

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.06.2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.15972 of 2015 and
M.P.No.1 of 2015

Hindu Munnani
Represented by its
Member of State Executive Committee,
T.Manohar, S/o Thangavel,
Having head Office at
Sri Sakthi Vinayagam,
59, Ayya Mudali Street,
Chintadripet, Chennai - 600 002.

.. Petitioner

Versus

- 1.The Commissioner of Police,
Coimbatore City,
Coimbatore.
- 2.The Deputy Commissioner of Police,
Crimes (Incharge) Law & Order,
Coimbatore City,
Coimbatore.
- 3.The Inspector of Police,
B-6 Police Station (Law & Order),
Peelamedu, Coimbatore.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent herein in Na.Ka.No.1139/A.Ka.Thu.Aa/Sa.O/Ko.Ma/2015 dated 03.06.2015 and part of the order which denies permission for procession and quash the same and consequently direct the respondents herein to grant permission to organize the procession on 07.06.2015 as requested in the permission letter dated 02.05.2015.

For Petitioner :Mr.G.Karthikeyan

For Respondents :Mr.S.T.S.Moorthy, Government Pleader
Assisted by Mr.V.Subbiah, Spl.G.P., and
Mr.R.Vijayakumar, AGP

O R D E R

By consent, the writ petition is taken up for final disposal.

2.The petitioner, who claims to be a member of the State Executive Committee of Hindu Munnani Organization, Coimbatore, would state in the affidavit filed in support of this writ petition that the Hindu Munnani Organization organizes its State conference once in every five years and so far, they have conducted the State conferences in various places in Tamil Nadu like Dindigul, Karur, Madurai, Rameswaram and Coimbatore and similar conference and procession was also organised in Coimbatore city in the year 1991. The petitioner would further state that in this year, it has decided to organize its 7th conference on 07.06.2015 in Coimbatore city and planned to conduct the conference in Kodisiya Ground at around 4.00 p.m., on that day and prior to the commencement of conference, they have planned to organize a procession on 07.06.2015 at 3.00 pm.

3.According to the petitioner, for the purpose of conducting procession on 07.06.2015, various placards with slogans have been made and so also, chariots.

4.The petitioner would further state that for the purpose of getting permission to conduct a procession and holding a conference, they have submitted an application on 02.05.2015 to the third respondent and they also applied for permission to use loudspeakers. The petitioner received a memo in C.No.03/B-6 L&O PS/Memo/2015 dated 03.06.2015 from the third respondent asking for the following particulars:-

"1 In the event of any law and order problem in the place where the conference is going to be held, who is responsible for the same?

2 On account of vehicles coming to the Coimbatore city in connection with the conference, if there is any law and order problem in these routes, who will be responsible for the same?

3 If there is any law and order problem in connection with erection of Pandals and banners for the conference, who will be held responsible?

4. Who will be held responsible for the law and order problem caused, by those who are to come to that place, which may arise on account of your arrangements, notwithstanding the

rejection of permission for conduct of procession by the Police Department?"

5.The petitioner, who is the resident of Coimbatore City and District President of Hindu Munnani, Coimbatore City, was called upon to submit his remarks.

6.The grievance expressed by the petitioner is that on the very same day of the said memo dated 03.06.2015, the impugned order came to be passed by the second respondent rejecting his request, for conducting the procession, however, granting permission to conduct conference in a private place at 6.00 pm on 07.06.2015.

7.Mr.G.Karthikeyan, learned counsel for the petitioner would vehemently contend that the organization has espoused the cause of the public and also done yeoman services to various poor and needy and when it received the news about the Nepal earthquake, the Organization went there and undertook all speedy relief measures and also constructed houses to the houseless people in Sri Lanka and the said Organization also helped the people of our State to recover from Tsunami and therefore, the reasons stated in the impugned order for rejecting the request of the petitioner for conducting procession, on the face of it, is un-sustainable.

8.The learned counsel for the petitioner has also drawn the attention of this Court to the following judgements:-

"1.A.I.R 1935 Allahabad 657 (Qasim Raza v. Emperor);

2.CDJ 2004 SC 473 (Commissioner of Police v. Acharya Jagadishwarananda Avadhuta);

3.2005 (3) CTC 260 (Adhirai M.M.Ibrahim v. The Commissioner of Police);

4.Writ Appeal Nos.842 and 843 of 2013 dated 13.04.2013 (The Home Secretary, Government of Tamil Nadu v. Era.Selvam);

5.CDJ 2014 MHC 648 (M.V.Vijayaraghavan State Youth Wing Convenor V. The Superintendent of Police);

6.CDJ 2014 MHC 663 (M.Duraiaraj v. The Superintendent of Police) and

7.CDJ 2015 MHC 3320 (Dr.Ambedkar Mandran-Thiruchuli v. The Superintendent of Police)."

9.It is contended by the learned counsel appearing for the petitioner that right of freedom and speech is enshrined in Article 19(1)(a) of the Constitution of India and the said fundamental right could be restricted only for the purpose mentioned in Article 19(2) and it should be a reasonable restriction, based on tenable reasons.

10.In the case on hand, the respondents have mainly contended that on the alleged intelligence inputs and came to an erroneous conclusion that in the event of permission being granted to conduct procession, slogans will be raised against the people belonging to a particular religion and caste and apprehension expressed by the second respondent, is wholly un- founded.

11.The learned counsel for the petitioner, on instructions, would submit that if an opportunity is given, an Organizer of the meeting, along with officer bearers and an advocate, will meet the respondents 1 and 2 and file an affidavit as to the routes into which the procession will be taken and the organizer/s will also undertake full responsibility in the event of any law and order problem, transgression of public order and hence, prays for appropriate order.

12.Mr.S.T.S.Moorthy, learned Government Pleader who accepts notice for the respondents, has invited the attention of this Court to page No.8 of the typed set of papers and would submit that slogans to be raised by the said Organization are found place and some of the slogans are directed against a particular religion and caste and if the slogans are raised in the public,at the time of conduct of procession, it is definitely bound to create law and order problem and it may lead to loss of life also, while controlling the situation and taking into consideration the said aspects and also public interest in mind, the impugned order refusing permission to conduct procession, came to be passed by the second respondent and hence, prays for dismissal of this writ petition.

13.This Court paid its anxious consideration to the rival submissions and also various materials placed before it. It is not in serious dispute that during February 1998, serial bomb blast took place in Coimbatore and 58 lives were lost and hundreds of persons had sustained grievous injuries and there was loss to the property worth crores and crores of rupees and after so many years, the City of Coimbatore is slowly limping back to normalcy. Though the reason assigned in the impugned order cannot be said to be wholly unfounded, this Court is of the view that in the light of the provision contained in Section 41(2) of the Chennai City Police Act, 1888, which is also made applicable to the City of Coimbatore, interference is warranted.

14.The second respondent, before rejecting the request made by the petitioner organization to conduct procession, ought to have granted an opportunity of hearing to the Organizer either in person or through his Advocate by issuing a show cause notice.

15.It is relevant to extract paragraph No.11 of the judgement reported in Durai Sankar & others v. Secretary to the Government & others (2014(5) L.W 865) and though the said judgement is under challenge before a Division Bench of this Court, the legal position enunciated in paragraph No.11 of the judgement cannot be doubted.

"11.A careful comparison of Section 41 of the Chennai City Police Act, 1888 with Section 30 of the Police Act, 1861 would show that the power to prohibit any assembly, meeting or procession is available only to the Commissioner, under Section 41(2) of the Chennai City Police Act, 1888. This power is also restricted by the proviso thereunder. Under Section 41(3)(a), a person intending to take out a procession, may make an application to the Commissioner seeking permission, even if a prohibitory order is in force under Section 41(2). A careful reading of clause (b) of sub-section (3) of Section 41 of the Chennai City Police Act, 1888 would show that the grant of permission for convening an assembly or meeting and promoting a procession, is the rule and the refusal of permission is the exception. Even if the Commissioner decides to refuse permission under clause(b) of sub-section (3), he cannot refuse, without affording an opportunity of appearing in person or through pleader and showing cause against the proposal to refuse. This is in terms of sub-section (4)."

16.As already pointed out in the earlier paragraphs, the third respondent has issued a memo dated 03.06.2015 to the District President of the Organization, calling upon certain particulars which mainly pertain to law and order problem, but, however, on the very same day, the second respondent has chosen to pass the impugned order, by a portion of which, the petitioner is aggrieved.

17.In the light of the above said legal position, page Nos.1 and 2 of the impugned order are liable to be set aside and an opportunity of personal hearing is to be provided to the petitioner.

18.In the result, the writ petition is partly allowed and page Nos.1 and 2 of the impugned order dated 03.06.2015 passed by the second respondent are set aside and the District President of the Hindu Munnani Coimbatore City along with two office bearers and an Advocate shall appear before the second respondent on 06.06.2015 at 11.00 am and file a detailed affidavit as to the purpose of procession and route of procession, along with the details sought in the memo of the third respondent dated 03.06.2015 and other relevant details and the second respondent is directed to consider the same in

the light of the above cited judgement in Durai Sankar & Others v. Secretary to the Government & others and pass orders by 06.06.2015 itself and communicate the decision taken to Mr.Dasaradhan, the District President, Hindu Munnani. No costs. Consequently, connected miscellaneous petition is closed.

jbm

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

- 1.The Commissioner of Police,
Coimbatore City,
Coimbatore.
 - 2.The Deputy Commissioner of Police,
Crimes (Incharge) Law & Order,
Coimbatore City,
Coimbatore.
 - 3.The Inspector of Police,
B-6 Police Station (Law & Order),
Peelamedu, Coimbatore.
- + 1 cc to Mr.G.Karthikeyan, Advocate SR 27122
- + 1 cc to Government Pleader SR 27123

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