

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.01.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

W.P.No.2551 of 2019

A.G.Narasimhan

...Petitioner

Vs

1.The Chief Secretary,
Government of Tamil Nadu
St.George Fort, Secretariat, Chennai.

2.The Secretary,
Social Welfare Department,
St.George Fort,
Secretariat, Chennai.

3.The Secretary,
Higher Educational Department,
St.George Fort,
Secretariat, Chennai.

4.The Principal,
Gurunanak College & Educational Institutions
Velachery, Chennai.

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus Directing the respondents not to grant permission to the Hindu Seva Arakkattalai for conduct exhibition of HINDU SEVAI KANKATCHI (Hindus Spiritual Exhibition) at 4th respondent college premises from the date 29th January to 4th February, 2019 subsequently not to permit these kind of motivational functions at all the Government aided and Government colleges and educational institutions across the Tamil Nadu pursuant of the petitioners representation dated 24/01/2019.

For Petitioner :Mr.G.Prabhu

For Respondents:Mr.E.Manoharan

Additional Government Pleader for R1 & R2

Mr.C.Munusamy
Special Government Pleader for R3

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

The petitioner, who claims to be a practising Advocate, belongs to Salem Bar Association and according to him, the 4th respondent Institution, which is a religious minority Institution, permitting one entity to conduct Hindu spiritual fair in the college premises during working days and on account of the same, students studying in the 4th respondent College are bound to suffer and it may also create a wrong precedent. It is further submitted by the petitioner that since it is also an aided religious minority institution, it cannot permit the entity, whose members are belonging to Hindus, to conduct such a festival and the same is against the secularism and constitutional values. In this regard, he submitted a representation dated 24.01.2019 to the respondents and despite receipt and acknowledgement, no orders came to be passed and hence came forward to file this writ petition.

2. Mr.G.Prabhu, learned counsel appearing for the petitioner has drawn attention of this Court to the affidavit as well as the typed set of documents and would submit that the 4th respondent ought not to have been granted permission to the concerned entity to conduct the Hindus Spiritual fair and the same is against secularism as well as against constitutional values and that apart, students are also bound to suffer for the reason that the said fair is conducted during working days.

3. Mr.E.Manoharan, learned Additional Government Pleader who accepts notice on behalf of the respondents 2 and 3 would submit that admittedly, the representation is of very recent origin and the petitioner has not even furnished the acknowledgement for having served the said representation to the official respondents and even before the input drive, approached this Court by filing this writ petition styled as Public Interest Litigation and it is nothing but a Publicity Interest Litigation and the petitioner has no genuine grievance or cause to advance in this writ petition and prays for dismissal of the same.

4. This Court has considered the rival submission and also perused the materials placed before it.

5. A perusal of the typed set of documents containing the news item appeared in the Hindu Tamil Daily, dated 24.01.2019 would disclose that the said

spiritual fair is conducted by HINDU SEVAI ARAKKATTALAI, charitable trust and yet another Trust starting from January 29 and it is held for 7 days. Admittedly, the said Trust have not been arrayed as parties in this writ petition.

6. It is also to be remembered at this juncture that the present writ petition, styled as Public Interest Litigation, is filed by the petitioner who claims to be the practising lawyer belonging to Salem Bar and therefore, he is expected to do some research before filing the Public Interest Litigation. This Court during the course of arguments has also put a specific question to the learned counsel appearing for the petitioner as to whether the writ petitioner had made any attempts to visit the fair atleast as a visitor and the response is in negative.

7. The Hon'ble Supreme Court of India in the decision reported in 2010 Volume 3 SCC 402 (State of Uttaranchal Vs. Balwant Singh Chautal and others) has considered the scope and purport of Public Interest Litigation. The facts of the case would disclose that The appointment of L. P. Nathani was challenged before the High Court in a Public Interest Litigation on the ground that he could not hold the august Office of the Advocate General of Uttarakhand in view of Article 165 read with Article 217 of the Constitution and it came to be allowed. Challenging the same, the State of Uttaranchal has filed Special Leave Petitions and after admission, those Special Leave Petitions were converted as Civil Appeal Nos.1134 to 1135 of 2018. The Hon'ble Supreme Court had allowed the Civil Appeal filed by the State of Uttranchal and also imposed a cost of Rs.1,00,000/- on the respondents / writ petitioners and also considered the following guideline relating to Public Interest Litigation and it is relevant to extract Paragraph No.181 of the same:

"181. We have carefully considered the facts of the present case. We have also examined the law declared by this court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations. (2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet

framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation. (8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

In paragraph Nos.22, 23, 173, 174 of the said judgement, the Hon'ble Supreme Court of India had also dealt with the filing of the Public Interest Litigation by a practising lawyer and it is relevant to extract the same:

"It was expected from a member of noble profession not to invoke jurisdiction of the Court in a matter where controversy itself is no longer res integra. The petitioner, a local practising lawyer, ought to have bestowed some care before filing this writ petition in public interest under Article 226 of the Constitution. The controversy raised by the petitioner was decided 58 years ago by the High Court in Karkare, AIR 1952 Nag 330, which was approved by the Constitution Bench way back in 1962 in Atlas Cycle, AIR 1962 SC 1100. When the controversy is no longer res integra and the same controversy is raised repeatedly, then it not only wastes precious time of the Court and prevents the Court from deciding other deserving cases, but also has

immense potentiality of demeaning a very important constitutional office, and the person who has been appointed to that office. This is a clear case of abuse of process of the Court in the name of Public Interest Litigation. A degree of precision and purity in presentation is a sine qua non for a petition filed by a member of the Bar under the label of public interest litigation. It is expected from a member of the Bar to at least carry out the basic research whether the point raised by him is res integra or not. The lawyer who files such a petition cannot plead ignorance.

8. In the considered opinion of this Court, the petitioner has failed to implead the proper and necessary parties to the litigation namely the members, who are conducting the fair and that apart, he has failed to do any research before filing the writ petition. Insofar as the primordial submission made by the learned counsel appearing for the petitioner that the 4th respondent, which is running an aided religious minority Institution, cannot allow the concerned entity to conduct Hindu Spiritual fair, in the considered opinion of this Court, the said submission totally lacks merit and substance for the reason that secularism is propounded by the Constitution and nothing wrong on the part of the 4th respondent Institution to permit the said entity to conduct a spiritual fair of major religion.

9. It is also to be pointed out at this juncture that the writ petitioner has submitted a representation dated 24.01.2019 to the respondent and did not enclose any materials as to the serving and acknowledgement of the said representation on the concerned respondents and that apart, within a short span of time, he has also approached the Court on the very next day of representation on 24.01.2019 and filed the present writ petition and sought a positive order.

10. In the light of the above facts and the reasons assigned above, this Court is of the considered view that the present writ petition lacks merits and deserves dismissal and accordingly, stands dismissed. No costs.

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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TO:-

1.The Chief Secretary,
Government of Tamil Nadu
St.George Fort, Secretariat, Chennai.

2.The Secretary,
Social Welfare Department,
St.George Fort, Secretariat, Chennai.

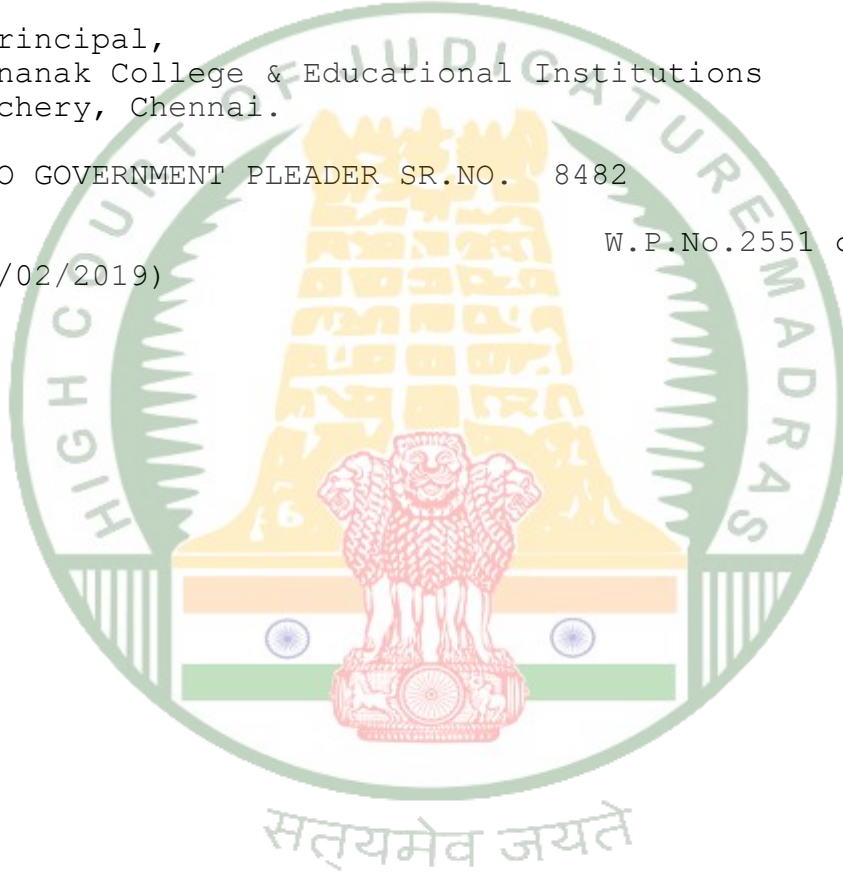
3.The Secretary,
Higher Educational Department,
St.George Fort, Secretariat, Chennai.

4.The Principal,
Gurunanak College & Educational Institutions
Velachery, Chennai.

+1 CC TO GOVERNMENT PLEADER SR.NO. 8482

W.P.No.2551 of 2019

A.SK(27/02/2019)



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