the appellant has the right in law to do so. It was, therefore, argued on behalf of the appellant that every citizen has the fundamental right to hold public meetings on a public street.

The respondents, however, submitted that, in India, the law is, that there is no right, let alone a fundamental one, to hold public meeting on public street. In Saghir Ahmmad v. The State of U.P. and others(1), this Court said :

> "According to English law, which has been applied all along in India, a highway has its origin, apart from statute,, in dedication, either express or implied, by the owner of the land of a right of passage over it to the public and the acceptance of that right by the public".

The only right acquired by the public is a right to pass and repass it at their pleasure for the purpose of legitimate travel. Ex-parte Lewis(2), Wills, J. speaking for- the Court said

> "A claim on the part of persons so minded to assemble in any numbers, and for so long a time as they please to remain assembled, upon a highway, to the detriment of others having equal right, is in its nature irreconcilable with the, right of free passage, and there is, so far as we have been able to ascertain, no authority whatever in favour of it. It was urged that the right of public meeting, and the right of occupying any unoccupied land or highway that might seem appropriate to those of her Majesty's subjects who wish to meet there, were, if not synonymous, at least correlative. We fail to appreciate the argument."

In Reg. v. Omninghame Graham and Burns(:) the Commissioner of Police, in the exercise of his powers vested in him under the Metropolitan Police Act, 1839, issued an order that "no organised procession shall be allowed to approach the Trafalgar Square on Sunday the 13th instant". It was argued that he had no power to forbid an orderly meeting. But Charles, J. in charging the jury said :

> "I can find no warrant for telling you that there is a right of public meeting either in Trafalgar Square or any other public thoroughfare. So far as I know the law of England, the use of public thoroughfares is for people to pass and repass along them. That is the

(1) [1965] 1 S.C.R. 707, 715. (2) (1888) Law Reports 21 Q.B.D. 191

(3) (1886-90) Cox's Criminal Law Cases. Vol. 16, 420,29-30.

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> purpose for which they are, as we say, dedicated by the owner of them to the use of the public and they are not dedicated to the public use for any other purpose that I know of than for the purpose of passing and re-passing;"

A meeting held on a highway, although it might be a trespass. against the Authority in which the highway is vested is not,, on that ground, wrongful against the members of the public. As far as they are concerned the meeting is a wrong only if it is a nuisance. As the public are entitled to the unobstructed use of the highway for passing

and repassing, any meeting which appreciably obstructs the highway would seem to constitute such a nuisance. The test is whether it "renders the way less commodious than before to the public". The fact that sufficient alternative passage space is left is no defence. "It is no defence to show that..... though a part of the highway actually used by the passengers is obstructed, sufficient available space is left." (1) Moreover, it is not necessary to prove that any one has been obstructed; the placing of obstructions on a public road or street in a manner calculated to create an obstruction to traffic is an offence although no person or carriage may have been actually obstructed. In Gill v. Carson and IV Nield(2) Viscount Reading, C.J. said

> "In my judgment it is not necessary to prove that a person has been actually obstructed, it is quite sufficient to prove circumstances from which the justices can conclude that in the ordinary course persons may be obstructed, and that the actual use of the road was calculated to obstruct even though no person was proved to have been obstructed."

Applying these rules to the special facts of a public meeting in the highway, it would appear that such a meeting, however reasonable and desirable its purposes may be, is a nuisance if it causes any appreciable obstruction, and that it is not necessary to prove that in fact, any one has been prevented from passing. In De Morgan v. Metropolitan Board of Works(3) it was held that although there is a widespread belief that the general public has a right to hold meeting on a common, no such right was known to the law. When it was argued that such meetings were always permitted, Lush. J. is reported to have said that "such uses did not constitute a right or prove anything more than an excused or licensed trespass". It may be stated, therefore. that if every unlicensed public meeting is a trespass, as against a person

(1) Halsburly, Hailsham ed., Vol. xvi, p. 355
(2) [1917] 2 K.B. 674, 677.
(3) [1880] 5 Q.B.D. 155, 157.

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or body of persons in whom the surface of the highway is vested, then this obviously may limit the so called right of public meeting to the 'Vanishing point.

Dicey in his Law of the Constitution(1) has observed':

> "A has a right to walk down the High Street or to go on to a common. B has the same right. C, D and all their friends have the same right to go there also. In other words, A, B, C and D, and ten thousand such, have' a right to hold a public meeting; is

It might not follow that because A, B, C. D, etc., have a right to walk down the High Street, they have a legal right to hold a public meeting. Beatty v. Gillbanks(2) which dicey cites as the leading case on the law of public meeting was not directly concerned with this question as the appellants there who were leading a procession through the street intended to hold their meeting on private premises. Dicey has himself pointed out in the Appendix to the eighth edition of the book as follows : (3)

> "Does there exist any general right of meeting in public places? The answer is easy. No such right is known to the law of England.
>
> "..... But speaking in general terms the Courts do not recognise certain spaces as set aside for that end. In this respect, again, a

crowd of a thousand people stand in the same position as an individual person. If A wants to deliver a lecture, to make a speech, or to exhibit a show, he must obtain some room or field which he can legally use for his purpose. He must not invade the rights of property-i.e., commit a trespass. He must not interfere with the convenience of the public-i.e., create a nuisance.

"The notion that there is such a thing as a right of meeting in public places arises from more than one confusion or erroneous assumption. The, right of public meeting-that is, the right of all men to come together in a place where they may lawfully assemble for any lawful purpose, and especially for political discussion-is confounded with the totally different and falsely alleged right of every man to use for the purpose of holding a meeting any place which in any sense is open to the public. The two rights, did they both exist, are essentially different, and in many countries are

(1) A.V. Dicey, Law of the Constitution, 10th ed., 271-272.
(2) [1882] 9 Q.B.D. 308.
(3) Appenx to Law of the Constitution 8th ed, Note' V on Question connected with th.- right of public meeting", pp. 498-499.

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regulated by totally different rules. It is assumed again that squares, streets, or roads, which every man may lawfully use, are necessarily available for the holding of a meeting. The assumption is false. A crowd blocking up a highway will probably be a nuisance in the legal, no less than in the popular sense of the term, for they interfere with the ordinary citizen's right to use the locality in the, way permitted to him' by law. Highways, indeed, are dedicated to the public use, but they must, be used for passing and going along them, and the legal mode of use negatives the claim of politicians to use a highway as a forum, just as it excludes. the claim of actors to turn it into an open air theatre.The crowd who collect, and the persons who cause a crowd, for whatever purpose, to collect in a street, create a nuisance.....

In Burden v. Rigle'r and another(1), the evidence showed that the urban authority. had tacitly licensed the meeting and so it was not a trespass as against them., No evidence was also adduced that the meeting caused any appreciable obstruction on the highway and so there was no proof of any nuisance. The Court held that the fact that a public meeting is held upon a highway does not make the meeting unlawful whether it is unlawful or not depends upon the circumstances in which it is held e.g., whether or not an obstruction is caused, The Court further, held that even though there is no right to hold a meeting on a highway, i.e., no absolute legal right, it does not necessarily follow that, if a meeting is held, it may not be lawful. And after referring to the decision-in Ex-parte Lewis(2) already referred to, the Court said that the convenors of a meeting cannot, under all circumstances, insist on holding a

meeting.
In Harrison v. Duke of Rutland(3), Lord Esher M. Observed:

> "Highways are no doubt dedicated prima facie for the purpose of passage; but things are done upon them by everybody which are recognised as being rightly done, and as constituting a reasonable and usual mode of using a highway as such."

In Halsbury's Laws of England(4), it is said , that. it is a nuisance organise 'or take part in a procession or meeting which naturally results in an obstruction and is. an unreasonable use of the highway
(1) [1911] L.R. 1 K.B.337
(2) [1965] 1 S.C.R. 707. 715.
(3) [1893] Q.B. 142, C.A. at 146
(4) Hailssham Edition , Vol xvi, p. 362 " Highway".
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Public processions are prima facie legal. If A, B and C have each a right to pass and repass on the highway, there is nothing illegal in their doing so in concert, unless the procession is illegal on some other ground (see Manzur Hasan v. Muhammed Zaman(l) and Chandu Sajan Patil v. Nyshalchand(2). "As 'the public interest is paramount, it is sometimes suggested that, on the analogy of a public meeting, any procession which causes an appreciable obstruction to the highway must be a public nuisance. This, however, is not so. As a public meeting is not one of the uses for which the highway has been dedicated,-it is a nuisance if it appreciably obstructs the road. It is no defence to show that sufficient available space is left if a part of the highway actually used by passengers is obstructed. But, and this is most important, in the case of a procession, the test is whether in all the circumstances such a procession is a reasonable user of the highway, and not merely whether it causes an obstruction. Thus to take an obvious illustration, the temporary crowding in a street occasioned by people going to a circus or leaving it is not a nuisance, for if such a temporary obstruction were not permitted then no popular show, could ever be held" (see Goodhart, Public Meetings and Processions(3). The distinction between the use of a highway to hold a public meeting and the use of it to conduct procession thereon is pointed out by the author and he takes the view that no person has a right to use a highway for holding public meeting even though no nuisance is created. According to him, under the law, a person can use a highway for the purpose for which it has been dedicated i.e., to pass and repass and any other unlicensed use, however desirable it may be from other standpoints, is legally wrongful.
In Lowdens v. Keaveney(4), Gibson, J. said that a procession is prima facie legal and that it differs from "the collection of a stationary crowd" but that a procession may become a nuisance if the right is exercised unreasonably or with reckless disregard of the rights of others.
Justice Holmes, while he was Chief Justice of the Massa-chusetts Supreme Court said

> "For the legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house. When no Proprietary rights interfere, the legislature may and the right of the public

(1) 52 T.A. 61.

(3) Cambridge Law Journal (1936-38), 6, 171.
(2) A.I.R. 1950 Bom. 192.
(4) (1903) 2 I.R. 82.
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to enter upon the public place by putting an end to the dedication to public use. So it may take the less step of limiting the public use to certain purposes."
This dictum was quoted and approved by the U. S. Supreme Court Davis v. Massachusetts(1). But later decisions of the U.S. Supreme Court have politely distinguished the case. In Hague v. C.I.O.(2), Justice Roberts, speaking for the majority, said

> "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute but relative, and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied."

This dictum has been followed in Kunz v. New York (3 Shuttlesworth v. Birmingham (4).
Freedom of assembly is an essential element of any democratic system. At the root of this concept lies the citizens' right to meet face to face with others for the discussion of their ideas and problems-religious, political,, economic or social. Public debate and discussion take many forms including the spoken and the printed word, the radio and the screen. But assemblies face to face perform a function of vital significance in our system, and are no less important at the present time for the education of the public and the formation of opinion than they have been in our past history. The basic assumption in a democratic polity is that Government shall be based on the consent of the governed. But the consent of the governed implies not only that the consent shall be free but also that it shall be grounded on adequate information and discussion. Public streets are the 'natural' places for expression of opinion and dissemination of ideas. Indeed it may be argued that for some persons these places are the only possible arenas for the effective exercise of their freedom of speech and assembly.
(1) U.S. 43 (1897).
(2) 307 U.S. 496, 515-516.
(3) 340 U.S. 490.
(4) 394 U.S. 147, 152.
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Public meeting in open spaces and public streets forms part of the tradition of our national life. In the pre-Independence days such meetings have been held in open spaces and public streets and the people have come to regard it as a part of their privileges and immunities. The State and the local authority have a virtual monopoly of every open space at which an outdoor meeting can be held. If,

therefore., the State or Municipality can constitutionally close both its streets and its parks entirely to public meetings, the practical result would be that it would be impossible to hold any open air meetings in any large city. The real problem is that of reconciling the city's function of providing for the exigencies of traffic in its streets and for the recreation of the public in its parks' with its other obligations, of providing adequate places for public discussion in order to safeguard the guaranteed right of public Assembly. The assumption made by Justice Holmes is that a city owns its parks and highways in the same sense and with the same rights a private owner owns his property with the right to exclude or admit anyone he pleases. That may not accord with the concept of dedication of public streets and parks. The parks are held for public and the public streets are also held for the public. It is doubtless true that the State or local authority can regulate its property in order to serve its public purposes. Streets and public parks exist primarily for other purposes and the social interest promoted by untrammeled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion.

The framers of the Constitution were aware that public meetings were being held in public streets and that the public have come to regard it as part of their rights and privileges as citizens. It is doubtful whether, under the common law of the land, they have any such right or privilege but, nobody can deny the de facto exercise of the right in the belief that such a right existed. Common error facit jus (common error makes the law). This error was grounded on the solid substratum of continued practice,. over the years. The conferment of a fundamental right of public assembly would have been an exercise in utility, 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. Our fundamental rights of free speech and assembly are modelled on the Bill of Rights of the Constitution of the U.S.A [see Express Newspapers (Private) Ltd. and Another v. The Union of India and others(1)]

(1) [1959] S.C.R 12, 121.

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would be relevant then to look to the ambit and reach of those rights in the United States to determinE their content and range in India. On closer analysis, it will be found that the basis of Justice Roberts' Dictum in Hague v. C.I.O.(1) is the continued de facto exercise of the right over a number of years. I think the same reasoning can be applied here.

The power of the appropriate authority to impose reasonable regulation in order to assure the, safety and convenience of the people in the use of public highways has never been regarded as inconsistent with the fundamental right of assembly. A system of licensing as regards the time and the manner of holding public meetings on public street has not been regarded as an abridgement of the fundamental right of public assembly or of free speech. But a system of licensing public meeting will be upheld by Courts only if definite. standards are provided by the law for the guidance of the licensing authority. Vesting of unregulated discretionary power in a licensing authority has always been considered as bad [see the cases on the point discussed in

the concurring opinion of Justice Frankfurter in Niemotko v. MarylaNd(2)].

If there is a fundamental right to hold public meeting in a public street, then I need hardly say that 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 touch stone in an area so closely touching our precious freedoms" [see NAACP v. Button(3).

I would allow the appeal.

BEG, J. I have had the advantage of reading the judgments of Mylord the Chief Justice and my learned brother Mathew. I would like to indicate why, despite my difficulties, I conclude that Rule 7 of the rules made under Section 33(0) of the Bom bay Police Act, 1961 (hereinafter referred to as 'the Act'), is void. The difficulties I refer to arise mainly from two considerations : firstly, it is abundantly clear that there is no separate right of "public meeting", let alone a constitutional fundamental right so described, and, in any case, there, is no such right attached to public streets which are dedicated for the particular purpose of passing and repassing with which any recognition of a right to hold a meeting on a public thoroughfare will obviously be in-

(1) 307 U.S. 496. (2) 340 US. 268

(3) 371 US. 415. 438 (1963)

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consistent; and, secondly, although Rule 7 apparently gives a wide discretionary power to give, or to refuse permission to hold a meeting on a "public street", so that it is capable of being misused or so used as to enable unjustifiable discrimination, yet, it is possible to find some guidance, as the High Court of Gujarat found, in the preamble as well as in Section 33 (0) of the Act. Therefore, it may be possible to rely here, as the High Court had done, upon the presumption that even the appar ently wide discretionary powers vested by Rule 7 in the Commissioner of Police, a highly responsible police officer, will not be abused. It is certainly arguable with some force that the power of the High Court; (to strike down an improper exercise is a sufficient safeguard against its misuse so that it may not be necessary to strike down Rule 7 at all. Furthermore, in (the case before us, a good enough reason was given by the Commissioner to justify a refusal. We are, however, also concerned with the validity of Rule 7 which may be relied upon for future refusals or grants of permission which will, it is urged, effect the petitioner's rights.

There is doubt that a "public street", as it is commonly understood, is really dedicated for the use of the public for the purpose of passing, and repassing on it and not for any other purpose. In this respect, it appears to me that the law in this country, as laid down by this Court in Saghir Ahmad v. State of U.P.(1) and the Municipal. Board, Manglaur v. Sri Mahadeoji Maharaj(2), is not different from the Law in England found stated in Halsbury's Laws of England (3) , as follows :

> "The right of the public is a right to 'pass along' a highway for the purpose of legitimate travel, not to 'be on' it, except so far as their presence is attributable to a reasonable

and proper user of the highway as such".

A right to use a public highway for the purpose of carrying on transport business or other forms of trade such as hawking, or, to take out a procession through it, is really incidental to a reasonable user of the highway by the,-public. It would be fully covered by the purpose for which the public road is deemed to be dedicated. But. as regards the supposed right to hold a "Public meeting" on a highway, it appears to me that the following observations from Blackwell's "Law of Meetings" (9th Edn..p. 5), could apply equally well here :

> "There appears to exist a view that the public has a right to hold meetings for political and other purposes on the highway. This is an erroneous assumption.

(1) Alit 1954 S.C. 720. (2) [1965] S.C.R. p. 242.
(3) Halsbury's Laws of England 'Third Edn. Vol, 19, p. 73.
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> A public highway exists for the purpose of free passage only, and for purposes reasonably incidental to this right. There can be no claim on the part of persons who desire to assembly for the purpose of holding a meeting to do so on the highway. The claim is ir-reconcilable with the purpose for which a highway exists".

I do not find it possible to accept the view that a merely erroneous assumption can ever form the basis of a right unless buttressed by something stronger.

No doubt a meeting held on a highway will not necessarily be illegal. It may be sanctioned by custom or rest on permis-sion, from an authority prescribed by statute, to put a particular part of the public highway to an exceptional and extraordinary user for a limited duration even though such user may be inconsistent with the real purpose for which the highway exists. The right has, however, to be shown to exist or have a legal basis, in every case in which a claim for its exercise is made, with reference to the particular part of the highway involved.

The Privy Council pointed out, in Lakshmidhar Misra & Ors. v. Bangalal & Ors.(1), the right to user of a particular piece of land for a particular purpose, such as holding a fair, may be part of the customary law of locality. Thus, a customary right to use a highway for special purposes sometimes may exist provided the ingredients of such a right are established although the customary right may not be consistent with the purpose for which the highway is dedicated. Proof of such a customary right attaching to a particular part of a highway must, however, be a matter of evidence in every case. It seems clear to me that we are not concerned with such rights as they were not set up anywhere in the case be-fore us, and, even if such a right had been set up, it could only be adjudicated upon satisfactorily in a civil suit.

No doubt Dicey's Law of the Constitution (10th Edn. p. 271-272) contains a passage which deals with the right of a subject to pass. through a highway and to proceed to "a common" together with others in procession and to hold a public meeting, for political or other purposes without obtaining the prior permission of any authority to exercise such a right. I am, however, unable to read into this passage the further right of holding a public meeting on a highway or public street. It seems to me that what is referred to there is only the right to pass through

(1) AIR 1950 P.C. p. 56

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a public thoroughfare in order to proceed to and hold a meeting on "a common". There may be a right of using "a common" for the purpose of holding public meetings by custom.
In the Appendix to Dicey's "Law of the Constitution(), the position under the English law is stated very clearly as follows

> "Does there exist any general right of meeting in public places" The answer is easy. No such right is known to the Law of England.
> "..... But speaking in general terms the courts do not recognise certain spaces as set aside for that end. In this respect, again, a crowd of a thousand people stand in the same position as an individual person. If A wants to deliver a lecture, to make a speech, or to exhibit a show, he must obtain some room or field which he can legally use for his purpose. He must not invade the rights of property-i.e. commit a trespass. He must not interfere with the convenience of the public-i.e. create a nuisance.
> "The notion that there is such a thing as a right of meeting in public places arises from more than one confusion or erroneous assumption. The right of public meeting-that is, the right of all men to come together in a place where they may lawfully assemble for any lawful purpose, and especially for political discussion-is confounded with the totally different and falsely alleged right of every man to use for the purpose of holding a meeting any place which in any sense is open to the public. The two rights, did they both exist, are essentially different, and in many countries are regulated by totally different rules. It is assumed again that squares, streets, or roads, which every man may lawfully use, are necessarily available for the holding of a meeting. The assumption is false. A crowd blocking up a highway will probably be a nuisance in the legal, no less than in the popular sense of the term, for they interfere with the ordinary citizen's right to use the locality in the way permitted to him by law. Highways, indeed are dedicated to the public use, but they must be used for passing and going along them, and the legal mode of use negatives the claim of politicians to use a highway as a forum, just a,-, it excludes the claim of actors to turn it

(1) Dicey's Law of the Constitution-"8th Edn. Note V on Questions connected with the right of public meeting", p. 498-499,
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into an open-air theatre. The crowd who collect, and the persons who cause a crowd, for whatever purpose, to collect in a street, create a nuisance.....
Dicey does deal with a "right of public meeting" as though it was an outcome of a right of assembly. But, he assumes that an assembly, which is stationary, as distinct from one which is moving, must be held at a place where there is otherwise a right to hold such an assembly constituting a

"public meeting". If the term "meeting" signified the mere meeting of one citizen with another it could be said that such a meeting of many citizens on a particular portion of a public highway is included within reasonable user of the public highway for the purpose for which it was dedicated so long as it does not interfere unreasonably with similar rights of others. The term "public meeting", however, is generally used for a gathering of persons who stand or take their seats at a particular place so as to be addressed by somebody who is heard by or expresses the feelings of the persons assembled. If the term "meeting" were really confined to what may be called a moving assembly or procession a right to hold it could be comprehended within the right to take out a procession which should, it seems to me, be distinguished from what is commonly understood as a right to hold a public meeting. Such a meeting, if held on a highway, must necessarily interfere with the user of the highway by others who want to use it for the purpose for which the highway must be deemed to be dedicated.

It is true that there is a well recognised right of taking out processions on public thoroughfares in this country as an incident of the well understood right of their user by the public. But, I find it very difficult to proceed further and to hold that such a right could be extended and converted into a right to hold a public meeting on a thoroughfares The right to hold a public meeting may be linked with or even flow out of rights under Article 19(1)(a) to express one's opinions and 19(1)(b) to assemble peaceably and without arms, just as the right to take out processions or moving assemblies may spring from or he inextricably connected with these rights, yet, inasmuch as the right to hold a meeting at a particular place must rest on the proof of user of that place for the exercise of a fundamental right, it appears to me that the right to such a user must be established in each particular case quite apart from or independently of fundamental rights guaranteed by Article 19(1) of our Constitution. it involves something more than the exercise of a fundamental right although that something more may be necessary for and connected with the exercise of a fundamental right

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In Hague v. C.I.O.(1), Roberts, J. no doubt spoke of the general right of the public in America to use "streets and parks .... for purposes of assembly, communicating thoughts between citizens, and discussing public questions". But, I do not find here a recognition of a right to hold a, public meeting on a public thoroughfare. The passage relied upon by the learned Counsel for the appellant from this case referred to rights which could be exercised in "streets and parks". A natural interpretation of this passage appears to me to be that whatever rights can be properly exercised by members of the public on a public thoroughfare may be exercised ,there but the others could be exercised in a park where a public meeting could be held. Whatever may be the law in America, we have not been shown any authority for the proposition that there is an unconditional right of holding a public meeting at every public place, much less on a public thoroughfare or street in this country, as a necessary incident of the fundamental rights of either free speech or of assembly.

If the position rested me.-rely on the commonly accepted meaning of a "public street" and the purposes for which it must be deemed to be dedicated it may have been possible to argue that Rule 7 itself goes beyond the scope of the rule making power given by Section 3 3 (0) inasmuch as a

stationary assembly, as a public meeting must necessarily be so long as the assembly last, could not reasonably be within the purview of Sec. 33(O) of the Act. But, the definition of the public street in Section 2, sub. s. 15 of the Act lays down :

> 2(15) "Street" includes any highway, bridge, way over a causeway, viaduct, arch, quay or wharf or any road, lane, footway, square, court, alley or passage accessible to the public, whether a thoroughfare or not".

If we bear this definition in mind, it would appear that the public could conceivably hold a meeting at a place falling under this definition of a street. If this is so, could the Commissioner not be authorised to regulate it in the manner contemplated by Rule 7 ? I think he could, provided there are sufficient safeguards against misuse of such a power.

Rule 7 is so worded as to enable the Commissioner to give or refuse permission to hold a public meeting at a place falling within the definition of "a Street" without the necessity of giving reasons for either a refusal or a permission. It will, therefore, be possible for him, under the guise of powers given by this rule, to discriminate. If he chooses to give no reasons either for giving the permission or for refusing it, it will not be possible

(1) 307 U.S. 496, 515-516.

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for a High Court or this Court to decide, without holding a trial and taking evidence, what those reasons really are in a particular case. Such a wide power my even enable an exceptional user of a public thoroughfare, completely inconsistent with the rights of the public to pass or repass, to be made of it without sufficient justification for it. The Commissioner may give permission to use a place for a public meeting on a public street, which may not be suitable for it, to influential or powerful persons but deny it to others. Although, the right to hold a public meeting at a public place may not be a Fundamental Right by itself, yet, it is so closely connected with fundamental rights that a power to regulate it should not be left in a nebulous state. It should be hedged' round with sufficient safeguards against its misuse even if it is to be exercised by the Commissioner of Police. He ought to be required to give reasons to show why he refuses or gives the permission for such exceptional user of a "street" as it is defined in the Act. The rule should make clear the circumstances in which the permission may be given or refused. Therefore, although I have had my serious doubts as to whether we need declare Rule 7 invalid for a contravention of Art. 19 (1) (b) , of the Constitution, yet, on fuller consideration, I respectfully concur with Mylord the Chief Justice in declaring it invalid because it is capable of being used arbitrarily so as to discriminate unreasonably and unjustiably and thus to affect the exercise of rights conferred by Articles 19(1) (a) and (b) without sufficient means 'of control over possible misuse of power. The Rule of law our Constitution contemplates demands the existence of adequate means to check possibilities of misuse of every kind of power lodged in officials of the State. I would prefer to 'strike it down for contravening Article 14 of the Constitution although, if its' repercussions on the rights guaranteed by Art, 19(1)(a) and (b) were also taken into account, it could be struck down as an unreasonable restriction on those rights as well.

For the reasons given above, I respectfully agree with the order proposed by Mylord the Chief Justice.

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