



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD) No.12775 of 2017

WEB COPY

Joseph Jeyaseelan

... Petitioner

Vs.

1. The Superintendent of Police,
Nagercoil,
Kanniyakumari District.

2. The Inspector of Police,
Vadasery Police Station,
Nagercoil,
Kanniyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notice dated 20.06.2017 issued by the 2nd respondent and impugned notice dated 26.06.2017 issued by the 2nd respondent and quash the same as illegal and consequently direct the 2nd respondent to grant permission to conduct the token hunger strike on 15.07.2017 in front of Anna Stadium, Nagercoil.

For Petitioner

: Mr.V.Rajiv Rufus

For Respondents

: Mr.A.K.Baskara Pandian

Special Government Pleader

O R D E R

The Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus challenging the impugned notice dated 20.06.2017 and another notice dated 26.06.2017 issued by the second respondent and to direct the second respondent to grant permission to conduct the token hunger strike on 15.07.2017 in front of Anna Stadium, Nagercoil.

2.The petitioner in the affidavit filed in support of this Writ Petition stated that he is the Secretary of East Kanyakumari District in Naam Thamilar party and that pursuant to a resolution of his party headquarters, they have decided to conduct one day token hunger strike on 21.06.2017 in the place namely Anna Stadium, Nagercoil. The programme was postponed because of the impugned notice by which permission was rejected.



3. The petitioner though proposed to organise the hunger strike on 15.07.2017 and the representation of the petitioner dated 05.07.2017 also is for having the hunger strike on 15.07.2017, in view of the paucity of time, the petitioner himself has requested this Court to consider the representation to conduct one day token hunger strike on 18.07.2017 instead of 15.07.2017, as proposed. I have considered the case of the petitioner and the cause for which the petitioner has approached this Court. The respondent has rejected the representation earlier only on the ground that there is likelihood of law and order problem by referring to Section 30(2) of the Police Act, 1861. A Hon'ble Division Bench of this Court has already explained the scope of Section 30 of the Police Act in the case of **C.J.Rajan v. Deputy Superintendent of Police, Mayiladuthurai and another** reported in (2008) 3 MLJ 926 wherein it has been held as follows:

"12. Therefore, it is too late for the respondents to refuse permission to hold a meeting on a matter of public importance. With respect to the respondents' reliance upon Section 30(2) of the Police Act, 1861, it can only be said that it enables the respondents to direct the control and conduct of all assemblies and processions on public road or in the public streets or thoroughfares and to prescribe the Rules by which and the times by which the processions may pass and Section 30(2) and (3) on which reliance was placed, is extracted below:

Sec 30(2):" He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the district, or of the subdivision of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice, that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a licence.

(3) On such application being made, he may issue a licence, specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place, and otherwise giving effect to this section."

13. Therefore, the said provision is only a regulatory power and not a blanket power to strifle any democratic dissent of the citizens by the Police.

14. While dealing with a similar situation on the powers conferred on the Commissioner of Police under Section 41 of the Madras City Police Act, 1888, this Court (R. Jayasimha Babu, J.) vide judgment in *P. Nedumaran v. State of Tamil Nadu and others* [1999 (1) L.W. (CRI) 73] defined the scope of the rights of citizen and the power of the State to impose reasonable restriction. The following passages found in paragraphs 15 to 18 may be usefully extracted:

Para 15: "The rights conferred on the citizens by Article 19 of the Constitution are precious rights and are not to be lightly breached or restricted by the State or any functionary of the State. Any regulation of exercise of those rights must be for the purposes specified in Article 19 of the Constitution itself, and that power must be so exercised as to subserve the larger public good. The power to impose restrictions is not the power which is available for exercise in an arbitrary manner or for the purpose of promoting the interest of those in power, or for suppressing dissent Democracy can be made dynamic an truly alive only when there is free market for ideas and discussion and debate is not only permitted but is encouraged. All expression of opposing view point cannot be regarded as dangerous to the safety or security of the country and all expressions which do not find the approval of those exercising the power of the State cannot be regarded as harmful to the State and to the public order.

Para 16: The power conferred on the Commissioner under Section 41 of the Madras City Police Act is sweeping, that power is meant to be exercised with great care and caution. The Madras City Police Act is a pre-Constitution enactment, and the powers conferred on the authorities at a time when the country was under the colonial regime, and during the period when suppression of dissent was considered to be a legitimate policy of the State, cannot be exercised after the enactment of the Constitution in the same manner, as it was exercised earlier. The Intelligence Report placed before the Court shows that the police still have the attitude which does not seem to recognise that the country is a democratic nation, where every citizen has a right to full and equal participation in the process of Government. No citizen can be regarded as an enemy of the State merely because he has voiced a view which is not the one favoured by those in authority.



Para 17: The fact that the police are vested with power should not make them assume that, that power is available for exercise in any manner that they consider fit. That power is to be exercised strictly within the ambit of the provisions of the Constitution, more particularly, the requirement that any restriction placed on the exercise of fundamental rights should be a reasonable restriction, and the restrictions so placed should be shown to be essential, having regard to the permissible purpose for which restrictions may be imposed.

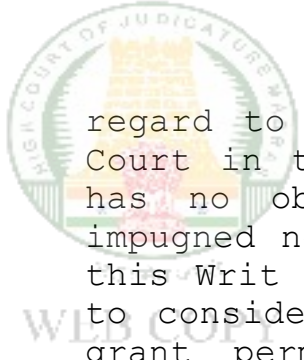
Para 18: The fact that the petitioner-Association is voicing a view point which may not be popular cannot be a justification for preventing that point of view being projected."

We are in entire agreement with the views expressed therein.

15. The proposal made on behalf of the petitioner is laudable and it shows their accommodating spirit in relocating the venue of the public meeting to another place after taking note of the objections raised by the respondents. We are of the view that the respondents can have no objection for the present venue, date and time chosen by the petitioner Association for conducting a public meeting. Since the respondents are present in Court and they were also informed about the change of the venue made by the petitioner, it is hereby directed the petitioner need not send any fresh application and the request recorded in this order can be taken as adequate requisition made by the petitioner.

16. In view of the above, the second respondent is hereby directed to permit the petitioner to hold the meeting at Avurithidal (near bus stand) at Nagapattinam Town on 23.3.2008 from 4 PM to 10 PM. It is for the respondents to provide adequate protection for the smooth conduct of the meeting. The writ petition is disposed of accordingly. However, there will be no order as to costs. Connected Miscellaneous Petition is closed."

4. The protest by the proposed one day token hunger strike was intended to condemn the Central Government and State Governments on the issue relating to the Hydro Carbon project in Kathiramangalam Village, Thanjavur. It is now settled that the State cannot prevent open discussion and open expression however hateful to its policies. Unless there is a reasonable apprehension of a breach of peace on account of the demonstration or any form of expression, there cannot be a prohibition. Having



regard to the view taken by the Hon'ble Division Bench of this Court in the above case and the fact that the second respondent has no objective reasons to refuse to grant permission, the impugned notice dated 20.06.2017 and 26.06.2017 are set aside and this Writ Petition is allowed. The second respondent is directed to consider the petitioner's representation dated 05.07.2017 and grant permission to conduct one day token hunger strike on 18.07.2017 in front of Anna Stadium, Nagercoil and to give adequate police protection subject to any reasonable restrictions / conditions so as to preserve and maintain law and order and communal harmony.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Nagercoil,
Kanniyakumari District.
2. The Inspector of Police,
Vadasery Police Station,
Nagercoil,
Kanniyakumari District.

+1 CC to M/s.V.RAJIV RUFUS, Advocate, SR No. 65332.

SRM/IA
PSM/MR-KKR/SAR1/14.07.2017/5P/4C

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