



W.A.(MD) No.681 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.05.2023

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.A.(MD) No.681 of 2023
and
C.M.P(MD) Nos.6046 and 6047 of 2023**

Koottalumoodu Arulmigu Bhadreswari
Devasthanam, Painkulam – 629173
Rep. by its Secretary Incharge
T.Thulasidhas

... Appellant

-VS-

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The District Revenue Officer cum
Addl. District Magistrate,
Kanyakumari District,
Nagercoil.
- 3.The Superintendent of Police,
Kanyakumari District, Nagercoil.



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4. The Inspector of Police,
Pudukadai Police Station,
Kanyakumari District.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 27.04.2023, passed in W.P.(MD) No.8805 of 2023, on the file of this Court.

For Appellant : Mr.Ananth C.Rajesh

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

J U D G M E N T

This intra-court appeal is directed against the order dated 27.04.2023 made in W.P.(MD) No.8805 of 2023 filed by the appellant herein. The appellant is an ancient temple. There is a tradition of conducting display of fire works in the concluding session of “Chithirai Festival” after the temple flag is lowered. When the appellant filed the writ petition for directing the second respondent to grant such permission, the learned Judge by the impugned order stipulated a condition that permission may be granted for bursting of fire crackers between 09:00 p.m. and 10:00 p.m. on 09.05.2023. Aggrieved by the imposition of such condition, this writ appeal has been filed.



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2. The learned Judge took note of the fact that during such display of fire works in the year 2015, one J.Jeban Sekar had died. The temple administration was directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as a matter of humanitarian gesture and without prejudice to the defence of the accused in the pending criminal case. Even though the writ appeal is directed against the entire order, the learned counsel appearing for the temple/appellant informed the Court that this direction to pay compensation has been complied with. Receipt given by the victim's family was produced before us.

3. The only question that calls for consideration is whether that learned Single Judge was justified in stipulating condition regarding timings. We take note of the fact that this is not the first time the issue has cropped up before this Court. The appellant herein had earlier filed W.P.(MD) No.9701 of 2019 and the said writ petition was allowed on 23.04.2019 in the following terms:-

“2. The writ petitioner is an ancient temple. There is a tradition of conducting display of fireworks in the concluding session of Chithirai festival. The fireworks commence after the flag is brought



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WEB COPY down at around 12.30 past midnight. The petitioner wants this Court to direct the respondents to grant permission for conducting the public display of fireworks in the traditional manner. In this regard, application dated 20.04.2019 has already been given.

3. The second respondent is the competent authority to grant permission. Since the subject matter pertains to temple festivities, I am of the view that the second respondent ought to grant permission. This is all the more so, because there is nothing novel or new about it. It is a traditional feature. Therefore, the petitioner sought to be permitted to conduct the event in the usual traditional and customary manner.

4. However, it is seen that an accident had taken place a few years back. This Court therefore called upon the petitioner's counsel that he should name somebody who will assume responsibility to ensure the smooth and accident free conduct of the event. The petitioner's counsel submitted that the Secretary of the petitioner / Devasthanam namely Thiru.Chandrakumar would be the nodal person to ensure the smooth conduct of the event. He also gave a further undertaking that the second respondent can impose conditions while



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5. With the above directions, the Writ petition stands allowed. No costs."

4. Pursuant to the said direction, appropriate proceeding permitting the conduct of the event in the traditional manner was issued. When for the year 2022, the authority declined permission, the appellant herein had filed W.P.(MD) No.8477 of 2022 vide order dated 28.04.2022, the writ petition was disposed of in the following manner:-

"The prayer in this writ petition is to call for the records of the fourth respondent in C.No.G1/12612/22 & N.Ref: 214/SDOC/22, dated 18.04.2022 and quash the same as without jurisdiction and consequently, direct the respondents to grant permission for the traditional public display of fireworks in the end of tenth day festival of Chithirai Thiruvizha at Kootalumoodu Arulmigu Bhadreswari Devasthanam, Painkulam, on 10.05.2022 after the



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Thirukkodi Irakkam (jpUf;nfhb ,wf;Fjy;) with a specific timings after 12.00 am (11.05.2022) based on the petitioner's application, dated 08.04.2022.

2. In view of the earlier order passed by this Court in W.P(MD)No.9701 of 2019 for the very same petitioner, dated 23.04.2022, the petitioner is at liberty to submit fresh representation before the fourth respondent. The fourth respondent is directed to consider the same in the light of the order passed by this Court, dated 23.04.2022 in W.P(MD)No.9701 of 2019 on or before 06.05.2022.

3. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.”

Pursuant to the said direction, appropriate proceeding in favour of the temple was issued.

5. Probably apprehending that authorities may not grant permission for this year, the appellant filed W.P.(MD) No.8805 of 2023. One of us had earlier held *vide* order dated 16.08.2022 in W.P.(MD) No.18554 of 2022 (*P.Seeni v. The*



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District Collector, Virudhunagar & Ors.,) that permission from administrative authorities need not be taken for conducting traditional religious functions in the customary manner. Paragraph Nos.4 to 6 of the said order read as follows:-

“4.The Constitution of India confers certain fundamental rights. Article 19(1)(b) states that all citizens shall have the right to assemble peaceably and without arms. Article 25 (1) states that subject to public order, morality and health and to the other provisions of Part III, are persons are equally entitled to freely practice religion. The Hon'ble Supreme Court of India in Gulam Abbas v. State of U.P (AIR 1981 SC 218) held that religious faith and the performance of the rites, customary practices and observances constitute one's fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India. This judgment was followed by the Division Bench of the Madras High Court (2021 SCC Online Mad 1779/WA No.743 of 2019). A learned Judge of this Court in WP No.6986 of 2018 dated 23.03.2018 held that centuries old custom and religious practices cannot be ignored or found as insignificant, since such customs privileges and practices go with the sentiment of the people of the locality and the Government machinery cannot interfere in a casual manner under mere apprehension. If some



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5. Section 42-A of the Tamil Nadu District Police Act, 1859 which provides for the presence of police personnel in any public meeting or assembly or procession states that this requirement will not apply to any assembly or meeting of a purely religious character held in a recognized place of worship. Section 41 of the Chennai City Police Act which contains the power to regulate assemblies, meetings and processions in public places etc., in sub section 8 states that nothing in the Section shall apply to any assembly or meeting of a purely religious character held in a recognized place of worship. This provision was the subject matter of reference under Section 438 (2) of the old Cr.Pc before the Division Bench of the Madras High Court in AIR 1959 Mad 63 (C.N. Annadurai v. State). When the learned counsel appearing for the accused argued that the provision was discriminatory and violative of Article 14, the Hon'ble Division Bench held that the exemption granted to marriages, funerals and religious assemblies would constitute



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6.Of course, the authorities cannot remain a silent spectator if there is breach of public tranquility. If threat to maintenance of law and order is imminent, then also the executive magistrate or the police are bound to intervene. So long as there is no such situation, the authorities have no role in the matter. The scope of this writ petition is confined to a festival that has been celebrated from time immemorial every year in a village. Since the writ prayer is for directing the authorities to grant permission, I hold that no such permission is required.”

6. It is true that the Hon'ble Apex Court comprising their Lordships CJI, R.C.Lahoti and Ashok Bhan J.J., *vide* order dated 18.07.2005 in W.P.(C) No. 72 of 1998 (In Re: Noise Pollution) had held that there shall be a complete ban on bursting sound emitting fire crackers between 10:00 p.m. to 06:00 a.m. However, it was added that it is not necessary to impose restrictions as to time on bursting of colour/light emitting fire crackers. But subsequently, a Hon'ble Three Judges



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Bench *vide* order dated 11.04.2019 in W.P.(C) No.728 of 2015 after noticing that some temples in Kerala have been celebrating the “Thrissur Pooram” festival since 1798 and that displaying of fire works has been an integral part of the celebration of the festival saw no reason as to why the festivity should be suspended. We are inclined to respectfully adopt the very same approach, particularly in view of the earlier orders of this Court. We are clearly of the view that it is not for the Writ Court to interfere with the conduct of customary religious festivals or stipulate the timings as to when the traditional display of fire works should be conducted.

7. However, the safety aspects cannot be lost sight of. A few days ago, in Kerala, there was a boat tragedy leading to loss of a number of lives. That was because of over crowding. When we indicated our concerns to the learned counsel for the appellant, it was undertaken by the appellant that Shri.T.Thulasidhas, Secretary in-charge of the appellant Devasthanam shall act as the nodal person to ensure scrupulous adherence to the safety protocol to be stipulated by the authorities. It is further undertaken that the fire works will be displayed only at the notified site which will be fenced and barricaded. Members



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of the general public will not be allowed to come within 100 metres of the spot.

The Devasthanam will form a volunteer corps who will ensure that the safety distance is maintained. The entire burden shall not be placed on the police force.

It is admitted that the temple flag is customarily lowered at 12:00 a.m. (Midnight) and the display of fire works follows. The organizers undertake to conclude the event by 02:30 a.m. In other words, the display of fire works can commence immediately after the flag is lowered and it shall be concluded by 02:30 a.m. The condition as to the timings imposed in the impugned order dated 27.04.2023 is set aside. The writ appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[G.R.S., J.]

[S.S.Y., J.]

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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and
S.SRIMATHY, J.

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To:

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