



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.12.2018

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

W.P. (MD) No.25177 of 2018

and

W.M.P (MD) No.22803 of 2018

I.Akbar Ali

... Petitioner

Vs.

1.The Commissioner of Police,
O/o the Commissioner of Police,
Trichy District,
Trichy.

2.The Assistant Commissioner of Police,
O/o the Assistant Commissioner of Police,
Thillai Nagar,
Trichy District.

3.The Assistant Commissioner of Police,
O/o The Assistant Commissioner of Police,
Cantonment,
Trichy District.

4.The Inspector of Police,
Thillai Nagar Police Station,
Thillai Nagar,
Trichy District.

5.The Inspector of Police,
Cantonment Police Station,
Cantonment,
Trichy District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in C.No.16-E-4PS/TRC/2018 dated 16.12.2018 on the file of the respondent No.4 and the consequential order dated 18.12.2018 in Na.Ka.No.245/அ/கா.உ.ஆ/ஸ்ரீரங்கம்/.ச.ஒ/தி.மா.2018 on the file of Respondent No.3 quash the same as illegal and consequently direct the respondent to grant permission to the petitioner and other members of the "Viduthalai Tamil Puligal" Party to conduct the procession from K.T.Theatre at Shahstri Road, Trichy to Uzhavar Santhai, Trichy at about 3.00 p.m to 05.00 p.m on 23.12.2018 or on



any other date or time within the time frame stipulated by this Court.

For Petitioner : Mr.T.Lajapathy Roy
For Respondents : Mr.R.Anandharaj
Addl. Public Prosecutor

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O R D E R

This Writ Petition has been filed challenging the impugned order of the fourth respondent dated 16.12.2018 and consequential order of the third respondent dated 18.12.2018 and seeking a consequential direction to the respondents to grant permission to the petitioner and other members of the "Viduthalai Tamil Puligal" party to conduct the procession from K.T.Theatre at Shahstri Road, Trichy to Uzhavar Santhai, Trichy at about 3.00 p.m to 05.00 p.m on 23.12.2018 or on any other date or time within the time frame stipulated by this Court.

2.The learned counsel appearing for the petitioner would submit that the petitioner is the Trichy District Secretary of the political party, by name, Viduthalai Tamil Puligal and that his party had decided to conduct meeting on the 45th Anniversary of "Thiru.E.V.Ramaswami" popularly known as "Thanthai Periyar" where it has been decided to take out a public procession wearing black shirt in memory of Thanthai Periyar and the procession would start from K.T. Theatre at Shahstri Road, Trichy at about 03.00 p.m and end at Uzhavar Santhai, Trichy at about 05.00 p.m and thereafter, conclude with the public meeting which is scheduled to be held on 23.12.2018 at Uzhavar Santhai Tidal. He would further submit that in that meeting, important leaders, like Mr.K.Veeramani, Mr.Thirumurugan Gandhi, Mr.Kolathur Mani, Mr.K.Ramakrishan, Mr.Nagai Thiruvalluvan, Mr.Athiyaman, Mr.N.D.Pandian, Mr.Kulanthai Arasan, Mr.Pollilan and other cadres of the respective parties have agreed to participate and enlighten the cadres about the Thoughts of Thanthai Periyar. He would further submit that the petitioner has already prepared pamphlets and wall posters and spent more than a sum of Rs.10,00,000/- and that on 10.12.2018, the petitioner had made a representation to the respondents 1 to 5 requesting to grant permission to the petitioner and other members of the Viduthalai Tamil Puligal party to conduct the said procession and meeting. Since no order has been passed, the petitioner filed a writ petition in W.P(MD)No.24742 of 2018 seeking for a Writ of Mandamus for a direction directing the respondents to grant permission to the petitioner. He would submit that believing that the permission would be granted, they were waiting, whereas, the fourth respondent has not given the No Objection Certificate for the public meeting with regard to the procession on 23.12.2018 and consequently by the impugned order dated 16.12.2018, the petitioner has been denied permission. He would submit that the action of the respondents



refusing permission for procession is a clear violation of fundamental rights guaranteed under the Constitution of India and that Article 19(1)(a) of the Constitution of India is the very basic fundamental right and without using these right the petitioner cannot claim any other fundamental rights guaranteed under the Constitution. He would submit that the the reasoning given for not according No Objection Certificate is strange and would submit that the day on which they have intended to conduct the procession and meeting is a Sunday whereas, the respondent Police without application of mind, had stated that the route which the petitioner have intended to conduct the procession, is the route to all the persons coming from the other Districts to the Central Bus Stand, Trichy and that there are schools, passport offices, hospitals and temples on the way which would cause problem to the public and traffic and that the road is 30 feet narrow road and further stating that it would cause hindrance, had refused to grant No Objection Certificate.

3.The learned counsel for the petitioner would submit that the grounds taken by the respondents for not giving No Objection Certificate cannot be legally sustained at any cost for the fact that the meeting is scheduled to be conducted on a Sunday and that it is a holiday for the schools and the passport offices and that the traffic is also less on Sundays. Whereas, contrary to the reasons stated in the order refusing to grant "No Objection Certificate" different reasonings have been stated in the impugned order, as if that several cases are pending against the one of the speakers viz., Mr.Thirumurugan Gandhi. The learned counsel would submit that most of the cases against the Thirumugan Gandhi are registered under Section 188 IPC and that the petitioner, as he organizer of the meeting, is prepared to give any undertaking as demanded by the respondents to see to that no untoward incidents takes place and that the procession is regulated not to affect the traffic or cause hindrance to public. He would also submit that the petitioner shall take steps to get the undertaking from the speaker that no inciting or provoking speeches will be delivered by him and that his speech will be curtailed under the four corners of limits of freedom of speech guaranteed under the constitution. He would also submit that the petitioner is prepared to abide any other conditions and restrictions imposed by the respondent police.

4.The learned counsel relied on the Judgment of this Court in **Durai Sankar and others vs. Secretary to the Government, Home Department, Government of Tamil Nadu** reported in (2014)8 MLJ 114, and refer the relevant paragraph, wherein this Court had granted permission taking into consideration so many other judgments with regard to grant of permission for public meeting. The relevant portion of the said judgment reads as follows:-

"25.....(vii) But, there are at least two Division Bench decisions of this Court, which require to be taken note of. Both the decisions took note of the development

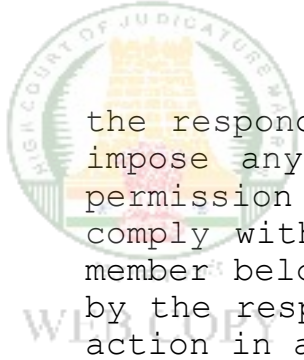


of law in entirety, starting from Himat Lal K.Shah. The first is that of the Division Bench in C.J.Rajan Vs. Deputy Superintendent of Police [CDJ 2008 MHC 613]. In the said case, the Division Bench traced the history from Himat Lal K.Shah and the journey that the law undertook through the decision in S.Rangarajan and eventually, the Division Bench came to the conclusion that such meetings are not to be prohibited. The next decision of the Division Bench is the one between Home Secretary and Era.Selvam [W.A.Nos.842 and 843 of 2013] dated 13.4.2013. In the said case, the District Administration relied upon two decisions of the Supreme Court and the decision of the Division Bench of this Court. The first decision relied on by the State was one in Dr.Praveen Bhai Thogadia. The second case relied upon by the State before the Division Bench in that case was Ramlila Maiden Incident, In re [2012 (5) SCC 1]. The State also relied upon the decision of the Division Bench in Rama.Muthuramalingam. After considering the very same decisions, which are now relied upon before me and also considering the decision of the Supreme Court in Ramlila Maiden, the Division Bench of this Court held that the right of the citizens to conduct processions and public meetings cannot be curtailed except on definite reasons;"

5.The learned Additional Public Prosecutor would vehemently oppose stating that the one Mr.Thirumurugan Gandhi is the speaker in the meeting and he has a track record of delivering inflammatory speeches inciting violence and several cases have been registered against him through out Tamil Nadu and that he was also detained under the Goondas Act and that apprehending similar situation the respondent had denied permission.

6.At this juncture, the learned counsel for the petitioner would submit that all the cases have been registered only for the offences under Section 188 IPC. He would further submit that the detention order has also been set aside by this Court. He would reiterate and submit that the respondents have got powers to regulate and not prohibit and would further submit that the petitioner is prepared to give an undertaking himself as organizer that inciting or inflammatory speech shall not be delivered and that he is prepared to abide by any restriction or regulation imposed by the respondent.

7. Taking into consideration the submission of the both parties, this Court is of the opinion that the impugned order is liable to be set aside. Accordingly, this impugned order is set aside. In view of the same, the respondent police is directed to grant permission to the petitioner to conduct the procession and meeting on 23.12.2018 at the venue indicated by the petitioner. The petitioner is directed to give an undertaking affidavit mentioning that they will not violate any of the conditions imposed on them by



the respondent police. It is left open to the respondent police to impose any reasonable conditions, for the purpose of giving such permission to the petitioner and the petitioner is duty bound to comply with the conditions without fail. If the petitioner or the member belonging to his party violate any of the conditions imposed by the respondent, it is left open to the second respondent to take action in accordance with law.

8.The writ petition is disposed of with the above direction. Consequently, connected miscellaneous petition is closed.

Sd

ASSISTANT REGISTRAR (CS II)

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SUB ASSISTANT REGISTRAR (CS IV)

skn

To

- 1.The Commissioner of Police,
O/o the Commissioner of Police,
Trichy District,
Trichy.
- 2.The Assistant Commissioner of Police,
O/o the Assistant Commissioner of Police,
Thillai Nagar,
Trichy District.
- 3.The Assistant Commissioner of Police,
O/o The Assistant Commissioner of Police,
Cantonment,
Trichy District.
- 4.The Inspector of Police,
Thillai Nagar Police Station,
Thillai Nagar,
Trichy District.
- 5.The Inspector of Police,
Cantonment Police Station,
Cantonment,
Trichy District.

2CC 'S TO MR. T. LAJAPATHI ROY, ADVOCATE SR 101477

SP RSK SAR 4
21 12 2018 / 5P 8C

order made in