

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.27959 of 2018

K.Pugalenth

.. Petitioner

Vs.

1.The Chief Secretary,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

2.The Joint Chief Controller of Explosives,
No.140, Lakshmipathy Road,
Egmore, Chennai - 600 008

3.The Director,
Tamil Nadu Fire & Rescue Services,
Egmore, Chennai - 600 008

4.The Commissioner,
Coimbatore Corporation,
Coimbatore

5.The Commissioner of Police,
Coimbatore City, Coimbatore.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for a writ of mandamus directing the respondents to consider petitioner's representation dated 04.10.2018 and allot a common place in Coimbatore City to sell the fire crackers in the eve of Diwali after following the Rules and Regulations of Explosive Act, within the time stipulated by this Hon'ble Court.

For Petitioner : Mr.P.M.Vishnuvarthan

O R D E R

(Order of the Court was made by SUBRAMONIUM PRASAD, J.)

Instant public interest litigation has been filed by the petitioner for a writ of mandamus, directing the respondents to consider his representation dated 04.10.2018 and allot a common

place in Coimbatore city, to sell fire crackers on the eve of Diwali, after following the rules and regulations of Indian Explosives Act.

2. The petitioner states that he belongs to Coimbatore; he submits that there have been many fire accidents in the city of Coimbatore during Diwali festival and the authorities have not been able to control a check on the fire accidents. The petitioner relies on a common order of the First Bench of this court dated 07.10.2013 made in W.P. Nos.25870, 25871 and 26447 of 2013 regarding guidelines, which have been laid down by this court for regulating sale of fire crackers in Chennai.

3. To begin with the writ petitioner's representation is extremely sketchy. The representation being very extremely short one, is quoted hereunder:

RPAD

From
K.Pugalenth
S/o.Krishnaraj
212 Thomas Street
Floor-1
Coimbatore 641 001

To

- 1.The Chief Secretary,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
- 2.The Joint Chief Controller of Explosives,
No.140, Lakshmipathy Road,
Egmore, Chennai - 600 008
- 3.The Director,
Tamil Nadu Fire & Rescue Services,
Egmore, Chennai - 600 008
- 4.The Commissioner,
Coimbatore Corporation,
Coimbatore
- 5.The Commissioner of Police,
Coimbatore City,
Coimbatore.

Respected Sir,

Sub : Allotting common place for selling fire

crackers eve of Diwali festival in Coimbatore city - Request an public interest.

I am a resident of Coimbatore city. I had born and brought up at Coimbatore city. In the reason past several accident took place in Coimbatore city, on the explosion of fire crackers, illegally dump at the time of Diwali in the shops, located at residential area.

There are number of incidence/accident occurred during Diwali and thereby, several person life where take into task. In fact, massive explosion happened, continuous years that is on 2016 and 2017 as well. All because of pattern violation of rules framed under Explosives Act.

It is understood that this Hon'ble Madras High Court in the year 2013, passed order in W.P. No.26447 of 2013 dated 07.10.2013, issued direction and guidelines in respect of fire crackers shops in common place, as well as strict directions to be follow by corporations in allotting common places/grounds in the city, which will be easier to common public to approach.

In Coimbatore city there are more than three places of Government land, much suitable for allotting fire crackers shops. More particularly VOC Park (15 Acres) and R.S.Puram (10 Acres). It is needless to state that Coimbatore city is one of the major city in Tamil Nadu having more population any other cities. It is also industrial

hub too. No prejudice will cause to fire crackers business people or to the related persons, in allotting common places for fire crackers shops in anyone of the above Government places and to follow the similar guidelines of the orders passed by the Hon'ble High Court.

It is therefore humbly prayed that the authorities may issue appropriate direction implementing similar guidelines adopted by Chennai Metro in respect of allotting common places for fire crackers shops in anyone of the above Government places, before the Diwali era and thus render justice.

Date : 04.10.2018
Place: Coimbatore

Yours sincerely

(K.PUGALENDHI)

4. It is a pure policy decision of the Government as to where cracker shops must be located. The fact that in Channai the High Court has passed orders designating specific areas where cracker shops must be located does not mean that the same analogy must be made applicable to Coimbatore also.

5. It is settled principle of law that courts cannot run Government. In support of the same, reliance can be made to the following decisions:

(i) In Narmada Bachao Andolan vs. Union of India and others reported in (2000) 10 SCC 664, the Hon'ble Apex Court at paragraph Nos.232 to 234, held as follows:

"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not transgress its jurisdiction. There is in our Constitutional frame-work a fairly clear demarcation of powers. The Court has come down heavily whenever the executive has sought to impinge upon the Courts jurisdiction.

233. At the same time, in exercise of its enormous power the Court should not be called upon or undertake governmental duties or functions. The Courts cannot run the Government nor the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the constitution casts on it a great obligation as the sentinel to defend the values of the constitution and rights of Indians. The courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words the Court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the

Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in Public Interest to require the Court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation the Court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

(ii) The above said observations have been quoted with approval in the judgment of BALCO Employees Union (Regd.) vs. Union of India and others reported in (2002) 2 SCC 333.

(iii) In Divisional Manager, Aravali Golf Club and Another vs. Chander Hass and Another reported in 2008 (1) SCC 683, the Hon'ble Apex Court at paragraph 29, has observed as under:

"29. Honble Justice A.S. Anand, former Chief Justice of India has recently observed : Courts have to function within the established parameters and constitutional bounds. Decisions should have a jurisprudential base with clearly discernible principles. Courts have to be careful to see that they do not overstep their limits because to them is assigned the sacred duty of guarding the Constitution. Policy matters, fiscal, educational or otherwise, are thus best left to the judgment of the executive. The danger of the judiciary creating a multiplicity of rights without the possibility of adequate enforcement will, in the ultimate analysis, be counter productive and undermine the credibility of the institution. Courts cannot create rights where none exists nor can they go on making orders which are incapable of enforcement or violative of other laws or settled legal principles. With a view to see that judicial activism does not become judicial

adventurism, the courts must act with caution and proper restraint. They must remember that judicial activism is not an unguided missile failure to bear this in mind would lead to chaos. Public adulation must not sway the judges and personal aggrandizement must be eschewed. It is imperative to preserve the sanctity and credibility of judicial process. It needs to be remembered that courts cannot run the government. The judiciary should act only as an alarm bell; it should ensure that the executive has become alive to perform its duties."

(iv) Similarly, the Hon'ble Supreme Court in Common Cause (A Regd. Society) vs. Union of India and others reported in (2008) 5 SCC 511, at paragraph Nos.20 to 22, has observed as under:

20. These are instances of judicial excessivism that fly in the face of the doctrine of separation of powers which has been broadly (though not strictly), envisaged by the Constitution vide Divisional Manager, Aravali Golf Club & Anr. vs. Chander Hass & Anr. JT 2008 (3) SC 221, Asif Hameed vs. State of Jammu & Kashmir JT 1989 (2) SC 548 etc. In other words, while expansion of the meanings of statutory or constitutional provisions by judicial interpretation is a legitimate judicial function, the making of a new law which the Courts in this country have sometimes done, is not a legitimate judicial function. The Courts of the country have sometimes clearly crossed the limits of the judicial function and have taken over functions which really belongs either to the legislature or to the executive. This is unconstitutional. If there is a law, Judges can certainly enforce it. But Judges cannot create a law by judicial verdict and seek to enforce it.

21. Moreover, it must be realized by the courts that they are not equipped with the skills, expertise or resources to discharge the functions that belong to the other co-ordinate organs of the government (the legislature and executive). Its institutional equipment is wholly inadequate for undertaking legislation or administrative functions.

22. As observed by Hon'ble Dr. Justice A.S. Anand, former Chief Justice of India :

"Courts have to function within the established parameters and constitutional bounds.

Decisions should have a jurisprudential base with clearly discernible principles. Courts have to be careful to see that they do not overstep their limits because to them is assigned the sacred duty of guarding the Constitution. Policy matters, fiscal, educational or otherwise, are thus best left to the judgment of the executive. The danger of the judiciary creating a multiplicity of rights without the possibility of adequate enforcement will, in the ultimate analysis, be counter productive and undermine the credibility of the institution. Courts cannot "create rights" where none exists nor can they go on making orders which are incapable of enforcement or violative of other laws or settled legal principles. With a view to see that judicial activism does not become "judicial adventurism", the courts must act with caution and proper restraint. They must remember that judicial activism is not an unguided missile failure to bear this in mind would lead to chaos. Public adulation must not sway the judges and personal aggrandizement must be eschewed. It is imperative to preserve the sanctity and credibility of judicial process. It needs to be remembered that courts cannot run the government. The judiciary should act only as an alarm bell; it should ensure that the executive has become alive to perform its duties".

6. The petitioner has not given any reason and has not supplied any material as to why in Coimbatore there has to be a designated area for selling fire crackers. In view of the above, the writ petition is dismissed. However, there shall be no order as to cost.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

asr

To

1. The Chief Secretary,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.

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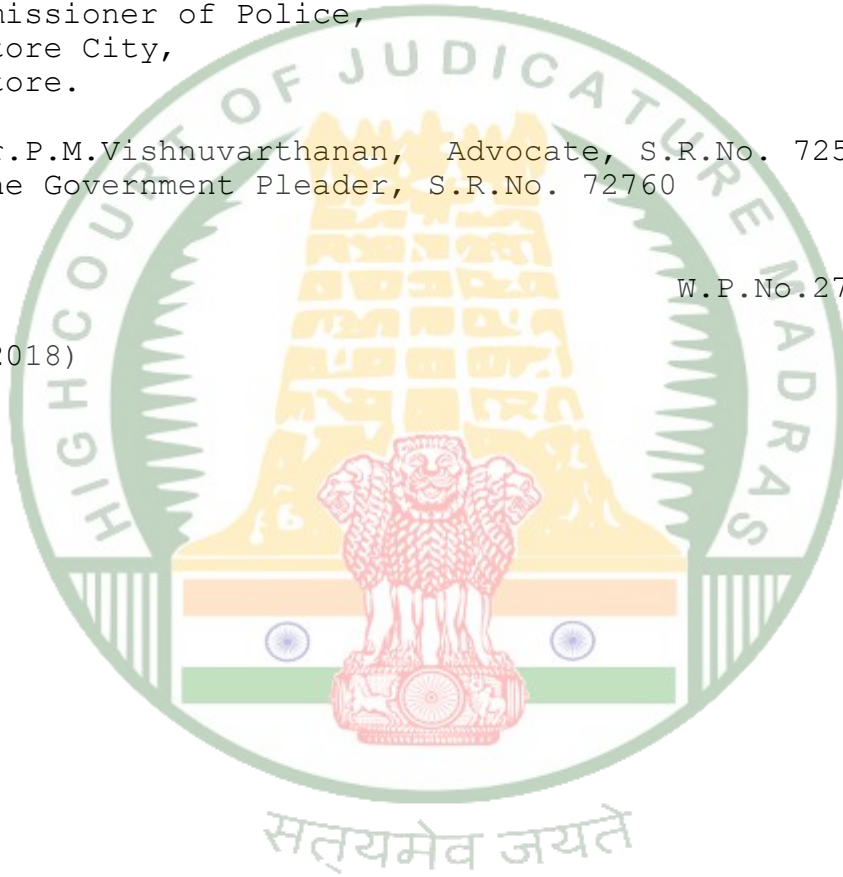
4.The Commissioner,
Coimbatore Corporation,
Coimbatore

5.The Commissioner of Police,
Coimbatore City,
Coimbatore.

+lcc to Mr.P.M.Vishnuvarthanan, Advocate, S.R.No. 72548
+lcc to the Government Pleader, S.R.No. 72760

W.P.No.27959 of 2018

GN(17/12/2018)



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