

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.10.2018

PRONOUNCED ON: 29.10.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.23000 of 2018

B.Senthil Kumar
State Secretary
Hindu Makkal Katchi (Tamilagam)
Residing at : Door No.9, Thiru.Vi.Ka.Street
M.G.R.Salai,
Chennai - 600 078

Petitioner

vs.

The Commissioner of Police
Office of the Commissioner of Police
Vepery
Chennai - 600 007

Respondent

Writ Petition filed under Article 226 of the Constitution to issue a writ of certiorarified mandamus or any other appropriate writ or order in the nature of writ, by calling for the records vide dated 28.08.2018, No.1210/Tha.P.2/2018-1, passed by the respondent and quash the same, consequently, direct the respondent to permit the petitioner's organisation to conduct Spiritual-Political Mobile Propoganda Yathra for any 4 days in Chennai, subject to the convenient dates of the respondent by giving police protection.

For petitioner सत्यमेव जयते Mr. P. Suresh

For respondent Mr. C. Raghavan
Govt. Advocate (Crl. Side)

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ORDER

The petitioner, claiming to be the State Secretary of Hindu Makkal Katchi (Tamilagam), has filed the present writ petition challenging the order dated 28.08.2018 passed by the respondent-Commissioner of Police, Greater Chennai and for a direction to the respondent to permit the petitioner's organisation to conduct spiritual-political mobile propaganda Yathra for any

four days in Chennai, for spreading spiritual and human values.

2. The petitioner gave an application dated 23.08.2018 seeking permission to conduct mobile van propaganda regarding spiritual and political policies as desired by his leader for the period from 01.09.2018 to 02.01.2019.

3. The petitioner was informed by the respondent that only during election time, permissions are granted for van propaganda with vehicles fitted with loudspeakers; in view of the noise pollution and in order to avoid accidents, nobody is given permission to conduct mobile van propaganda fitted with loudspeakers; if the petitioner is given any such permission, then, it will become a wrong precedent for others to claim a similar permission; further, in order to maintain law and order and public interest as well as to protect religious harmony, the petitioner's request to conduct mobile van propaganda on political religious policies from 01.09.2018 to 02.01.2019 in Chennai cannot be acceded to. Therefore, a notice dated 24.08.2018 was issued to the petitioner to appear before the respondent on 27.08.2018 either in person or through a counsel and to offer their explanation, failing which, it was informed that appropriate orders will be passed on the basis of records. This notice was purported to be issued under Section 41(4) of the T.N.City Police Act.

4. The petitioner, after receiving the notice, submitted a reply dated 27.08.2018, stating that their mobile van propaganda in the city was only for a period of 4 days and they will use a mike which has rather low volume and they will conduct the propaganda in a peaceful manner.

5. However, the respondent opined that the volume of traffic in Chennai has increased and that many roads have become one way traffic and if propaganda for such spiritual-political issues are allowed through van, then, the traffic will become a chaos and the common people will be put to trouble even for doing their daily routine. It was also stated that certain anti-social elements may assemble during the van propaganda and may indulge in anti-social activities including causing damage to public/private properties and may cause public disorder. The respondent also referred to the observation made by the Supreme Court regarding the power of the police in regulating processions and meetings and reference was made to the order dated 10.04.2003 in Civil Appeal No.7926 of 2001 (K.K.Road Merchants, Tamil Nadu Vs. District Collector, Tamil Nadu) as under:

"..... Police already have powers under the existing enactments to regulate processions and meetings the antecedents of the organizers, and

whether there would be any prejudice in maintenance of Law and Order, public tranquillity, peace and security of the State. It was therefore considered that there should be an element of discretion with the authorities of the State. In view of the above, no further orders are necessary. The Civil Appeal stands disposed off accordingly"

So saying, the respondent, by order dated 28.08.2018 in reference no. 1210/Tha.P.2/2018-1, rejected the request of the petitioner for grant of permission. Challenging the same, the present writ petition has been filed.

6. The contention of the petitioner was that his organization wanted to conduct Yatra for inculcating culture, tradition and human values so as to transform the present generation in a righteous path and bring peace and harmony in the society; they were of the opinion that many children are misguided and are indulging in nefarious activities. It was also claimed that every citizen of India has a right to practise and promote his religion peacefully and it is a fundamental right guaranteed under Articles 25 to 28 of the Constitution. According to the petitioner, a secular State must treat all its citizens equally regardless of religion and avoid any preferential treatment to any particular group. Therefore, it was contended that since the time sought for permission had already expired, this Court may give permission for conducting the van yatra for any 4 days. In Ground 9 (G) of the affidavit, the petitioner also made the following undertaking:-

".....Our organization is ready and willing to abide by any restrictions and conditions imposed by this Hon'ble Court for conducting the Yatra. Further the petitioner undertakes that they will not break the law in any manner and follow whatever directions or orders passed by this Hon'ble Court to conduct the spiritual Political Mobile Propaganda Yatra".

7. It must be noted that the very same order of the Supreme Court referred to by the respondent in the impugned order, earlier came to be considered by this Court in relation to holding of a protest rally vide decision in Shanmugaraj vs The Deputy Superintendent Of Police, Tenkasi [2004 MLJ (Cr1). 330 (Mad)] by P.Sathasivam, J. (as he then was), wherein, it was held as follows:-

"13. Learned Government Pleader relying on an order of the Supreme Court in Civil Appeal No. 7926/2001 dated 10-04-2003, would contend that the antecedents of the organiser is one of the relevant

factors and in view of report by the police against Dr. K. Krishnasamy, it is not desirable to grant such permission. It is true that the appeal before the Supreme Court was preferred by K.K. Road Merchants Association, Tamil Nadu against the judgment of the Division Bench of this Court declining to grant such relief. While hearing the matter, Secretary to Government, Home Department, State of Tamil Nadu filed an affidavit conveying their stand. After recording the contents of the affidavit, the Hon'ble Supreme Court closed the appeal, holding no further orders are necessary. Firstly, the Hon'ble Supreme Court, in the light of the stand taken in the affidavit, closed the appeal. Secondly, even in the affidavit it is stated that blanket ban might cause complications and that a decision has to be taken in each case with reference to the nature and purpose of the meeting or procession, the antecedents of the organisers and whether there would be any prejudice in maintenance of law and order, public tranquility, peace and security of the State. There is no positive order stating that if the antecedents of the organiser is bad, there cannot be any meeting being organised by such person. It is true that Dr. Krishnasamy is facing certain criminal cases. So long as the procession or hunger strike is assured to be peaceful without harm and not against any individual or group or community, in the light of the Constitutional protection and mandate, there cannot be any blanket prohibition. As observed in 1991-1-L.W. (Crl.) 73 (cited supra), 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. Likewise, though police are vested with power, I am of the view that the power is to be exercised strictly within the ambit of the provisions of the Constitution, particularly the requirement that any restriction placed on the exercise of fundamental rights should be a reasonable restriction, and the restriction so placed should be shown to be essential, having regard to the permissible purpose for which restrictions may be imposed.

14. It is also useful to refer a recent order of the First Bench of our High Court dated 12-12-2003 rendered in Writ Petition No. 36209 of 2003 (Arcot N. Veerasamy Vs. The Government of Tamil Nadu, represented by its Home Secretary, Chennai-9). The said writ petition came to be filed by way of Public Interest Litigation at the instance of a political party of the State praying for issuance of a writ of

mandamus forbearing the Government and the police officers from preventing the office bearers and cadres of their party for participation in the picketing in front of the State and Central Government offices and also from making any preventive arrests. While considering the said issue, Their Lordships have considered the right of a citizen to participate in a peaceful procession and the right of State/ police to impose restriction considering the peace and maintenance of law and order. The following observation of the Division Bench is relevant:

"5. Dissent is the essence of the democracy and Clauses (a) and (b), read together, to sub-Article (i) of Article 19 of the Constitution, grant Fundamental Rights to citizens to assemble peaceably and without arms; and also of freedom of speech and expression. But they shall be subject to such reasonable restrictions as envisaged in sub Articles (2) and (3) of Article 19. Sub-Article (2) is not very much relevant for this case and what is relevant is subArticle (3) under which the State is entitled to place such reasonable restrictions in the interest of public order. While the petitioner and his party are entitled to assemble peaceably and without arms, the police are entitled to place reasonable restrictions and in fact, such assembly can only be subject to permission, which can be granted under Section 41 of the Madras City Police Act, 1888..."

Ultimately the Division Bench permitted the petitioner therein for peaceful procession to express their views by slogan shouting but without indulging in any violence and subject to follow such regulatory methods, which the police formulate for the purpose of peaceful procession.

15. In the light of what is stated above, the impugned Memo of the first respondent dated 06-12-2003 rejecting the request of the petitioner to hold All Party Hunger Strike on 10-12-2003 is quashed, and the respondents are directed to grant permission to the petitioner to hold an All Party Hunger Strike in the Quaid-e-Millath Thidal at Kadayanallur, Tirunelveli District for one day between 20 th December and 31st December, 2003..."

8. In C.J.Rajan Vs. Deputy Superintendent of Police [2008 (3) MLJ 926 (Mad)], a Division Bench headed by P.K.Misra J. (as he then was), quoted with approval, the earlier decision of R.Jayasimha Babu, J. and reiterated the cherished right guaranteed under Article 19(1)(a) of the Constitution, vis-a-vis, the regulatory power conferred on the Commissioner of Police under Section 41 of the Tamil Nadu City Police Act, in the following words:-

"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:

"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 and 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.

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.

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.

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."

9. If the petitioner wants only a permission to hold a meeting in an earmarked place, there would be no difficulty in granting such permission. But, in this case, the petitioner wants to have a mobile van propaganda which involves moving in the city streets and at places to stop and give a small talk. This will involve the trailing of the petitioner's van meant for propaganda throughout and also to map the route covered by the petitioner's van and in places where they intend addressing small crowds by stopovers, then to provide appropriate police protection in those areas to prevent any untoward incidents. In such a situation, the petitioner cannot seek an extended right of using the public thoroughfare and thus exercise its right. The Courts have always ruled that there is no fundamental right to opt for a particular route and a particular time without regard to the other factors.

10. In *S.Thangalingam vs The Superintendent Of Police* in W.P.(MD) 7577 of 2007, vide order dated 14 September, 2007, K.Chandru J., held as follows:-

"33. In the light of the same, the grievance projected by the petitioner are not based upon any constitutional foundation and more particularly, no religious right of the petitioner is infringed. On the contrary, there is no religious right guaranteed or recognised by the Constitution to encroach upon public property and also to conduct religious right by taking procession only through a particular route. At times, the religious rights and practices may be recognised but that right does not carry with it a concomitant right to take procession through a particular route, which is not authorised by any law or by the constitution."

11. In the matter of Vinayaga idols being taken out for immersion ceremony (Visarjanam), which is an annual feature, a Division Bench of this Court, headed by K.A.Swami C.J. in *Vinayaga Chathurthi Madhya Kuzhu, Vs. State of Tamil Nadu and another* [1997 MLJ (Cr1) 142 (Mad)] held that the procession for immersion is not an absolute right and that, it is subject to regulation and imposition of reasonable restrictions. It was also held that the exercise of such a right can be regulated under the Madras City Police Act, more particularly, under Section 41.

12. Subsequently, P.D.Dinakaran, J. (as he then was) in W.P.No.10583 of 1999 in *Pazha.Nedumaran Vs. State of Tamil Nadu*

& Others, vide order dated 30.06.1999, set aside the refusal of the police in granting permission to the organizers of Death Penalty Abolition Rally throughout the State of Tamil Nadu by going in a mobile van fitted with loudspeakers and granted permission to hold the van propaganda with certain conditions.

13. A Division Bench of this Court headed by D.Murugesan, J. (as he then was) held as follows in its decision dated 28.10.2009 in K.Karunthamalai vs The District Collector in W.P. (MD)No.10711 of 2009:-

"20. Hence, we are not inclined to grant the relief sought for by the petitioner to take out the procession from Mandalamanickam village to Usilampatti via Muthuramalingapuramputhur village again from Usilampatti to Mandalamanickam via Muthuramalingapuramputhur village during this year and we clarify that the members of petitioner village are entitled to take out the procession for this year on any other route, except passing through Muthuramalingapuramputhur village."

14. It must be noted that M.M.Sundresh, J. in his decision dated 28.08.2015 in P.Pugalenthi vs The Deputy Superintendent Of Police, Cuddalore Dist. in W.P.Nos.26567, 26568, 27078 & 27079 of 2015, refused permission for holding a protest rally on the ground the organizers of the rally were having criminal record and therefore, they need not be shown any indulgence, in the following words:-

"6. Thus, it is apparent that there were number of cases filed against the erstwhile leaders and are pending against the persons, who are involved in the conduct of the present meeting. The problem of law and order is a matter to be decided by the respondents. They are bound to take into consideration the relevant materials. Though this Court finds considerable force in the submission of the petitioner that Section 30(2) of the Tamil Nadu Police Act is only regulatory, it cannot be said that there were no materials available. The power of this Court to assess those materials is rather limited. This Court does not find any arbitrariness in the decision made by the first respondent. The averments made in the counter affidavit filed by the respondent about the alleged involvement of the some of the members of the petitioner is neither denied nor disputed. The decision of Apex Court relied upon by the learned counsel appearing for the petitioner in ARUP BHUYAN V. STATE OF ASSAM (Criminal Appeal No.889 of 2007 dated 03.02.2011) does not have any application to the case on hand. The facts involved therein are different. The question therein was the

criminality of a person attributed against him and not merely a member of the banned organisation, which is not the case before us. It is the specific case of the respondents that the object of the meeting is to incite the public to violence or violate the public order."

15. In *Durai Sankar & Ors. Vs. The Secretary to the Government, Home Department, Govt. Of Tamil Nadu* [2015(1) CTC 49], V.Ramasubramanian, J. held that the scope for imposing reasonable restriction in relation to the right under Article 19 (1)(b) is very limited to two aspects when compared to the scope for imposing reasonable restriction under Article 19(1)(a) of the Constitution. While holding so, he reviewed all the previous cases rendered under the subject and in paragraphs 21 and 22, he observed as follows:-

"21. There can be no dispute about the fact that the right to freedom of speech and expression and the right to assemble peaceably and without arms, are fundamental rights guaranteed under Article 19(1)(a) and (b) of the Constitution. By virtue of clauses (2) and (3) of Article 19, this right is subject to any existing law or a law enacted by the State, imposing reasonable restrictions. Such reasonable restrictions, if they relate to Article 19(1)(a), should have a nexus with (i) interests of the sovereignty and integrity of India (ii) friendly relations with foreign States (iii) public order (iv) decency (v) morality (vi) contempt of court (vii) defamation or (viii) incitement to offence. But if those reasonable restrictions relate to the right under Article 19(1)(b), they should have nexus only with 2 things namely (i) interests of the sovereignty and integrity of India or (ii) public order. In other words, the scope for imposing reasonable restrictions in relation to the right under Article 19 (1) (b) is very limited only to 2 things when compared to the scope for imposing reasonable restrictions in relation to the right under Article 19 (1)(a). Therefore, Courts have repeatedly grappled with questions of this nature and several decisions have been cited on both sides.

22. The cases that have come up before Courts fall under two categories, namely (i) those seeking permission to hold public meetings and demonstrations, and (ii) those seeking permission to hold rallies or take out processions. Again cases where permission is sought to take out processions fall under two categories, namely (i) those where a right is claimed as an essential part of the profession of any religion, and (ii) those where the rally or procession

is sought to be taken for advancing a social cause. The cases which fall under the former category, may involve even the application of Article 25 of the Constitution. The cases on hand do not fall under such category, since the petitioners do not claim that they seek to take out a procession as an essential part of any religious rite."

16. After holding so, in paras 27 to 29, he granted permission to the Rashtriya Swayam Sevak Sangh to carry out the Founder's Day rally in public streets and to hold a public meeting, in the following words:-

"27. In the cases on hand, the learned counsel for the petitioners have stated that the processionists will not carry lathis and will not shout slogans inciting any violence or offending sentiments of anyone. In any case, the right flowing under Article 19(1)(b) itself is restricted to assemble peaceably and without arms. Since the definition of the expression "arms" includes "lathis", the processionists cannot carry lathis. The organisers are prepared to give the names and addresses of persons who will take responsibility for any untoward incident, if it happens. Therefore, after having permitted rallies, processions and public meetings for several organisations, it may not be possible to deny such permission to the petitioners.

28. As regards the inputs allegedly received from the Intelligence Agencies, it should be pointed out that those inputs, a copy of which is handed over to me, are of a general nature. Those inputs are actually received over a long period of time from January 2014 onwards and not with particular reference to a rally or public meeting that the petitioners want to take out.

29. Moreover, as pointed out earlier, the respondents have relied upon Section 41-A of the Chennai City Police Act and Section 30(2) of the Police Act, 1861, both of which provided only for regulation and not prohibition. Therefore, all these writ petitions are allowed, directing the respondents to grant permissions to the petitioners to take out processions in the routes specified by the respondents and to hold public meetings in the places earmarked by the respondents with such reasonable restrictions as they deem fit and proper."

17. Once again, relying upon the decision rendered in Durai

Sankar (supra), the same learned Judge granted permission to Viduthalai Chiruthigal Katchi (VCK) to hold their conference at Salem. He also lamented the continuous problems created by the State by refusing permission and the Court's inevitable exercise of removing the obstacle in the following words in R.Navarasan Vs. The Home Secretary, Govt. Of Tamil Nadu, Secretariat in W.P.No. 21838 of 2014 vide order dated 14.08.2014:

"18. If one goes by past experience, one would find that problems are created almost at all times, whenever any organisation, be it political, non political or non governmental, has been given permissions to hold conferences. But we have not come to a stage for total prohibition. So long as the right continues to be recognised by the Constitution, there cannot be a blanket ban."

18. However T.S.Sivagnanam, J., while dealing with the permission sought by the Popular Front of India to hold the rally with uniform, distinguished the ratio laid down in Durai Sankar (cited supra) and relied upon the intelligence reports furnished by the police to uphold the ban imposed by the police on the rally, in Popular Front of India Vs. The Director General of Police & Ors. [2015(2) CTC 515.] In para 9, the learned Judge observed as follows:-

"The learned counsel for the petitioner submitted that in the case of Durai Shankar, (supra) this Court has also dealt with the effect of the report received from Intelligence Agencies. It is to be pointed out that in the said decision, this Court observed that the Intelligence Report which was shown to the Court are of general nature and were actually received over a long period of time and not with particular reference to a rally or public meeting that the petitioners wanted to take out. The Intelligence report referred to in the impugned proceeding are with specific reference to the procession and meeting to be conducted on 17.02.2015. Therefore, those reports cannot be discredited as being of general in nature, as it pertains to the very procession and meeting for which permission was sought for. Therefore, the right to freedom of expression and speech may at times have to be subjected to reasonable restrictions to preserve public order and rule of law in the light of the data which has been referred in the impugned order and placed before this Court including the First Information Report pending investigation in respect of the incident which occurred last year i.e., 17.02.2014. Therefore, this Court is not inclined to sit as an appellate authority over the decision of the law enforcing agency. There is no error in the decision making process, the petitioner was given sufficient

opportunity to put forth their submissions after issuing show cause notice and there can be no complaint in this regard".

19. This order was taken on appeal before a Division Bench headed by Satish K. Agnihotri J. (as he then was). The Division Bench, in Appeal Nos.305 & 306 of 2015 vide judgment dated 27.02.2015 in Popular Front of India vs. The Director General Of Police, gave liberty to the writ petitioner to approach the police once again with a fresh request and observed as follows:-

"3.The learned Single Judge, having heard the learned counsel for the writ petitioner as well as the learned Advocate General, dismissed the writ petitions, observing that the writ petitioners failed to make out any ground for interference. Being aggrieved the instant writ appeals have been preferred by the writ petitioners.

4. The relief sought for in the writ petitions was to permit holding of peaceful procession and public meeting on 17.02.2015. Thus, the instant appeals have become infructuous as on date, the proposed date has come to an end and no useful purpose would sub-serve by hearing the appeals on merits. However, we make it clear that if a representation or application is made by the appellant/ writ petitioner in future, the authorities will consider the same in accordance with law and on its own merit, after recording proper reasons and pass orders. If there is certain extraneous material which requires explanation from the appellant / writ petitioner, the appellant must be afforded an opportunity of hearing before taking a decision on the applications made therein."

20. The ratio laid down in P.Pugalenthi (supra) and Popular Front of India (supra) are distinguishable. The first case was based on criminal record of the rally organisers and the second case was based upon the intelligence inputs received on the organizers. No such material has been placed before this Court in this case to deny the organizers their right to carry on the van propaganda. However, this is subject to two restrictions i.e., the petitioner cannot have his own charter for the route by which the propaganda van will go through and that will be decided by the respondent. Similarly, his request to conduct the propaganda through mike fitted van for 4 days is not permissible for the reason set out in the impugned order i.e. the public thoroughfare will be obstructed for the public use. However, this Court is inclined to grant one day permission from 8.00 a.m. to 8.00 p.m., that too on a Sunday, preferably, on 11.11.2018, after Deepavali, so that the festival rush may not

be there.

21. In view of the above, the impugned order dated 28.08.2018 passed by the respondent is set aside. The respondent is directed to give permission to the petitioner for holding a van propaganda in the Chennai city on 11.11.2018 from 8.00 a.m. to 8.00 p.m. The route will be chartered by the respondent, taking into account, all relevant factors and intimated to the petitioner, within one week from the date of receipt of a copy of this order. In view of the concern raised by the respondent regarding the law and order problem which may be created by anti-social elements, necessary police protection may be afforded in this regard.

The writ petition stands disposed of accordingly. Costs made easy.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

The Commissioner of Police
Office of the Commissioner of Police
Vepery
Chennai - 600 007

+1cc to Mr.P.Suresh, Advocate, S.R.No. 73746

W.P. No.23000 of 2018

GN(30/10/2018)

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