

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.5.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.No.14956 of 2015

A.Loganathan
Treasurer
Makkal Vazhvadara Padukappu Iyakkam,
Main Road, Periyapattu,
Chidambaram Taluk,
Cuddalore District.

... Petitioner

vs.

1 The Government of Tamil Nadu
Rep. by its Secretary
Department of Home
Fort St. George,
Chennai-600 009.

2 The Superintendent of Police,
Cuddalore District, Cuddalore.

3 The Inspector of Police
Puduchatiram Police Station,
Cuddalore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order dated 14.05.2015 issued by the 3rd respondent and set aside the same as illegal and direct the respondents to permit the petitioner to conduct demonstration near Poochimedu Road Junction, Periyapattu, Cuddalore District on 28.05.2015 at 10.00 am or on some other day as fixed by this Honourable Court.

For Petitioner : Ms.S.Meenakshi

For Respondents : Mr.R.Vijayakumar,
Additional Government Pleader

ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India, seeking to quash the impugned order passed by the third respondent dated 14.05.2015 and for a consequential direction, directing the respondents to grant permission to the petitioner to conduct demonstration near Poochimedu Road Junction, Periyapattu, Cuddalore District on 28.05.2015 at 10.00 am or on some other day as fixed by this Honourable Court.

2. The petitioner is the Treasurer of the Organization called Makkal Vazhvadara Padukappu Iyakkam. As regards conducting demonstration near Poochimedu Road Junction, Periyapattu, the petitioner submits that in the Village of Periyapattu, Chidambaram Taluk, Cuddalore District, the dying factory called Syma Dying Factory is going to be erected in the near future. The Village is fully dependent on Agriculture and other natural resources. Observing the infirmities caused by the dying factories, this Court has ordered closure of many

dying factories. Similarly, the formation of dying factory at Periyapattu Village is likely to cause similar defects. Therefore, the people of the Village fear that their ground water may get contaminated and the same may affect their only livelihood of agriculture in that area. Therefore, to create awareness among the people about the harzarduous nature of the dying factory and its release of wastage, the petitioner Iyakkam has organized for a Demonstration.

3. Ms.S.Meenakshi, learned counsel for the petitioner would mainly urge that the rejection of the petitioner's representation dated 14.05.2015 is arbitrary, unjustified, erroneous, illegal and against the principles of natural justice. She would further contend that Article 19(2) of the Constitution of India provides right to freedom of expression subject to reasonable restriction, but that would not tantamount to negation of the rule of law. Therefore, the impugned order of the third respondent is contrary to the right guaranteed under Article 19(1)(a) of the Constitution of India. The learned counsel for the petitioner would also submit that holding a procession is a peaceful assembly and it cannot be termed as unlawful or otherwise. Therefore, the impugned order has to be quashed. She would further contend that though the relief sought is to conduct the demonstration

on 28.05.2015, the petitioner would conduct the same on 04.06.2015, if permission is granted.

4. Resisting the said submission, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents would submit that it is the duty of the State to regulate and maintain law and order. He would further submit that the performance of procession and public meeting would affect the law and order. Therefore, the rejection order has been passed and the same is in accordance with law. He would also submit that the nature of the function sought to be propagated in the public meeting to be held would definitely create certain social problems and therefore, the decision of the law enforcing authority is correct.

5. In similar circumstances, this Court has allowed conduct of demonstrations as in the following cases :

(i) **C.Sakthivel vs. The Commissioner of Police (2010 (5) CTC**

134)

"8. It is seen that the petitioner is the District Secretary of Bahujan Samaj Party, North Chennai. It is claimed by him that his is a major political party in Indian continent and it is fighting for socially underprivileged and marginalized people through constitutional means and within the purview of established law. The

petitioner also claims that the party is democratically fighting against social evils, concerns of the public, and conducting agitations through various methods viz., rally, fasting, dharna, public meeting etc. The petitioner gave a letter to the respondent on 24.07.2010 and sought for permission to convene the protest on 30.07.2010 against the action of the Government in respect of suspension of C.Uma Shankar, I.A.S., between 11.00 a.m. and 2.00 p.m. in front of Memorial Hall, which is the scheduled place for staging demonstration by all. A show cause notice was issued to the petitioner by the respondent, requesting to appear, for which the petitioner gave a reply on 28.07.2010. Thereafter, the petitioner met the respondent in person along with his counsel. However, permission to conduct the agitation was denied by the respondent, by passing the impugned order, dated 28.07.2010. Therefore, the petitioner has challenged the impugned order on the ground that it is in violation of Article 19 (1) (a) of the Constitution. The petitioner has specifically contended that the respondent ought to have followed Section 41 of the Madras City Police Act, 1988, and the respondent has power to regulate the meetings, but not to refuse the permission of meeting.

9. In the case of [S.Rangarajan v. P.Jagjivan Ram](#), cited supra, the Supreme Court had held that the democracy is a government by the people via open discussion. The democratic form of government itself demands its citizens an active and intelligent participation in the affairs of the community. The public discussion with peoples participation is a basic feature and a rational process of democracy which distinguishes it from all other forms of government. The democracy can neither work nor prosper unless people go out to share their views. The truth is that public discussion on issues relating to administration has positive value. The Supreme Court further held that there must be freedom of thought and the mind must be ready to receive new ideas, to critically analyse and examine them and to accept those which are found to stand the test of scrutiny and to reject the rest. Article 19(2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and a surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against

the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression.

10. Also, this Court dealt with a similar matter in the case of P.Nedumaran, cited above. In the said case, the stand of the State was that the petitioner was persistently extending support for an unlawful association viz., LTTE, which had been declared to be an unlawful association under the Unlawful Activities (Prevention) Act, 1967. This Court held that the power conferred on the Commissioner under Section 41 of the Madras City Police Act is sweeping and that power is meant to be exercised with great care and caution. The Madras City Police Act is a pre-Constitution enactment, and the powers conferred on the authorities at a time when the country was under the colonial regime, and during the period when suppression of dissent was considered to be a legitimate policy of the State, cannot be exercised after the enactment of the Constitution in the same manner, as it was exercised earlier. The Intelligent Report placed before the Court shows that the police still have the attitude which does not seem to recognise that the country is a democratic nation, where every citizen has a right to full and equal participation in the process of Government. No citizen can be regarded as an enemy of the State merely because he has voiced a view which is not the one favoured by those in authority. The fact that the police are vested with power should not make them assume that, that power is available for exercise in any manner that they consider fit. That power is to be exercised strictly within the ambit of the provisions of the Constitution, more particularly, the requirement that any restriction placed on the exercise of fundamental rights should be a reasonable restriction, and the restrictions so placed should be shown to be essential, having regard to the permissible purpose for which restrictions may be imposed. This Court, while analysing the case, held that the meeting which the petitioner had wanted to hold was to have been held on the 19th January, 1997, well over a year ago, and the authorities ought not to have refused permission mechanically. They should be in a position to satisfy the Court that such refusal falls strictly within the ambit of the permissible grounds for restricting the exercise of fundamental rights under Article 19 of the Constitution. A mere apprehension that some

disturbance may be caused in the meeting place would not be sufficient. Under Sec.41 of the Madras City Police Act, the police have power to depute one or more police officers to be present at the meeting. If, at the meeting, such police officers were to find that anything illegal was being done, it would be open to them to take such further action as may be considered necessary in the circumstances. A blanket order refusing to permit the meeting to be held is not the method of relating the exercise of fundamental rights of freedom of speech, expression and assembly.

13. In *Destruction of Public & Private Properties v. State of A.P.*, CDJ 2009 SC 752, referred to above, the Supreme Court considered the two reports submitted one by Justice K.T.Thomas and the other by F.S.Nariman. In para 20 of the judgment, it was pointed out that "there is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

14. While dealing with a similar situation, a learned single Judge of this Court in a recent decision in K.T.Patchaimal, cited above, in view of the binding legal precedent set out by the Supreme Court, allowed the Writ Petition and set aside the order passed by the respondent, directing the respondent to accord permission to conduct demonstration on the date requested or on any future date.

16. Law is well settled, as pronounced by the Supreme Court as well as this Court, that reasonable restrictions for the purpose mentioned in Article 19 (2) alone can be the reasons to refuse such a permission. A circumspection and clear analysis of the case on hand would not give any such impression for this Court that the demonstration contemplated by the petitioner is against any particular administrative function or otherwise, but, instead, they aim to protest against the action of the Government. If such permission is granted, it is always open for the authorities to regulate the same and also anything illegal being done and they can have every right to proceed against the perpetrators."

(ii) Home Secretary, Government of Tamil Nadu and others vs.

Era.Selvam and another (2013) 3 MLJ 513

"5. It is an admitted fact the Viduthalai Siruthaigal Katchi (VCK) is conducting Dr.B.R.Ambedkar birth anniversary and award giving fuunction from the year 2007. For conducting procession on 14.4.2013 the respondent in W.A.No.842 of 2013 submitted an application on 26.3.2013 seeking permission to hold procession at 10.00 a.m. from Rajarathinam Stadium to Langs Garden Road under the leadership of party President, who is also a Member of Parliament. The said application was processed and according to the learned counsel for the respondents, the Commissioner of Police/3rd appellant requested the respondent to change the timing of procession to 3.00 p.m. and the said suggestion was agreed and request was made to give permission to conduct procession from 3.00 p.m. instead of from 10.00 a.m.

"6. A show cause notice was issued on 10.4.2013 asking the

respondents as to why the permission sought for to conduct procession shall not be rejected and the respondents were directed to approach the Assistant Commissioner of Police of the concerned police limit for the grant of permission to conduct public meeting. Time was granted to give objection up to 12.4.2013 at 11.00 a.m. and objection was filed before the Commissioner of Police on 10.4.2013 itself. No order having been passed and 12.4.2013 being the only working day, the respondents filed the writ petitions before this Court, which was taken up for hearing on 11.4.2013 in a special sitting and the learned Judge ordered to file counter/objection by the State Government and posted the matter on 12.4.2013. On 12.3.2013 counter affidavit was filed and the learned Advocate General urged all the grounds stated in the counter and opposed the prayer made in the writ petitions. The learned Judge passed orders granting permission to conduct procession and award giving function by fixing time i.e, to start procession at 3.00 p.m. and fixing time of meeting from 6.00 to 10.00 p.m. on 14.4.2013.

7. From the perusal of the order of the learned single Judge it could be seen that learned single Judge has ordered to regulate and control the procession without causing any hindrance to general public; procession should move quietly and peacefully; no words, actions, expressions shall be made by the writ petitioners and others, affecting the sentiments of others; the speakers can focus only on general topic and shall not speak on any other topics and on other parties/leaders; after the meeting people shall quietly disburse, without causing disturbance to people in and around and to general public; the vehicles shall be permitted to be parked in Marina area and police shall do the needful; and the cars and vehicles shall not be brought to the place of meeting. The leader of the party, who was present in the Court gave an undertaking to control the entire cadre while conducting processing and meeting and his undertaking was also recorded in the order. The police was directed to provide adequate protection to avoid untoward incidents.

10. The appellants cannot deny the right of the people though discretion is vested with them under Section 41 of the Chennai City

Police Act, 1888. In Chennai City sufficient police force is available to meet any eventuality. In the decision reported in AIR 1973 SC 87 ([Himat Lal K. Shah v. Commissioner of Police, Ahmedabad](#)), it is held that although 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 right that a power to regulate it should not be left in a nebulous state. Article 19(1)(a) of the Constitution of India guarantees to all citizen the right to freedom of speech and expression subject to reasonable restrictions on the grounds set out under Article 19(2). The reasonable limitations can be put in the interest of sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement of an offence. In the decision reported in (1989) 2 SCC 574 ([S. Rangarajan v. P. Jagjivan Ram](#)) in paragraph 53 the Supreme Court held thus,

"53. Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself"

11. In the decision reported in (2012) 5 SCC 1 (Ramlila Maidan Incident, In Re) the Supreme Court held that the Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of democratic system. In para 245 the Supreme Court held thus,

"245. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact,

encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquillity, as it may disturb the social order. This delegated power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to subvert them."

12. Thus, the right of the citizens to conduct procession and public meeting cannot be curtailed, except on definite reasons and not on mere surmises. In the Division Bench Judgment of this Court reported in CDJ 2008 MHC 613 (cited supra) freedom to conduct meeting on a sensitive issue was considered and this Court directed to grant permission to hold the meeting and the police were directed to provide adequate protection for the smooth conduct of the meeting.

13. The decision cited by the learned Advocate General reported in (2004) 4 SCC 684 (supra) was rendered when the prohibitory order imposed under section 144 of the CrI.P.C. was challenged to prohibit religious meeting at communally sensitive area where several communal clashes resulted in several deaths and damages to public and private properties. The said facts are entirely different from the fact of this case.

14. Considering the above principles in mind as well as the claim made by the respondents in these writ appeals that they are organising procession and award giving function on the birth anniversary day of Dr.B.R.Ambedkar on 14.4.2013 and to avoid apprehension expressed by the learned Advocate General that the entire persons participating in the procession will straight away go to the meeting place at Mangollai, Mylapore, Chennai, we are of the view that the said apprehension can be answered by modifying the order of the learned single Judge, directing the writ petitioners/respondents herein to hold procession between 10.00

a.m. and 1.30 p.m. on 14.4.2013 from Rajarathinam Stadium to Langs Garden Road and to conduct public meeting at Mangollai, Mylapore, Chennai-4 from 6.00 to 10.00 p.m. The change of timing will avoid the persons participating in the procession going to the place of meeting straight away as there will be a brake of 4.30 hours. The police are directed to regulate traffic and permit the writ petitioners to conduct procession and meeting as aforesaid. The conditions imposed by the learned single Judge in his order dated 12.4.2013 is to be scrupulously followed by the writ petitioners/respondents herein and organisers and leader of the party, who assured to control the entire cadre. It is needless to reiterate that while conducting procession during the above said time and conduct of meeting, the organisers should see that no untoward incident is allowed to happen and if any violation of the undertaking given by the organisers or by any other person, the appellants are entitled to deal with them to preserve maintenance of peace and tranquility and it is open to them to initiate appropriate action against the violators, in accordance with law."

(iii) Thol. Thirumavalavan vs. Government of Tamil Nadu and others (2013) 6 MLJ 137

"11. This Court, after considering various situations, particularly when there was a request for re-post mortem of the body of the deceased Elavarasan and the same was also allowed by this Court to be conducted by the Doctors from All India Institute of Medical Sciences (AIIMS), New Delhi and thereafter, funeral ceremony will be scheduled to be held on the date fixed by the family members of the deceased Elavarasan, is of the view that it is for the District Magistrate to take decision on the representations received from several political leaders including the petitioner, expeditiously, so that *actus curiae neminem gravabit*, which means, an act of law does no wrong."

6. In view of the above ruling of this Court and having regard to the facts and circumstances of the case and as the freedom of

expression is the fundamental right guaranteed under Article 19(1) of the Constitution of India, the third respondent herein is directed to permit the petitioner to conduct demonstration near Poochimedu Road Junction, Periyapattu, Cuddalore District on 04.06.2015 at 10.00 am, subject to the terms and conditions, the third respondent may impose.

The Writ Petition stands allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petitions are also closed.

28.05.2015

Index : yes
Internet : yes

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To :

- 1 The Government of Tamil Nadu
Rep. by its Secretary
Department of Home
Fort St. George Chennai-600 009.
- 2 The Superintendent of Police
Cuddalore District Cuddalore
- 3 The Inspector of Police
Puduchatiram Police Station
Cuddalore District.

V.DHANAPALAN, J.

ssk/aeb

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