

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2015

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.Nos.26567, 26568, 27078 & 27079 of 2015

P.Pugalenthi

President,

Thamizhdesa Makkal Katchi,

No.5, 4th floor, Sunguraman Street,

Chennai-600 001.

... Petitioner
in all W.Ps.

Vs.

1.The Deputy Superintendent of Police,
Sethiyathope Sub-Division,
Cuddalore District.

2.The Inspector of Police,
Thirumuttam(Srimushnam) Police Station,
Cuddalore District.

.. Respondents in
W.P. Nos.26567
& 27079/2015

1.The Deputy Superintendent of Police,
Virudhachalam Sub-Division,
Cuddalore District.

2.The Inspector of Police,
Pennadam Police Station,
Cuddalore District.

.. Respondents in
W.P.Nos.26568 &
27078/2015

W.P.No.26567 of 2015 is filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondents to decide the representation dated 14.08.2015 of the petitioner immediately and grant permission to hold a procession in honour of Tamilarasan and four others at Tamilarasan Memorial, Mathakalir Manikkam Village, Chidambaram Taluk, Cuddalore District on 01.09.2015.

W.P.Nos.26568 of 2015 is filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondents to decide the representation dated 14.08.2015 of the petitioner immediately and grant permission to the petitioner-

political party to conduct an indoor meeting on 01.09.2015 in a private building viz., 'Saro Rathinam Mahal' at Pennadam, Cuddalore District.

W.P.Nos.27078 of 2015 is filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records in the order bearing Na.Ka.No.322/Kaa.Thu.Ka./Viru/2015 dated 25.08.2015 passed by the first respondent, quash the same and direct the respondent to grant permission to the petitioner-political party to conduct an indoor meeting on 01.09.2015 in a private building viz., 'Saro Rathinam Mahal' at Pennadam, Cuddalore District.

W.P.Nos.27079 of 2015 is filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records in the order bearing Na.Ka.No.146/SDOJ/Mugaam/2015 dated 25.08.2015 passed by the first respondent, quash the same and direct the respondent to grant permission to hold a procession in honour of Tamilarasan at Tamilarasan Memorial, Mathakalir Manikkam Village, Chidambaram Taluk, Cuddalore District on 01.09.2015.

For Petitioner in all WPs.	...	Mr.Radhakrishnan for Mr.P.K.Ilavarasan
For Respondents in all WPs.	...	Mr.A.Kumar, Special Government Pleader

COMMON ORDER

The petitioner, who is the President of "Thamizhdesa Makkal Katchi" seeks to challenge the order dated 25.08.2015, by which, the permission sought for to conduct the meeting on 01.09.2015 was rejected on various grounds. In view of the writ petitions challenging the said order having been filed in W.P.Nos.27078 and 27079 of 2015, the writ petitions in W.P.Nos.26567 and 26568 of 2015 seeking to issue writ of mandamus have become infructuous and accordingly, the said writ petitions are dismissed.

2. A perusal of the impugned orders would show that a permission has been sought for to hold a procession in honour of three deceased leaders of Tamil Nadu Liberation Army. Admittedly, the said organisation has been banned. Intention of the said army is to have a separate existence away from the Government of India. Thus, the rejection was made on the ground that it is against the sovereignty of the country, the persons, who conduct and participate, are having several criminal cases, it would lead to indoctrination of the younger generations and leading to law and order problem causing fear in the mind of the general public.

3. The learned counsel appearing for the petitioner submitted that the freedom of speech and expression is guaranteed under Article 19 of the Constitution of India. It is further submitted that even to the extent of justifying a commission of violence cannot be curtailed. What is prohibited is resorting to violence and reciting or creating public disorder by violence. Section 30(2) of the Police Act is regulatory and also no person can be deprived to have the meeting, that too, in a private place. In support of his contention, the learned counsel appearing for the petitioner has made reliance upon the following judgments.

1. ARUP BHUYAN V. STATE OF ASSAM (Criminal Appeal No.889 of 2007 dated 03.02.2011)
2. C.J.RAJAN, MADURAI-2 V. DEPUTY SUPERINTENDENT OF POLICE, MAYILADUTHURAI AND ANOTHER ((2008) 3 MLJ 926.

4. The learned Special Government Pleader appearing for the respondents, based on the counter affidavit filed, submitted that number of cases have been registered against the erstwhile leaders of banned association. It has also involved in the offences under the Explosives Act, apart from 302 IPC. One Ponnivalavan, District Organizer of Thamizh Desa Makkal Katchi is involved in five cases. He was also an active member of the banned organisation. What is proposed to be done is to revive the banned organisation in a different form. The volunteers of the petitioners have committed grave crimes and cases have been registered for several offences. The discrete enquiry also reveals that such meetings if permitted would create a serious law and order problem apart from disturbance of peace and public tranquillity. In support of his submission, reliance has been made on the decision of the learned single Judge in POPULAR FRONT OF INDIA, REP. BY ITS STATE GENERAL SECRETARY V. THE DIRECTOR GENERAL OF POLICE, CHENNAI AND THREE OTHERS in W.P.Nos.4049 to 4054 of 2015 dated 17.02.2015.

5. To understand the background, it is imperative to place on record the statement made in the counter affidavit, which reads under.

"6. It is further submitted that in the Pamphlet enclosed with the application, it was found that Tr.Ponnivalavan, District Organizer of Thamizhdesa Makkal Katchi is going to address the meeting and to organize the meeting. It was found that the said Tr.Ponnivalavan was the prime organizer of Tamil Nadu Liberation Army which was banned by the Government in G.O.SS.1/559-16/2000 dated

09.11.2001 and it is also pertinent to submit that the said Kaliyaperumal founder of TNLA was involved in the following cases:

- 1) Pennadam PS Cr.No.98/70 under Section 304(a), 120(b) IPC, 4(a) (b) & 5 of Explosive Act, Sessions Court, Cuddalore.
- 2) Pennadam PS.Cr.No.42/71 under Sections 302, 324, 326, 120(b) IPC Sessions Court, Cuddalore.
- 3) Pennadam PS Cr.No.153/68 under Sections 147, 341, 323, 355 IPC
- 4) Pennadam PS Cr.No.232/68 under Section 147, 447 IPC
- 5) Pennadam PS Cr.No.46/69 under Section 341, 323, 324 IPC.

Mr.Ponnivalavan District Organizer of "Tamildesa Makkal Katchi" was involved in the following cases:

- 1) Jayankondam PS Cr.No.938/98 under Section 397 IPC, FTC, Ariyalur.
- 2) Andimadam PS. Cr.No.234/97 under Sections 147, 148, 448, 427, 323, 397, 307, 342, 332, 341 IPC- Sessions Court, Poonamallee.
- 3) Thattaparai PS Cr.No.51/99 under Section 3 of TNPPDL Act & Sec.3 and 4 of Explosive Substances Act, 1908.
- 4) Dharmapuri PS Cr.No.2/99 under Section 9(b)(1)(b) of Explosive Act 1884 & Sections 4 & 5 of Explosive Substances Act, 1908.
- 5) Sethiyathope PS Cr.No.311/2013 under Section 294(b), 323, 324, 506(ii) IPC.

Mr.Suseendran Maran @ Maran @ Senguttuvan @ Kanniyan @ Manimaran whose photo is to be unveiled on 01.09.2015 at 02.00p.m. at Pennadam. He was the leader of TNLA and was also involved in various cases as follows:-

- 1) Puthur PS Cr.No.44/91 under Sectionw 147, 148, 332, 452, 398, 307, 302, 120(B) r/w 149 IPC, 25(1)(b) Arms Act 4 of Explosive Act.
- 2) Boompukar PS Cr.No.41/95 under Sections 147, 427, 506(ii) IPC & 5(1) of Explosive Substances Act, 1908.
- 3) Villupuram Town PS Cr.No.50/93 under Section 120(b) IPC r/w 3(1), 3(iii), 4(1) & 5 of TADA (P) Act and 3 & 5 of Explosive Substances Act.
- 4) Kullanchavadi PS Cr.No.346/93 under Sections 120(b), 147, 148, 451, 380, 511, 332, 333, 307, 302 IPC r/w 149 IPC 3(ii)(v), 4 & 5 of TADA (P) Act, 3 & 5 of Explosive Substances Act, 25(1)(b) Indian Arms Act, 9(b) of Explosive Act.
- 5) Chengalpattu RP PS Cr.No.595/96 under Sections 447, 427, 353 IPC r/w 5(3) Indian Explosive Substances Act r/w 151 of Indian Railway Act.
- 6) Mayiladuthurai PS Cr.No.595/96 under Section 3 of Explosive Substances Act, 1908.
- 7) Andimadam PS Cr.No.234/97 under Sections 147, 148, 448, 427, 323, 397, 307, 342, 332, 341 r/w 25(i)(b) (aa) and Section 27 of Indian Arms Act, 1957.
- 8) Jayankondam PS Cr.No.938/98 under Section 397 IPC

- 147, 148, 392, 397, 398, 403 and 404 IPC.
- 9) Thattaparai PS Cr.No.51/99 under Section 3 of TNPPDL Act Section 3 & 4 of Explosive Substances Act, 1908.
- 10) Thalavadi PS Cr.No.90/2000 under Sections 147, 148, 452, 366, 307, 506(ii) IPC r/w 25(1)(a)(b) of Arms Act.
- 11) Alanthurai PS Cr.NO.31/2001 under Section 5 of Explosive Substances Act.

Unveiling a photo who was involved in such above grave cases would tantamount to projecting a person as a leader and cause unnecessary disturbance among youth and lead to law and order crisis in that area, affecting the normal life of general public.

7. It is submitted that if the permission is granted to conduct the procession, there is every chance of misleading the youths and causing danger to the public property and integrity of India. There is a strong opposition among the public in conducting the procession and if it conducted it will affect the public tranquillity and will lead to law and order problem. Considering the above facts and circumstances and to safeguard the public property and integrity of India and considering the welfare of the public at large and further Section 30(2) of Tamil Nadu Police Act is in force in Sethiyathope Sub Division, it was decided that it would not be proper to grant permission to conduct the procession. Hence, it is reiterated that, the active leaders and members of Tamil Desa Makkal Katchi were the active participants and followers of Tamil Nadu Liberation Army(TNLA). TNLA is a banned organisation as per the Government order G.O.SS.1559 - 16/2000 dated 09.11.2001. Also the Indian Government has included the TNLA in the banned organisation list as per the UNLAWFUL PREVENTION OF ACTIVITIES ACT (UAPA-1967). It is banned on the basis that any existence and role if played by the organisation would affect the integrity and sovereignty of the state at large. Since the followers of Tamil Desa Makkal Katchi are the active participants of TNLA it would otherwise mean that it is the continuance of activities of TNLA. The Tamil Desa Makkal Katchi has not organised any such meeting earlier and it is the first time the party is organising the commemoration. Homage function, Procession, in large scale by assembling all the members, who are the followers of the Government banned organisation TNLA. Hence, it is illegal to allow such Homage or Procession that would affect the very basic integrity of the state.

8. It is also noted that the volunteers of Tamil Desa Makkal Katchi have committed grave crimes and cases were

registered under UNLAWFUL PREVENTION OF ACTIVITIES ACT -1967 as amended in 2008.

- 1) At Pondicherry Othiansalai PS Cr.No.25/2014, u/s 307 IPC, Sec.4 of Explosive Substances Act 1908, Sec.16 and 18 Unlawful Activities Prevention Act 1967 as amended in 2008.
- 2) At Madurai Othakadai PS Cr.No.47/2014, U/s 4, 4(b), 5, 5(a), 6 of Explosive Substances Act, 1908, Sec.15, 16, 18 & 20 of Unlawful Activities Prevention Act 1967 r/w 120(b), 121, 121(a), 124(a) and 34 IPC.
- 3) At Sivagangai Nachiyapuram PS Cr.No.10/2014, U/s 3 (a), 5, 5(a) Explosive Substances Act, 1908, Section 15 r/w 16(b), 18 & 20 of Unlawful Activities Prevention Act 1967 and Sec.120(b) of IPC.

9. The accused persons in the above cases who belong to Tamil Desa Makkal Katchi are active and it is known that they may also participate in the homage and procession conducted by Tamil Desa Makkal Katchi. Assembling of the above accused persons of Tamil Desa Makkal Katchi involved in activities against the Government may lead to disturbance of peace and public tranquillity and create an unpleasant atmosphere leading to law and order problem."

6. Thus, it is apparent that there were number of cases filed against the erstwhile leaders and are pending against the persons, who are involved in the conduct of the present meeting. The problem of law and order is a matter to be decided by the respondents. They are bound to take into consideration the relevant materials. Though this Court finds considerable force in the submission of the petitioner that Section 30(2) of the Tamil Nadu Police Act is only regulatory, it cannot be said that there were no materials available. The power of this Court to assess those materials is rather limited. This Court does not find any arbitrariness in the decision made by the first respondent. The averments made in the counter affidavit filed by the respondent about the alleged involvement of some of the members of the petitioner is neither denied nor disputed. The decision of Apex Court relied upon by the learned counsel appearing for the petitioner in *ARUP BHUYAN V. STATE OF ASSAM* (Criminal Appeal No.889 of 2007 dated 03.02.2011) does not have any application to the case on hand. The facts involved therein are different. The question therein was the criminality of a person attributed against him and not merely a member of the banned organisation, which is not the case before us. It is the specific case of the respondents that the object of the meeting is to incite the public to violence or violate the public order.

7. The learned Special Government Pleader also submitted that the case in which permission is sought is highly sensitive and the organisation leaders are sought to be honoured. This Court cannot substitute the views of the respondents with respect to the proposed place by giving a factual finding that it is safe to conduct the meeting. Considering the above, this Court is inclined to dismiss the writ petitions.

8. For the foregoing reasons, W.P.Nos.227078 and 27079 of 2015 are also dismissed. No costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

- 1.The Deputy Superintendent of Police,
Sethiyathope Sub-Division, Cuddalore District.
- 2.The Inspector of Police,
Thirumuttam(Srimushnam) Police Station,
Cuddalore District.
- 3.The Deputy Superintendent of Police,
Virudhachalam Sub-Division,
Cuddalore District.
- 4.The Inspector of Police,
Pennadam Police Station,
Cuddalore District.

3 cc to Government Pleader.Sr.No.46212, 46211 and 45426

W.P.Nos.26567, 26568,
27078 & 27079 of 2015

scd(co)

pmk.1.9.2015

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