

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2016

CORAM

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

W.P.Nos.53 & 54 of 2016 and WMP.Nos.19 & 20 of 2016 and
W.P.Nos.777 & 778/2016 and WMP.Nos.583 to 588/2016

A.Magesh Kumar .. Petitioner in W.P.No.53 & 777/16

S.Jotheendran ... Petitioner in W.P.No.54 & 778/16

Vs.

1 The State of Tamilnadu
Rep by its Secretary
Home Department
Fort St.George Chennai-09.

2 The Director of General of Police
Mylapore Chennai-04.

3 The Superintendent of Police
Erode District Erode.

4 The Inspector of Police
North Police Station
Veerappan Chattiram
Erode District. ... Respondents in W.P.No.53/16

1 The State of Tamilnadu
Rep by its Secretary
Home Department
Fort St.George Chennai-09.

2 The Director of General of Police
Mylapore Chennai-04.

3 The Superintendent of Police
Nagerkoil. Kanyakumari District.

4 The Inspector of Police
Thucklay Police Station
Thucklay Kanyakumari District.

.. Respondents in W.P.No.54/16

- 1 The State of Tamilnadu
Rep by its Secretary
Home Department
Fort St.George Chennai-09.
- 2 The Director of General of Police
Mylapore Chennai-04.
- 3 The Superintendent of Police
Erode District Erode.
- 4 The Deputy Superintendent of Police
Erode Town, Sub-Division,
Erode District. . . Respondents in W.P.No.777/16

- 1 The State of Tamilnadu
Rep by its Secretary
Home Department
Fort St.George Chennai-09.
- 2 The Director of General of Police
Mylapore Chennai-04.
- 3 The Superintendent of Police
Nagercoil. Kanyakumari District.
- 4 The Deputy Superintendent of Police
Thucklay, Kanyakumari District.
.. Respondents in W.P.No.778/16

Prayer in W.P.No.53/16: Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya SwyamSevak sangh to conduct a procession lead by a musical band from Kongu Kalaiarangam (Near Collectorate) Erode to Sengundhar School Brough Road Erode on 10.01.2016 at 04:30 PM based on the petitioners representation dated 17.12.2015 addressed to the 1st to 4th respondents.

Prayer in W.P.No.54/16: Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents herein to permit the petitioner and the members of the Rashtreeya SwyamSevak sangh to conduct a procession lead by a musical band from Parthasarathy Temple Kollanvilai (Thuckalay) Kanyakumari District to Padmanabapuram Kanyakumari District on 09.01.2016 at 5.00 PM based on the petitioners representation dated 19.12.2015 addressed to the 1st to 4th respondents.

Prayer in W.P.No.777/16: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the 4th respondent in C.No. /SDO-ET/Camp/2016 dated 6.1.2016 quash the same as far as it relates to condition No.1 & 2 is concerned and further direct the respondents herein to permit the petitioner and the members of the Rashtreeya SwyamSevak Sangh to conduct a procession in their uniform lead by a musical band from Kongu Kalaiarangam (Near Collectorate) Erode to Sengundhar School Brough Road Erode on 10.1.2016 at 4.30 PM.

Prayer in W.P.No.777/16: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the writs relating to the impugned order passed by the 4th respondent in C.No.15/SDOT/Camp/2016 dated 6.1.2016 quash the same as far as it relates to condition No.1 & 2 is concerned and further direct the respondents herein to permit the petitioner and the members of the Rashtreeya SwyamSevak Sangh to conduct a procession wearing their own uniform lead by a musical band from Parthasarathy Temple Kollanvalai (Thaucklay) Kanyakumari District to Padmanabapuram Kanyakumari District on 9.1.2016 at 05.00 PM.

For Petitioner	...	Mr.N.Chandrasekaran for
in W.P.No.777 of 2016		Mr. B.Rabu Manohar
and 53 of 2016		
For Petitioner	...	Mr.T.V.Ramanujam, Sr.Counsel
in W.P.No.778 of 2016		for Mr. B.Rabu Manohar
and 54 of 2016		
For R1 to R4	...	Mr.A.L.Somayaji,
in all W.Ps		Advocate General assisted by
		Mr.P.Sanjay Gandhi
		Addl. Govt. Pleader

COMMON ORDER

As the issues involved in all these writ petitions are one and the same, they have been taken up and disposed of by a common order.

2. In so far as W.P.No.777 of 2016 is concerned, the petitioner organisation has been having a dress code apparently from the year 1924 onwards with the white shirt and khaki trouser (half pant). Permissions have been sought for by the petitioner for the purpose of commemorating the 100th year Annual day of Sri. Ramanujar, 153rd Annual day of Swami Vivekanandar, 125th Annual day of Dr.Ambedkar. In the other writ petition, namely, W.P.No.778 of 2016, an application has

been made for the purpose of celebrating Mahara Sankaranthi by way of procession from Parthasarathi Temple to Padmanabhapuram. Though permissions have been granted by the respondents concerned, certain conditions have been imposed and the petitioners are aggrieved over two of such conditions. The conditions sought to be impugned are that the members of Rashtreeya Swayam Sevak Sangh, who are represented by the petitioners herein, shall not wear their traditional uniform during procession and they shall not carry sticks apart from taking musical instruments as the same would lead disturbance to public peace. Challenging these two conditions, the present writ petitions have been filed.

3. The learned counsel appearing for the petitioners submitted that the issue involved is no longer res integra. Considering the very same issue, this Court in W.P.No.28682 of 2014 has held that the petitioners are entitled for the relief sought for. While acknowledging the entitlement of the petitioner to wear khaki half trouser and white shirt, this Court has held in the said writ petition in the following manner:

"20. Arguments were advanced on both sides on the question as to whether the Khaki half-trouser and the white shirt worn by the volunteers of the Rashtriya Swayam Sevak Sangh, resemble the uniform of the armed forces of the Union or the police force. Apart from the fact that no member of the police force today wear half-trousers, the question is of no relevance to the cases on hand, since Section 41-A does not deal with the holding of processions but it deals only with drill, training or assembly. It is claimed that the uniform that the volunteers wear, was designed way back in 1920s. Therefore, the respondents appear to have raised a bogey, in the form of such an objection and they have taken recourse to a wrong provision of law. Hence, on a pure and simple question of law, the impugned orders are liable to be set aside."

4. Though the writ appeal has been filed against the said order, there is no interim order, which in fact, has been rejected. Therefore, the respondents are bound by the said order.

5. It is further submitted on behalf the petitioners that Section 41-A of Chennai City Police Act, 1888 can at best be regulatory and not mandatory. The entire Section has to be read as a whole. It cannot be made applicable to the case of the Rashtriya Swayamsevak Sangh represented by the petitioners, especially when the uniform, which is said to be resembling, is to be used by the trainees, that too, during drills. Therefore, the said condition cannot be sustained.

6. Coming to the other condition imposed, which is of two parts, namely, carrying of sticks and usage of musical instruments is concerned, it is submitted that the petitioners are not carrying any sticks. However, the sticks used for musical instruments are to be construed as part and parcel of the same and therefore, they cannot be termed as arms. In other words, they cannot be termed on par with clubs and sticks used for violence. Insofar as the musical instruments are concerned, it is submitted that it is beyond reasoning and logic that they would not cause any law and order problem. Therefore, it is submitted that writ petitions will have to be allowed by setting aside the aforesaid conditions.

7. The learned Advocate General appearing on behalf of respondents submitted that the order passed by this Court in W.P.No.28682 of 2014 is subject to appeal. A technical interpretation as given in the said order by differentiating an assembly with a procession cannot be sustained especially in view of the Judgement of the Apex Court in Himat Lal K.Shah Vs. Commissioner of Police, (AIR 1973 SC 87). The amendment to Section 41-A of Chennai City Police Act, 1888 has been brought forth in pursuant to the circular issued by Home Ministry dated 07.9.2012, which places fetters on the right of having procession enabling the respondents to impose the conditions above said. When a similar request was made before this Court, it was rejected in W.P.Nos.4049 and 4054 of 2015 dated 17.02.2015. The said order was also confirmed by the Division Bench. Therefore, no interference is required.

8. The fact that the members of Rashtriya Swayamsevak Sangh represented by the petitioners are having the very same dress to identify themselves from the year 1924 is not in dispute as seen from the impugned order passed in W.P.No.778 of 2016. This is also recorded by the learned single Judge in W.P.No.28682 of 2014. The similarity of the uniform sought to be projected by the respondents is not with reference to the uniform as that of the police force. It is a dress that is being used by the junior officers during drills and training. It is also seen that such dress is being used by the Fire Service personnel. There is no prohibition for using the said dress that is being used by the Fire Service personnel by invoking Section 41-A of Chennai City Police Act, 1888. Therefore, on facts, this Court does not find the condition imposed in the orders impugned qua the dress code can be sustained.

9. Coming to the interpretation of Section 41-A of Chennai City Police Act, 1888 as discussed above, the object and the rationale behind the said provision can be well understood by reading the said provision as a whole. In other words, the words, "drills, training or assembly with arms" will have to be

read with "in uniform resembling as that of armed forces of union or police". Therefore, it cannot be said that a dress code meant to be used during drills and parade by the junior officers could be read into said provision. Admittedly, it is not a regular dress. What is being used by the members of Rashtriya Swayamsevak Sangh is white shirt with Khaki shorts. Therefore, Section 41-A of Chennai City Police Act, 1888 has to be read in the context in which it has been said. For exercising Section 41-A of Chennai City Police Act, 1888, there has to be an application of mind on the part of the respondents concerned. To put it differently, dress meant to be used by a police personnel would not come within the purview of Section 41-A of the Act. Certainly, Section 41-A of the Act has got its own object. If anyone seeks to have a drill, training or assembly or even for argument sake, a procession which would create an impression that the dressing, would resemble that of the armed forces or union or police from the point of view of public peace or public safety or for the maintenance of the public order, then Section 41-A of the Act, certainly would come into play. Therefore, such an exercise is not automatic, but the authority concerned will have to see as to whether there is any likelihood of disturbance to public peace or public safety or disturbance of public order, as the case may be.

10. In the case on hand, the respondents have certainly imposed certain conditions by keeping in view the public peace, public safety and public order. Perhaps that is the reason the permission has been granted to the Rashtriya Swayamsevak Sangh with the modified rule i.e., subject to the conditions imposed by them.

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.

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s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

- 1 The Secretary, State of Tamilnadu
Home Department
Fort St.George Chennai-09.
- 2 The Director of General of Police
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Erode District Erode.
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North Police Station Veerappan Chattiram
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Nagercoil. Kanyakumari District.
- 6 The Inspector of Police
Thucklay Police Station Thucklay
Kanyakumari District.
- 7 The Deputy Superintendent of Police
Erode Town, Sub-Division, Erode District.
- 8 The Deputy Superintendent of Police
Thucklay, Kanyakumari District.
- 9 The Inspector of Police,
Thucklay Police Station,
Thucklay, Kanyakumari District.

+ 2 ccs to M/s.B.Rabu Manohar SRs. 1521 & 1522

+ 1 cc to Govt. Pleader High Court, Madras SR 1507

mp(co)
prk8/1

W.P.Nos.53 & 54 of 2016 and
W.P.Nos.777 & 778/2016