



W.P.(MD)No.14124 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED:27.07.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

W.P.(MD)No.14124 of 2023

H.M.S.Sarbutheen

... Petitioner

Vs.

1. The Superintendent of Police,
Tirunelveli District, Tirunelveli.
2. The Inspector of Police,
Ervadi Police Station, Tirunelveli.
3. G.Saffi
4. A.C.Peer Mohammed
5. P.Mohamed Sirajudeen

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 2nd respondent police to grant police protection for conducting Moharam festival which is scheduled to be held on 19th to 29th July, 2023, particularly, the flag hosting on 19th July, 2023 followed by procession with drumbeats between 05.00 p.m to 08.00 p.m., the Islamic religious musical concert



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on 28th July, 2023 between 07.00 p.m. to 11.00 p.m., and Santhanakoodu procession on 29th July, 2023 between 05.00 p.m. to 08.00 p.m., at Ervadi, Nanguneri Taluk, Tirunelveli District in a peaceful manner in pursuance to the representation dated 20.05.2023.

For Petitioner : Mr.A.Robinson

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
for R1 and R2
Mr.T.Lajapathi Roy,
Senior Counsel, for R3 & R4
Mr.S.Balaji for R5

ORDER

This petition is filed seeking for a direction to the second respondent police to grant police protection for conducting Moharam festival which is scheduled to be held from 19.07.2023 to 29.07.2023, at Ervadi, Nanguneri Taluk, Tirunelveli District, in a peaceful manner by considering the representation of the petitioner dated 20.05.2023.

2. Learned counsel for the petitioner submits that the petitioner is the treasurer of the committee, namely, "Sixth Street Hasan Hussain



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Moharam Chavadi Nirvaga Kulu". The said committee along with another committee, namely, "Lebbai Valavu Hassan Hussain Pallivasal Nirvaga Kulu" used to conduct Moharam Festival in Ervadi village. Both the committees were registered with Tamil Nadu Waqf Board bearing registration No.820/1960.

3. It is further submitted that Moharam festival is being celebrated for more than 300 years in the said village. However, for the past few years, the police have been denying the permission to conduct the Moharam procession citing that earlier offences took place at the time of practicing Santhanakoodu and Pancha rituals. It is submitted further that Police cannot refuse to grant permission in the name of law and order problem.

4. It is submitted by learned counsel for the petitioner that merely because one group or faction is objecting the petitioner shall not be denied their right of celebrating Mohram festival with rituals like "Pancha" and "Santhanakoodu" procession in the public route. Learned counsel for the petitioner has cited an order of this Court passed on



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23.03.2018 in W.P.No.6986 of 2018, wherein, this Court after quoting various authorities, held that under Section 180-A of the Tamil Nadu District Municipalities Act, 1920, the roads and streets are secular in nature, thereby all the people irrespective of caste, religion and creed shall be permitted to use and thereby any religious procession cannot be prohibited merely because another religious group is residing or doing business in that area predominantly.

5. Learned Additional Public Prosecutor appearing for the respondents police submits that disputes are pending between one faction of Muslim community in respect of conducting of "Pancha" and "Santhanakoodu" rituals during the Moharam Festival. A peace committee meeting was conducted in the presence of the representatives of both factions on 04.12.2011 and after the said meeting, Moharam Festival was celebrated without conducting "Pancha" and "Santhanakoodu" rituals. In the peace meeting committee, it was resolved to conduct the festival with rituals viz., Moulutu Oothutal, Marga Vilakka Meeting, recitation of quaran by children and 11th day Nerchai (Annadhanam). It is also submitted that every year during the



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eve of Moharam festival, disputes are being erupted between rival factions/sets in respect of conducting "Pancha" and "Santhanakoodu" rituals and in this regard, several writ petitions were filed before this Court.

6. Learned Additional Public Prosecutor further submits that one of the members of the petitioner's committee had earlier filed W.P.(MD) No.20147 of 2019, before this Court seeking the relief similar to that of the present one and this Court has dismissed the same by giving liberty to the petitioner to approach the civil Court. It is also submitted that several criminal cases have been registered against both the factions at Eruvadi Police Station in connection with dispute that arose during the celebration of Moharam Festival. Therefore, prayed for dismissal of this petition.

7. Heard the learned counsel for the parties and perused the records.



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8. Though this petition is filed projecting as if the petitioner is seeking police protection for conducting Moharam festival from 19.07.2023 to 29.07.2023, the main issue involved here is not simply the police protection during the course of festival. As seen from the record, Moharam festival was being performed until 2011 without any issue. However, in the year 2011, a group/faction of Muslim community have raised objections in respect of performing rituals being conducted during the Moharam festival. According to them, ritual like Pancha and Santhanakoodu resembles Hindu religious rituals, thereby, they have been raising objections. Therefore, the issue is in respect of rituals that are required to be performed during Moharram festival. Peace committee meeting was conducted and in the meeting, a decision was taken in the year 2011 to conduct Moharam festival excluding Pancha and Santhanakoodu rituals and accordingly, it is being continued from time to time every year. However, in the year 2019, the petitioner's group have requested the police to provide protection for performing the Moharam festival including Pancha and Santhanakoodu events. Police have declined by showing the reasons of law and order problem. The police



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have also filed the record before the Court to show that as many as 11 cases have been registered, latest of which is Crime No.167 of 2019 under Sections 14, 294(b), 352 and 506(1) of IPC.

9. The petitioner has approached this Court by filing W.P.(MD) No.20147 of 2019 and this Court has dismissed the writ petition by echoing the grounds raised by the police and rejected the request of the petitioner to grant permission. Aggrieved by the same, W.A.(MD) Nos. 1328 of 2016 was filed and the same was dismissed and there was no finding in respect of core issue involved and raised by the petitioner in the writ petition in respect of ritual of "Pancha" and "Santhanakoodu". Therefore, the issue has continued to kept in abeyance and unresolved.

10. Therefore, on considering the entire history of this case and the objections of the unofficial respondents and the police, it is clear that the dispute between the petitioner's group and the unofficial respondent's group of the Muslims in respect of performing of the rituals of Moharam festival is to be settled first. This issue can also be resolved by the religious heads of the various factions amicably. This Court is not in a



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position to take initiative in identifying the religious heads of various sects of Muslim community and to direct them to resolve the issue as to whether Pancha and Santhanakoodu rituals are mandatorily required to be performed in Moharam festival as both the sides have not expressed any opinion in this regard. It is for the petitioner's and rival group to come forward and place the material before the religious elders by placing the practices being followed in other part of the Country and then decide amicably about the rituals to be performed on the basis of religious scriptures. In case, if they are not interested to choose to resolve the dispute amicably among themselves, the only option available for them is to approach the civil Court as already directed by this Court in the earlier writ petitions. However, none of them have approached the elders of the religion or the civil Court so far to resolve the dispute.

11. As the dispute before the Court is not for simply providing police protection, the dispute is to the nature of rituals to be performed by the Muslims at the time of Moharam festival, this Court is not in a position to direct the police to provide protection. Every citizen in this



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Country will have a right to practice any religious faith. It is alleged that the rituals which the petitioner groups proposing to follow are not being accepted by the other group, on the ground that Pancha and Santhanakoodu are not required to be performed in Moharram festival. Merely because the religious practices of one group are not acceptable to other group, it shall not be a ground to decline permission to perform and practice such religious practices. However, the petitioner is not performing such practices within their respective homes, the petitioner intend to take out processions and perform rituals of Pancha and Santhanakoodu. If this Court directs the Police to provide protection to the petitioner, it amounts that this Court endorsed the petitioner to perform Pancha and Santhanakoodu rituals as a part of Moharam.

12. During the course of hearing, this Court has requested the learned counsel for the petitioner and learned Senior Counsel appearing for the unofficial respondents, to sit along with their clients to resolve the issue amicably and adjourned the case for couple of days. Both the learned counsel have reported that though the petitioner has agreed not to perform Pancha ritual, however, did not agree the proposal of the



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unofficial respondent that not to perform the Santhanakoodu ritual.

Therefore, since there is a dead lock in respect of conducting Pancha or Santhanakoodu ritual.

13. In view of the above, the request of the petitioner for providing of police protection to the petitioner to perform Pancha and Santhanakoodu during the Moharam festival cannot be granted and therefore, this writ petition stands dismissed.

27.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

PKN/mvs.



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2. The Inspector of Police,
Ervadi Police Station, Tirunelveli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

DR.D.NAGARJUN,J



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