

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.32176 of 2015

C.Eraniappan

... Petitioner

-Vs-

The Deputy Superintendent of Police,
Mahabalipuram,
Kancheepuram District.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records relating to the impugned order issued by the respondent bearing Na.Ka.No.174/MaMa/U.Ko./2015 dated 27.09.2015 and Na.Ka.No. 179/SDO-MRM/2015 dated 02.10.2015 and quash the same and subsequently directing the respondent to permit us to hold an indefinite fast programme within one week.

For Petitioner : Mr.K.Bharathi

For Respondent : Mr.P.Sanjay Gandhi,
Additional Government Pleader

O R D E R

It is the second round of litigation. Earlier, the petitioner approached this Court challenging the order dated 20.08.2015. This Court passed the following order, after hearing both sides:

"5.Considering the submissions made, this Court is of the view that, there cannot be any difficulty for the respondent to give permission in an unobjectionable place to be chosen by him. What the petitioner wants is to show his protest against the alleged vindictive action on the part of the management. Section 30[2] of the Tamil Nadu Police Act is regulatory. Even, if in a case there is likelihood of some trouble, then the respondent can impose appropriate condition.

6. Accordingly, the Writ Petition is disposed of, by directing the respondent No.2 to give permission to the petitioner to undertake continuous fasting in an unobjectionable place from the point of the respondent No.2, within a period of one week, from the date of receipt of a copy of this order. Thereafter, the respondent No.2 shall pass appropriate orders. It is made clear that the respondent No.2 can reject the choices of place given by the petitioner and choose any other place. Considering the facts and circumstances of the case, the respondent No.2 can also impose any other conditions. No costs. Consequently, connected Miscellaneous Petition is closed."

2. Thereafter, an order was passed on 27.09.2015 imposing certain conditions. While the petitioner has got no grievance with all other conditions, the condition restricting the time from 08.00 a.m. to 06.00 p.m. was objected to by way of representation. On considering the objection, a subsequent order was passed on 02.10.2015 rejecting the request, however, changing the starting time of the fasting as 06.00 a.m. instead of 08.00 a.m. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submitted that in view of the conditions imposed in the order dated 27.09.2015, especially conditions 10 & 11, the restriction cannot be sustained. In other words, if there is any law and order problem or hindrance to the public traffic, certainly appropriate orders can be passed. The petitioner's right of freedom of expression cannot be taken away. On mere suspicion and apprehension, an order cannot be passed.

4. The learned Additional Government Pleader appearing for the respondent submitted that during night hours, there is likelihood of hindrance to the general public, residents and students, apart from possible law and order problem.

5. When there is no law and order problem from 06.00 a.m. to 06.00 p.m. in the normal circumstances, there cannot be any such problem after 06.00 p.m., since there will be less traffic movement of general public including students. Almost, all the schools would be over by 06.00 p.m. If there is any real problem that would arise by the continuous fasting, then the respondent can always exercise the power by invoking the conditions 10 & 11, including cancellation of the permission, which is temporary and considering the conduct of fasting in any other place. Therefore, there is sufficient mechanism available with the respondent to take care of the situation.

6. In such view of the matter, the order impugned dated 02.10.2015 is set aside and the respondent concerned is directed to give permission for continuous fasting to the petitioner, however in the event of any traffic congestion, law and order problem, complaints being received from the public as well as the residents, it is well open to the respondent concerned to invoke the conditions given in the

order dated 27.09.2015, as the said permission is temporary and subject to the conditions imposed.

7. In the result, the Writ Petition is allowed. No costs.

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Sd/-
Assistant Registrar (CS-IV)

/True Copy/

Sub-Assistant Registrar

To

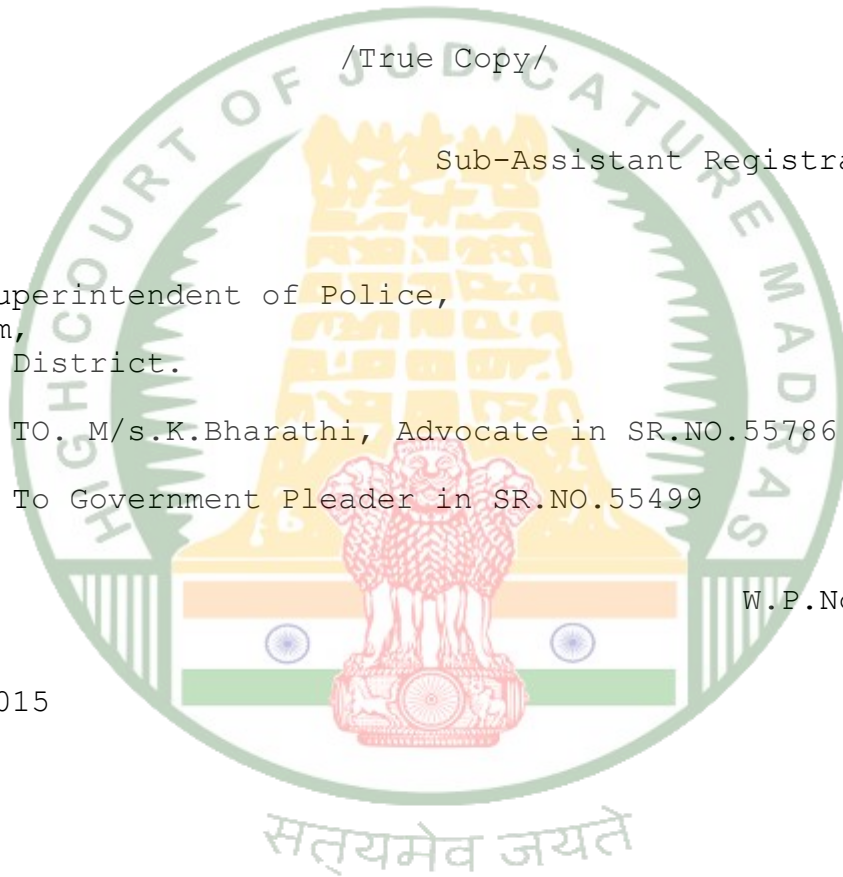
The Deputy Superintendent of Police,
Mahabalipuram,
Kancheepuram District.

+1 C.C. TO. M/s.K.Bharathi, Advocate in SR.NO.55786

+1 C.C. To Government Pleader in SR.NO.55499

W.P.No.32176 of 2015

BVR(CO)
sd : 19/10/2015



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