

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15-02-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition Nos. 4853, 4854, 5532 and 5533 of 2016
and
W.M.P. No. 4212 and 4213 of 2016

Popular Front of India
represented by its District President
B. Mubarak Basha
Tirupur
Tirupur District .. Petitioner in WP No. 4853/16

Popular Front of India
represented by its District President
M. Sheik Noordeen
Nagercoil
Kanniyakumari District .. Petitioner in WP No. 4854/16

Popular Front of India
represented by its District President
M. Sheik Noordeen
Nagercoil
Kanniyakumari District .. Petitioner in WP No. 5532/16

Popular Front of India
represented by its District President
B. Mubarak Basha
Tirupur
Tirupur District .. Petitioner in WP No. 5533/16

Versus

1. The State of Tamil Nadu
rep. by its Secretary
Department of Home
Fort St. George
Chennai - 600 009
2. The Director General of Police
DGP Office
Radhakrishnan Salai
Mylapore, Chennai - 600 004
3. The Commissioner of Police
Tirupur
4. The Inspector of Police
Tirupur South Police Station
Tirupur District

5. The Inspector of Police
Tirupur Rural Police Station
Tirupur District

Respondents in WP No. 4853/16

1. The State of Tamil Nadu
rep. by its Secretary
Department of Home
Fort St. George
Chennai - 600 009

2. The Director General of Police
DGP Office
Radhakrishnan Salai
Mylapore, Chennai - 600 004

3. The Superintendent of Police
Nagercoil
Kanyakumari

4. The Deputy Superintendent of Police
O/o. The Deputy Superintendent of Police
Thucklay, Kanyakumari

5. The Inspector of Police
Thucklay Police Station
Thucklay
Kanniyakumari District

Respondents in WP No. 4854/16

1. The State of Tamil Nadu
rep. by its Secretary
Department of Home
Fort St. George
Chennai - 600 009

2. The Director General of Police
DGP Office
Radhakrishnan Salai
Mylapore, Chennai - 600 004

3. The Assistant Superintendent of Police
Thucklay Division, Nagercoil
Kanniyakumari District

Respondents in WP No. 5532/16

1. The State of Tamil Nadu
rep. by its Secretary
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Chennai - 600 009

2. The Director General of Police
DGP Office
Radhakrishnan Salai
Mylapore, Chennai - 600 004

3. The Assistant Commissioner of Police
Tirupur South Division
Tirupur

4. The Inspector of Police
Tirupur South Police Station
Tirupur District

.. Respondents in WP No. 5533/16

WP No. 4853 of 2016:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondents 3 to 5 to accord permission for the procession to be undertaken by the members of the petitioner society from DSK Hospital, through Kangeyam Road, Tirupur to end at KNP Colony CTC Bus Stand, Tirupur and to hold a public meeting thereafter on 17.02.2016 by considering the representation preferred by the petitioner dated 27.01.2016 in the light of the order made by this Court in WP No. 28677 of 2014 dated 07.11.2014 and WP No. 777 of 2016 dated 08.01.2016 within the time that may be stipulated by this Court

WP No. 4854 of 2016:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondents to accord permission for the procession to be undertaken by the members of the petitioner society from Alagiyamandapam Junction, through Thurappu Junction to end at Thiruvidhancode Nadukadai Junction, Nagercoil and to hold a public meeting thereafter on 17.02.2016, by considering the representation preferred by the petitioner dated 27.01.2016 in the light of the order made by this Court in WP No. 28677 of 2014 dated 07.11.2014 and WP No. 777 of 2016 dated 08.01.2016 within the time that may be stipulated by this Court

WP No. 5532 of 2016:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the impugned order made by the third respondent in C.No.54/SDOT/Camp/2016 dated 11.02.2016 in so far as it relates to conditions 1 and 4 are concerned and quash the same as illegal and consequently direct the respondents to permit the petitioner to undertake the procession as permitted by the said order wearing uniform and using a musical band on 17.02.2016.

WP No. 5533 of 2016:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the impugned order made by the third respondent in Na.Ka.No.36/ACP(S)/TPC/2016 dated 11.02.2016 in so far as it relates to conditions 1 and 4 are concerned and quash the same as illegal and consequently direct the respondents to permit the petitioner to undertake the procession as permitted by the said order wearing uniform and using a musical band on 17.02.2016.

For Petitioner : Mr. Ajmal Khan, Senior Counsel
for Mr. A. Raja Mohamed
in all the Writ Petitions

For Respondents : Mr. A.L. Somayaji, Advocate General
assisted by Mr. P. Sanjay Gandhi
Additional Government Pleader
in all the Writ Petitions

COMMON ORDER

The petitioners have come forward with these writ petition, either seeking a Writ of Mandamus directing the respondents to take out the procession on 17.02.2016 in the date, time and place specified by them in the respective District or challenging the order denying permission to them to take out such procession.

2. The petitioner is a society registered under The Societies Registration Act with the object of protecting and empowering the backward, oppressed and marginalized Section of the society such as members of the backward class, minority, schedule caste and schedule tribes. According to the petitioner, the society is a non-political action movement, which has rendered valuable service to the society by providing assistance during flood and other natural calamities. As part of their foundation day, on 17th of every year, a procession will be undertaken by the members of the society in a defined route without giving any room for any complaints. In order to maintain a disciplined procession, the members of the society who participate in such possession will wear uniform. This year, the members of the petitioner society who participate in the procession will wear the uniform i.e., blue shirt and dark grey pant. For the purpose of celebrating the foundation day this year on 17th February 2016, the petitioner society has given a representation on 27.01.2016 by the petitioner in WP No. 4853 and 4854 of 2016 seeking permission to undertake the procession in Tirupur District. However, the said representation has not been considered by the respondents. Therefore, the petitioner has filed WP No. 4853 and 4854 of 2016 for the relief aforesaid.

3. As far as WP No. 5532 and 5533 of 2016 are concerned, the petitioner challenges the order passed by the respective respondent refusing to grant permission to the petitioner to undertake the procession on 17.02.2016 without wearing uniform and without using music band in the alternate route to be prescribed by the police. In other words, the petitioner was given permission to take out the procession partially, however, they were restrained not to wear uniform and to carry music band during the course of such procession. Assailing the order of rejection, the petitioner has filed WP Nos. 5532 and 5533 of 2016.

4. The petitioners would contend that wearing uniform would clearly identify the members of the petitioner society who take part in the procession. The procession will be carried out peacefully without giving any room for any complaint. The respondents are not therefore justified in passing the order rejecting the request of the petitioner to take out the procession on 17.02.2016.

5. The learned senior counsel appearing for the petitioners invited my attention to an order passed by this Court in the case of P. Nedumaran vs. State of Tamil Nadu reported in 1999 1 Law Weekly Criminal 73 and in the case of C.J. Rajan vs. Deputy Superintendent of Police reported in 2008 3 MLJ 296. In both the cases, an identical issue came up for consideration before this Court. This Court, while considering the scope of regulation that

could be prescribed for holding procession or meeting, held that the power to regulate such procession/meeting does not include the power to prohibit any such meeting/procession, but only to regulate any such activity. The learned senior counsel for the petitioner would further contend that when the petitioner society intended to take out a procession peacefully without causing any inconvenience to any one, the respondents are not justified in refusing to grant such permission. Such a right on the part of the petitioner society to carry out procession is a fundamental right enshrined under Article 19 (2) to (6) of The Constitution of India. The learned senior counsel for the petitioner vehemently contend that the similarity of the uniform to be attired by the participants will not in any relatable to the uniform prescribed for armed forces or naval or military force. There is no prohibition to wear the said dress and wearing such will not in any way attract the regulations contained in Section 41-A of the Chennai City Police Act. The respondents failed to see whether there is any likelihood of disturbance of public peace, safety and tranquility especially when the petitioner categorically that they will resort to the procession in a peaceful manner without giving any room for any complaint.

6. Per contra, the learned Advocate General appearing for the respondents would vehemently oppose the writ petitions. According to the learned Advocate General, a similar request made by the petitioner - Popular Front of India, before this Court in WP Nos. 4049 and 4054 of 2015 dated 17.02.2015 was rejected by this Court and confirmed by the Division Bench of this Court on appeal. According to the learned Advocate General, Article 19 (2) and (3) of the Constitution of India empowers the State to impose reasonable restrictions on the exercise of the rights conferred under Article 19 (1) (a) and (b) of the Constitution of India. The learned Advocate General, referring to an earlier incident during which permission was granted to the petitioner organisation to take out similar procession in Ramanathapuram District wherein the members of the petitioner organisation flouted the conditions which were imposed for taking such procession and it resulted in a law and order situation. In that incident, several persons were injured and criminal cases were registered against the cadre of the petitioner organisation. The learned Advocate General also brought to my notice the criminal cases registered against the members of the petitioner society on various occasion. Therefore, according to the learned Advocate General the past incident is a relevant factor and the respondents are fully justified in refusing permission or not according permission, as the case may be. It is further contend that what is sought to be undertaken by the petitioner association in the form of procession is nothing but a drill which is prohibited under Section 41-A of the Chennai City Police Act. The dress meant to be used by the participants in the procession clearly resembles the dress prescribed for armed forces. The colour of the uniform presently mentioned in the petition resembles that of the uniform used by the trainees of Indian Navy Ship and armed forces. However, the learned Advocate General appearing for the respondents would submit that if the petitioner files an affidavit of undertaking to the effect that the uniform to be attired by the participants of the procession will not resemble the armed forces or police personnel in any

manner and that the participants will not conduct any drill, which is prohibited under Section 41-A of the Chennai City Police Act, then the respondents will consider their claim for granting permission subject to conditions that may be imposed by the respondents taking into consideration the attendant facts and circumstances.

7. On the above submission of the learned Advocate General appearing for the respondents, the learned Senior counsel for the petitioners submits that the petitioner is prepared to swear to an affidavit to the effect that the uniform to be attired by the participants of the procession will not in any manner resemble the uniform prescribed for armed forces or other para-military forces or the participants will conduct any drill which will be in violation of Section 41-A of the Chennai City Police Act. For the purpose of filing an affidavit, the matter was passed over and the writ petitions were directed to be taken up for hearing at 4.00 p.m.

8. When the writ petitions are taken up for hearing at 4.00 pm, the learned senior counsel for the petitioners produced two additional affidavits sworn to by the petitioner in WP No. 5532 and 5533 of 2016. It is specifically stated in the affidavit that the cadres of the petitioner organisation shall not wear any uniform which resembles the uniform of the Armed Forces (or) Police Forces. It is further stated that the cadres of the petitioner organisation shall wear uniform namely Dark Blue shirt and grey colour full pant which does not resembles the uniform of the Armed Forces (or) Police Forces. It is further stated that the cadres of the petitioner organisation will not carry any Arms (or) lathis and only carry musical instrument band with drum-stick for playing the said band and that they will not conduct any drill. It is further stated in the affidavits that the cadres of the petitioner organisation will not raise any objectionable slogans and will conduct the procession peacefully and will co-operate with the police for the smooth conduct of the procession on 17.02.2016 in the route permitted by the respondent police. The contents of the affidavits are recorded.

9. It is to be stated that this Court cannot prescribe any uniform to be attired by the participants during the course of procession or this Court can conduct a roving enquiry as to whether the uniform to be attired by the participants will resemble the armed forces or other para-military forces. This Court, however, takes note of the undertaking given by the petitioner that they will not conduct any drill, they will cooperate with the police for the smooth conduct of the procession and that they will not raise any slogan which would be objectionable. In the light of the above undertaking given by the petitioner and the attendant facts and circumstances, I am of the considered view that by following the earlier orders passed by this Court and by recording the affidavits filed by the petitioner, as mentioned above, the permission sought for by the petitioner can be granted by allowing all the writ petitions. However, it is made clear that it will be open to the respective respondents to impose necessary conditions as may be necessary to ensure that the procession is conducted smoothly without giving any room for any complaint.

10. Subject to the aforesaid observation, all the writ petitions are ordered. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Secretary to Government of Tamilandu
Department of Home
Fort St. George, Chennai - 600 009

2. The Director General of Police
DGP Office
Radhakrishnan Salai
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Kanniyakumari District

9. The Assistant Superintendent of Police
Thucklay Division, Nagercoil
Kanniyakumari District

4 ccs to Mr.A. Raja Mohamed, Advocate, Sr. 9536 to 9539

2 ccs to Government Pleader, Sr. 9551 & 9552

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and 5533 of 2016