

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.Nos.34440 to 34453 of 2016

and

W.M.P.Nos.29664 to 29677 of 2016

P.Vijayakumar ..Petitioner in W.P.No.34440/2016
S. Anand ..Petitioner in W.P.No.34441/2016
P.K. Subramanian ..Petitioner in W.P.No.34442/2016
K. Srinivasan ..Petitioner in W.P.No.34443/2016
B. Senthilvel ..Petitioner in W.P.No.34444/2016
R. Thiagarajan ..Petitioner in W.P.No.34445/2016
G.S. Nagarajan ..Petitioner in W.P.No.34446/2016
S. Jotheendran ..Petitioner in W.P.No.34447/2016
N.Srinivasan ..Petitioner in W.P.No.34448/2016
P.K. Manikandan ..Petitioner in W.P.No.34449/2016
C. Rajendran ..Petitioner in W.P.No.34450/2016
N. Somasundaram ..Petitioner in W.P.No.34451/2016
K. Lakshminarayanan ..Petitioner in W.P.No.34452/2016
C.Sankara Ramasubramanian ..Petitioner in W.P.No.34453/2016

Versus

The State of Tamil Nadu
Rep. By its Secretary
Home Department
Fort St. George
Chennai - 600 009.

The Director General of Police
Mylapore
Chennai - 600 004.

..RR1 &2 in all WPs.

The Superintendent of Police
Coimbatore District.

..R3 in WPs.34440,
34441, 34443/16

The Inspector of Police
D-2, Police Station
Selvapuram
Coimbatore District

..R4 in WP.34440/16

The Inspector of Police,
Mettupalayam Police Station,
Coimbatore

..R4 in WP.34441/16

<https://hcservices.ecourts.gov.in/hcservices/>

The Superintendent of Police,
Dindigul

..R3 in WP.34442/16

The Inspector of Police,
Dindigul North Police Station,
Dindigul

..R4 in WP.34442/16

The Inspector of Police,
Town Police Station, Pollachi,
Coimbatore.

..R4 in WP.34443/16

The Superintendent of Police
Tirupur District.

..R3 in WP.34444/16

Teh Inspector of Police,
Tirupur South Police Station,
Tirupur
Corporation, Tirupur.

..R4 in WP.34444/16

The Superintendent of Police,
Nilgiris District

..R3 in WP.34445/16

The Inspector of Police,
B-1 Police Station, Ooty Town,
Nilgiris Dt.

..R4 in WP.34445/16

The Superintendent of Police,
Ramanathapuram Dt.

..R3 in WP.34446/16

The Deputy Superintendent of Police,
Ramanathapuram.

..R4 in WP.34446/16

The Superintendent of Police,
Kanyakumari

..R3 in WP.34447/16 & 34450/16

The Inspector of Police,
Vadasery Police Station,
Nagercoil, Kanyakumari Dt.

..R4 in WP.34447/16

The Superintendent of Police,
Madurai

..R3 in WP.34448/16

The Inspector of Police,
Subramaniapuram Police Station,
Madurai

..R4 in WP.34448/16

The Superintendent of Police,
Trichy Dt.

..R3 in WP.34449/16

The Inspector of Police,
Thillai Nagar Police Station,
Trichy

..R4 in WP.34449/16

The Inspector of Police,
Marthandm Police Station,
Kanyakumari Dt.

..R4 in WP.34450/16

The Superintendent of Police,
Tirunelveli Dt.

..R3 in WP.34451/16

The Inspector of Police,
Tenkasi Police Station,
Tirunelveli District

..R4 in WP.34451/16

The Superintendent of Police,
Nagapattinam Dt.

..R3 in WP.34452/16

The Inspector of Police,
Mayiladuthuri Police Station,
Nagapattinam Dt.

..R4 in WP.34452/16

The Superintendent of Police,
Thoothukudi Dt.

..R3 in WP.34453/16

The Inspector of Police,
Central Police Station,
Thoothukudi Dt.

..R4 in WP.34453/16

WP No. 34440 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White shirt and Olive brown full trousers), lead by a musical band from LIC Colony Bus Stand to Telungupalayam Roundana (Via Ayyanppa Koil, Motherland School, Co-operative Bank) on 09.10.2016 at 03.30 p.m. based on the petitioner's representation dated 13.09.2016 addressed to the 1st to fourth respondents.

WP No. 34441 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White Shirt and Olive brown full trousers) lead by a Musical Band from Nadoor Mettupalayam Housing Unit Mettupalayam on 9.10.2016 at 4.30 pm based on the petitioner representation 12.9.2016 addressed to the 1st to 4th respondents

WP No. 34442 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White Shirt and Olive brown full trousers) lead by a Musical Band from Dindigul Corporation Office to RS road Dindigul (Via Parvathi Tex - Kumaran Park - Taluk Office Road - Palani Road - Railway Feeder Road) on 9.10.2016 at 4.00 pm based on the petitioner representation dated 12.9.2016 addressed to the 1st to 4th respondents

WP No. 34443 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White Shirt and Olive brown full trousers) lead by a Musical Band from Thiruvalluvar thidal Pollachi to Rajeswari Kalyana Mandapam Pollachi on 9.10.2016 at 4.30 pm based on the petitioner representation dated 10.9.2016 addressed to the 1st to 4th respondents

WP No. 34444 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White Shirt and Olive brown full trousers) lead by a Musical Band from Kottai Mariamman Koil Dharapuram Road to Vellinkadu on 9.10.2016 at 4.00 pm based on the petitioner representation dated 10.9.2016 addressed to the 1st to 4th respondents

WP No. 34445 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White Shirt and Olive brown full trousers) lead by a Musical Band from Devanagar Mandabam Cheering Cross ATC-Mariamman Temple Main Bazaar to main Bus Stand Nilgiris on 9.10.2016 at 3.30 pm based on the petitioners representation dated 10.9.2016 addressed to the 1st to 3rd respondents

WP No. 34446 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White Shirt and Olive brown full trousers) lead by a Musical Band from Aranmanai Ramanathapuram District via Sigilraja Veethi Keenikarai Valiveedu Murugan Kovil Vandikara Street Agraharam Road Sivankovil Post Office to Aranmanai Ramanathapuram District on 9.10.2016 at 4.30 pm based on the petitioner representation dated 10.9.2016 addressed to the 1st to 4th respondents

WP No. 34447 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White Shirt and Olive brown full trousers) lead by a Musical Band from Vangiaditayam Puthu Theru Vadasery to DVD Hr.Sec. School Kottar on 9.10.2016 at 4.00 pm based on the petitioner representation dated 13.9.2016 addressed to the 1st to 4th respondents

WP No. 34448 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White Shirt and Olive brown full trousers) lead by a Musical Band from Vanchinathan Padippaga Veethi Subramaniapuram Market to Sundarrajapuram Market near TVS School on 9.10.2016 at 4.00 pm based on the petitioner representation dated 14.9.2016 addressed to the 1st to 4th respondents

WP No. 34449 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White Shirt and Olive brown full trousers) lead by a Musical Band from Tennur Ulavar Santhai to National College Higher Secondary School Ground near E.R. Higher Secondary School on 9.10.2016 at 4.00 pm based on the petitioner representation dated 14.9.2016 addressed to the 1st to 4th respondents

WP No. 34450 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White Shirt and Olive brown full trousers) lead by a Musical Band from Vettuvvanni Marthandam to Kuzhithurai Vettavillai Thotta Tumadam on 9.10.2016 at 4.30 pm based on the petitioner representation dated 12.9.2016 addressed to the 1st to 4th respondents

WP No. 34451 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White Shirt and Olive brown full trousers) lead by a Musical Band from Tenkasi to Madurai Road Vaaigai bridge to Pavadi Vinayagar Temple on 9.10.2016 at 4.30 pm based on the petitioner representation dated 9.9.2016 addressed to the 1st to 4th respondents

WP No. 34452 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White Shirt and Olive brown full trousers) lead by a Musical Band from Mayiladuthurai Koranad Sree Thagam Dhirtha Vinayagar Kovil to Chinna Kadai Street via No.2 Road Bus Stand Clock Tower Periya Kadai Street Mahadana Street Narayana Pillai Street Pattamangalam Street Mayiladuthurai on 9.10.2016 at 4.30 pm based on the petitioner representation dated 15.9.2016 addressed to the 1st to 4th respondents

WP No. 34453 of 2016:- Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya Swyam Sevak Sangh to conduct a procession in their uniform (White Shirt and Olive brown full trousers) lead by a Musical Band from V.V.D. Signal Thoothukudi to Toovipuram Sangara Narayan Park Thoothukudi on 9.10.2016 at 4.30 pm based on the petitioner representation dated 17.9.2016 addressed to the 1st to 4th respondents

For Petitioners : Mr.N.Chandrasekaran
in all WPs. for M/s. B. Rabu Manohar

For Respondents
in all W.Ps. : Mr.A.Kumar - Spl. G.P.

COMMON ORDER

The petitioners have filed the above writ petitions for issuance of Writ of Mandamus directing the respondents to permit them and the members of the Rashtreeya Swyam Sevak Sangh to take out a procession in their uniform (White shirt and Olive brown full trousers), lead by a musical band from the respective place, as the case may be, by considering their respective representations sent to the respondents.

2. In these batch of writ petitions, the petitioners seek for a direction to the respondents to grant them permission to take out a procession in their uniform with musical band. In the affidavits filed in support of the respective writ petitions, the petitioners seek for a direction to the respondents to grant them permission to take out a procession on 09.10.2016. However, during the course of argument, the learned counsel for the petitioners would state that the petitioners have decided to change the date on which they originally intended to take out procession. According to the counsel for the petitioners, the petitioners have postponed the date to take out the procession either on 6th or 13th November 2016 due to the schedule for conduct of local body Elections in the State has been announced. It is also stated that the petitioners have submitted their representations already seeking to grant them permission to take out the procession, which itself may be directed to be considered by the respondents for taking out the procession either on 6th or 13th November 2016 as there is more than four weeks time now for the petitioners to take out the procession, while so, there may not be any impediment for the respondents to grant permission to take out the procession in the respective routes.

3. The learned counsel for the petitioners would further contend that the petitioners have categorically stated in the affidavits filed in support of the respective writ petitions that the members of the petitioner Sangh will take part in the procession only in the official uniform namely White shirt and

Olive brown full trousers lead by a musical band and they will take out such procession peacefully without causing any disturbance to the general public. Therefore, according to the learned counsel for the petitioners, there may not be any impediment or objection by any one for the petitioners to take out such procession.

4. The learned counsel for the petitioners also fairly submitted that the members of the petitioner association would participate in the procession peacefully and by abiding any condition that may be imposed by this Court or by the respondents as a condition precedent for granting permission to take out the procession. In this context, the learned counsel for the petitioners brought to the notice of this Court several orders passed by this Court on earlier occasion and prayed for issuing appropriate direction to the respondents to grant permission to the petitioners to take out the procession on 6th or 13th November 2016.

5. The learned Special Government Pleader appearing for the respondents, by placing reliance on the counter affidavit filed by the second respondent, would oppose the writ petitions. The learned Special Government Pleader would contend that if permission sought for by the petitioners is granted to take out a procession in the routes specified by the petitioners, there will be every possibility of outbreak of law and order problem. Therefore, according to the learned Special Government Pleader, the directions sought for by the petitioners need not be granted. However, in view of the change in the date for taking out the procession by the petitioners, the respondents will consider the same in accordance with law.

6. I heard the learned counsel for the petitioners as well as the learned Special Government Pleader for the respondents. On earlier occasion, at the instance of the petitioners herein, this Court passed an order on 08.01.2016 in WP No. 53 of 2016 etc., batch wherein it was observed as follows:-

11. Therefore, this Court is of the view that even on the construction of Section 41-A of the Act, the petitioners are entitled to succeed. Coming to other two issues pertaining to the usage of sticks and clubs and the musical instruments, the said condition also cannot be sustained. There is absolutely no material to hold that mere usage of musical instruments would cause law and order situation affecting public peace. Similarly, the petitioners are not using sticks and clubs by way of arms in which case certainly, Section 41-A of the Act would be attracted. When the usage is for the purpose of musical instruments, they would form part of the said instruments and therefore, they cannot be termed as sticks. Therefore, the said conditions imposed cannot be sustained in the eye of law.

12. Accordingly, writ petitions in W.P.Nos.777 and 778 of 2016 stand allowed and the two conditions

aforesaid are hereby set aside. However, it is made clear that the petitioners will have to strictly comply with the other conditions imposed by the respondents. In view of the order passed in W.P.No.777 and 778 of 2016, the relief sought for in W.P.Nos.53 and 54 of 2016 no longer survives and the said writ petitions are dismissed as infructuous. No costs. Consequently, the connected miscellaneous petitions are dismissed.

7. It is evident that on the earlier occasion, the very same plea raised by the petitioners, seeking permission to take out a procession was considered by this Court.

8. Having regard to the submissions made by the learned counsel for the petitioners and the undertaking given before this Court that the petitioners will abide by any condition that may be imposed by this Court, this Court feels that interest of justice demands that a direction as prayed for by the petitioners can be issued to the respondents subject to the condition that the petitioners shall abide by the conditions that are imposed by this Court and if any to be imposed by the respondents. The petitioners are directed that they should not use lathis at the time of taking out the procession. The petitioners are also directed to abide by the time and route within which they should take out the procession as may be specified by the respondents. It is however made clear that the petitioners can take musical instruments and the procession can be lead by a band. The respondents are directed to consider the claim of the petitioners to grant them permission to take out procession in the respective routes and appropriate orders to that effect shall be passed by the respondents on or before 30th October 2016 so as to enable the petitioners to take out the procession.

9. The Writ Petitions are disposed of in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

smi/rsh

To

1. The Secretary
State of Tamil Nadu
Home Department,
Fort St. George,
Chennai - 600 009.
2. The Director General of Police
Mylapore, Chennai - 600 004.
3. The Superintendent of Police
Coimbatore District.
4. The Inspector of Police
D-2, Police Station,
Selvapuram, Coimbatore District
5. The Inspector of Police,
Mettupalayam Police Station,
Coimbatore
6. The Superintendent of Police,
Dindigul
7. The Inspector of Police,
Dindigul North Police Station,
Dindigul
8. The Inspector of Police,
Town Police Station, Pollachi,
Coimbatore.
9. The Superintendent of Police
Tirupur District.
10. The Inspector of Police,
Tirupur South Police Station,
Tirupur
Corporation, Tirupur.
11. The Superintendent of Police,
Nilgiris District
12. The Inspector of Police,
B-1 Police Station, Ooty Town,
Nilgiris Dt.
13. The Superintendent of Police,
Ramanathapuram Dt.
14. The Deputy Superintendent of Police,
Ramanathapuram.
15. The Superintendent of Police,
Kanyakumari

16.The Inspector of Police,
Vadasery Police Station,
Nagercoil, Kanyakumari Dt.

17.The Superintendent of Police,
Madurai

18.The Inspector of Police,
Subramaniapuram Police Station,
Madurai

19.The Superintendent of Police,
Trichy Dt.

20.The Inspector of Police,
Thillai Nagar Police Station,
Trichy

21.The Inspector of Police,
Marthandm Police Station,
Kanyakumari Dt.

22.The Superintendent of Police,
Tirunelveli Dt.

23.The Inspector of Police,
Tenkasi Police Station,
Tirunelveli District

24.The Superintendent of Police,
Nagapattinam Dt.

25.The Inspector of Police,
Mayiladuthuri Police Station,
Nagapattinam Dt.

26.The Superintendent of Police,
Thoothukudi Dt.

27.The Inspector of Police,
Central Police Station,
Thoothukudi Dt.

+14 ccs to Mr.B. Rabu Manohar, Advocate, S.R.No.56684
+1cc to the Government Pleader, S.R.No.56779, 56780, 56782, to
56790, 56794 to 56796

RV(CO)
EU(20/10/2016)