

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.7094 of 2019
and W.M.P.No.7813 of 2019

P.Karthikeyan

... Petitioner

Vs.

1. The Inspector of Police,
Town Police Station,
Chengalpet,
Kancheepuram District.

2. The Superintendent of Police,
Kancheepuram District,
Kancheepuram.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling the records pertaining to the first respondent Na.Ka.No.03/Chengai Town P.S./2019 dated 01.03.2019 and quash the same as illegal and directing the first respondent to grant permission to hold public meeting on 23.03.2019 or any other further date near the Old Bus Stand at Chengalpet Town or the venue earmarked by the municipality within the Town for the Public meeting or any other order.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.A.Kumar,
Additional Advocate General-VII
Assisted by
Mr.Mohammed Riyaz
Additional Public Prosecutor.

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O R D E R

This writ petition has been filed challenging the order passed by the first respondent dated 01.03.2019 bearing reference No.Na.Ka.No.03/Chengai Town P.S./2019, thereby rejecting the permission seeking to hold a meeting at Chengalpattu Municipal Marriage Hall, Kancheepuram District.

2. The learned counsel appearing for the petitioner submitted that the petitioner is the Taluk Organizer of the People's Democratic Youth Association, Tamil Nadu. Their leader A.M.Kothandaraman passed away on 25.11.2018 and to tribute him and to hold commemoration for him they decided to conduct meeting on 03.03.2019 at Municipality Thirumana Mandapam, Chengalpet. Therefore, the petitioner sought for permission by a representation dated 13.02.2019 to the first respondent. He further submitted that they already conduct two meetings to pay tribute to their leader A.M.Kothandaraman within the Chennai City by two other organizations. He further submitted that the petitioner has already filed a writ petition before this Court in W.P.No.5497 of 2019 to consider their representation, in which this Court directed the first respondent to dispose of the representation. Thereafter, it was rejected by an order dated 26.02.2019 and the same was challenged before this Court in W.P.No.5690 of 2019 and this Court allowed the writ petition by directing the first respondent to dispose the representation after giving opportunity to the petitioner by an order dated 01.03.2019. Against the first respondent without giving any opportunity of hearing to the petitioner, rejected the representation seeking permission to conduct meeting to pay tribute to their leader. He further submitted that the condolence meeting to pay homage to the departed leader is their right under Article 19(1)(a) of the Constitution of India and the first respondent ought not to have rejected their representation.

2.1. He further submitted that the reasons stated in the impugned order are illegal and incorrect. Insofar as the case registered as against the petitioner in the year 2014 is concerned, in the said case no action has been taken and no final report has been filed. Therefore, it directly hit under Section 468 of Cr.P.C. and the said criminal case naturally died. Insofar as the two cases registered as against one of the speaker Senthamizhkumaran, though they are pending, now the petitioner's associations decided to drop him in participating the meeting to be conducted to pay tribute to their leader. He further submitted that though this Court specifically directed to give opportunity of hearing to the petitioner, the first respondent without even issuing any show cause notice mechanically passed the impugned order. The learned counsel cited the judgement reported in 2019(2) CTC 135 in the case of L.Cheziyan @ Sakthivel Vs. Commissioner of Police and ors and judgement passed by the Division Bench of this Court in W.P.No.13681 of 2007 dated 30.01.2008 in the case of C.J.Rajan Vs. The Deputy Superintendent of Police and anr., and prayed to allow this petition.

3. Per contra, the learned Additional Advocate General-VII appearing for the respondents filed counter and submitted

that as directed by this Court in W.P.No.5960 of 2019, the first respondent called the petitioner for enquiry and the petitioner also participated in the enquiry on 01.03.2019. After conducting detailed enquiry and after recording the statement of the petitioner, his representation was rejected by an order dated 01.03.2019. Therefore there is no question of violation of principle of natural justice and the order has been passed with valid reasons. The leader of the petitioner A.M.Kothandaraman had traveled in Naxal ideology and there is an intelligence report that there is possibility of participating the persons supporting naxal movement and also other persons belonging to the government banded organizations. They also received secrete information that speakers would speak against the sovereignty of our country and those will create law and order problem.

3.1. He further submitted that one of the speaker one Senthamizhkumaran has already having bad antecedent and as against him there are two cases registered in Crime Nos.1048 of 2014 and 344 of 2014. In fact as against the petitioner also a case has been registered in Crime No.886 of 2010 and the same is pending before the Inspector of Police, Singanallur Police Station, Coimbatore. He further submitted that if the permission granted to the petitioner to conduct meeting, there will be a every chance to spoil the unity and integrity of our country. There is strong opposition from the public in conducting this kind of meeting and it will affect public tranquility and it affects public peace. He further submitted that the law is well settled that enforcement authority/Police are the best judge for meeting a situation prevailing in a particular locality based on which appropriate decision is to be taken for granting permission to conduct meeting in the public place. Since the criminal cases as against the petitioner as well as one of the speaker are pending and also expected that banded organizations are also participated in the meeting, the first respondent rightly rejected the permission sought for by the petitioner and there is absolutely no illegality or infirmity in the order passed by the first accused. Therefore, he prayed for dismissal of the writ petition.

4. Heard Mr.R.Sankarasubbu, learned counsel appearing for the petitioner, Mr.A.Kumar, learned Additional Advocate General appearing for the respondent.

5. The petitioner is the Taluk Organizer of People's Democratic Youth Associations, Tamil Nadu. He sought for permission to pay tribute his organization leader late A.M.Kothandaraman, who passed away on 25.11.2018. Initially the first respondent rejected the petitioner's representation without conducting any enquiry. Therefore, this Court directed the first respondent to pass order on the representation of the

petitioner after giving opportunity of hearing. The first respondent conducted enquiry and after recording his statement, rejected the request made by the petitioner for the reasons that the petitioner's leader had traveled in naxal movement and also the petitioner and another speaker viz., Senthamizhkumaran are having bad antecedents and the FIRs are also pending against them in Crime Nos. 1048 of 2014, 344 of 2014 and Crime No.886 of 2010, as against the said Senthamizhkumaran and the petitioner respectively. The other reasons stated that if the petitioner allowed to conduct meeting, there is valid apprehension that they will speak against the sovereignty of our country and it will lead to law and order problem. There is also an opposition from the public in conducting these type of meeting and it will also affect the public tranquility and it leads to law and order problem.

6. In this regard, the learned counsel appearing for the petitioner relied upon the judgment reported in 2019(2) CTC 135 in the case of L.Cheziyan @ Sakthivel Vs. Commissioner of Police and ors, which held as follows :-

"8. Jurisprudentially a right in one imposes a correlative duty in another. However, in Constitutionalism, where the Constitution guarantees the rights to the citizens, the duty becomes the citizens' to exercise the guaranteed rights responsibly. To cite an American example, the Constitution of the United States presumes lawfulness, and hence it becomes the responsibility of every American to respect and obey the law. While there are protections against violations of rights of citizens as in our Constitution, still the primary responsibility is in its insistence towards obedience of laws. To illustrate, the Constitution of United States has sets Rules for conviction for treason against that Nation. This presumes loyalty to the United States. It is a responsibility, then, to be loyal to the United States. Analogously, the Right to be tried in a jury trial is a fundamental right, but the jury should be an impartial one. This implies that every citizen has a responsibility, then not only to serve as a juror but also has the responsibility to be impartial when so appointed.

9.1 The Indian experience on the Constitutional responsibility found its way into the Constitution when Fundamental

Duties are inserted into it through Article 51A Vide the Constitution (42nd Amendment) Act. It reads: (only those that are contextually relevant are extracted) "51A. It shall be the duty of every citizen of India—

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

9.2 In *AIIMS Students Union vs. AIIMS and Others*, [(2002) 1 SCC 428], the Supreme Court has held that though the fundamental duties are not enforceable by a writ of the court, yet they provide valuable guidance, assistance and serve as an aid to interpret, resolve and deal with the Constitutional issues. This was reiterated in *State of West Bengal & Ors vs. Sujit Kumar Rana*, [(2004) 4 SCC 129] and confirmed later by a bench of seven judges of the supreme Court in the *State of Gujarat vs. Mirzapur Moti Kureshi Kassab Jamat and Ors*, [2005 (8) SCC 534]. Therefore, it is now beyond cavil that the jurisprudential principle of every right has a corresponding duty and

responsibility and the same has been engrafted into the Constitution, and it is the duty of the Court while interpreting the Constitution and the statutes made thereunder, to keep them in mind, while dealing with the issues before it.

10. The Constitutional rights finds its pair in the Constitutional duties or responsibilities. And, he who is conscious of his Constitutionally guaranteed rights and demands it, should also be prepared to submit to performing the Constitutional duties that goes with it. Time has come for the Courts not just to be a sentinel on the qui vive against State's attempts to invade the Constitutional rights of the citizens, but also against flirting tendencies of the citizens not to abide by their Constitutional responsibilities or duties. The latter may not be enforceable, yet they cannot be ignored.

11. In *J. Deva Asir Vs The Superintendent of Police, Kanyakumari District and others* [W.P(MD)1552 of 2019], I had an occasion to observe: "While the Courts stay neutral, they still do not blindfold itself to the happenings around." I repeat it again. As this Court observes around, the public space which ought to be a marketplace of fertile and refreshing socio-political and economic ideas hardly seen selling any great ideas. What is largely in view is a cacophony of abuses and incendiary speeches and not much on nation-building and spreading amity and brotherhood among citizens. Where the Constitutional duties are in peril of losing its contextual relevance, it then becomes necessary for the Courts to step in.

12. Therefore, every authority who henceforth grants permission for any meetings or other functions shall obtain a written undertaking from its organisers that he will take responsibility that none of the speakers, while they exercise their right to free speech and expression, will violate any of those aspects/heads on which the State has power to make laws

under Article 19(2) of the Constitution, that he would abide by the Constitutional values, and that no picture, cartoons or caricature, poster and every form of visual depiction, depicting any religious symbols or images be used as to hurt the religious sentiments of any religious group, nor shall be put on display anything banned under the laws of India.

13. However, the job of the court is made easy to an extent when the learned counsel for the petitioner submitted that the petitioner is ready to file an affidavit that the freedom of speech will not be misused. This court however, intends to modify it slightly as would be indicated below:

14. To conclude, this petition is allowed and the Order of the second respondent dated 10.02.2019 is set aside. This Court further directs the petitioner to present a fresh representation to the 3rd respondent with the names of the speakers and other related particulars along with a written undertaking:

(a) That the petitioner takes responsibility that none of the speakers, while they exercise their right to free speech and expression, will violate or infringe any of those heads (on which State has made laws or has power to make laws) under Article 19(2) of the Constitution (each of them should be specifically stated) and that he would abide by the Constitutional values, and that he takes responsibility, for peaceful conduct of the meeting.

(b) That no picture, cartoons, caricatures, posters, and every form of visual depiction, depicting any religious symbols or other images be used in any form as to hurt the religious sentiments of any religious group, nor shall display anything banned under the laws of India.

Upon receipt of the said representation with the undertaking as indicated above, the 3rd respondent is required to consider the same expeditiously and in the spirit

of what is indicated in this Order. In the eventuality of the 3rd respondent granting permission, he is also entitled to videograph the proceedings of the meeting to ensure that the undertaking given by the petitioner is obeyed in letter and spirit. If there is any violation, then the respondents are directed to prosecute the violators forthwith."

7. Another judgment replied upon by the petitioner's counsel is that the order dated 30.01.2008 passed by the Division Bench of this Court in W.P.No.13681 of 2007 in the case of C.J.Rajan Vs. The Deputy Superintendent of Police and anr., which reads as follows:-

"10. In this context, it is necessary to refer to the judgment of the Supreme Court in Himat Lal K. Shah v. Police Commissioner, Ahmedabad (1973 (1) SCC 227) rendered by a Constitution Bench of the Apex Court, wherein, the Court struck down Rule 7 of the Rules framed under the Bombay Police Act on the ground that Rule, which empowered the Commissioner of Police to refuse permission to hold meetings without giving any guidance under the Rule and thereby conferring an arbitrary discretion, was an unreasonable restriction on the freedom of association and freedom of assembly guaranteed under Article 19 of the Constitution. The Court also held that the word "regulating" in Section 33(1)(o) of the Bombay Police Act would include the power to prohibit and impose the condition that permission should be taken a few days before the holding of the meeting on a public street. Mathew, J., dissented from the view of the majority and held that the power to regulate did not include the right to prohibit and the permission sought for holding a meeting ought not be refused. The majority opinion was that regulation is necessary to enable citizens to enjoy the various rights in crowded Public Streets, and that the State can make regulation in aid of the right of the assembly of each citizen and can impose

reasonable restrictions in the interest of public order.

11. The Supreme Court also in *S. Rangarajan v. P. Jagjivan Ram* [1989 (2) SCC 574] held that freedom of speech under Article 19(1)(a) of the Constitution of India means the right to express one's own opinion by word of mouth, printing, picture or in any one manner of ideas made through any and the communication of ideas made through any medium. Such right, however, was held to be subject to reasonable restrictions in the larger interest of the community and the country as set out in Article 19(2) of the Constitution. Those restrictions are intended to strike a proper balance between the liberty guaranteed, and the social interests specified under Article 19(2). The Court emphasised that the interest of freedom of expression and social interest cannot be regarded as of equal weight and the court's commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or farfetched, but should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interests. It should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg."

This Court held that in the democracy the line dividing the State and the collective of its citizens is faint. For a citizen to exercise his rights under the constitution responsibility, he need not to look to the State, for he owes his existence not to the mercy of the State, but to the might of the constitution. Therefore, the Article 19(2) of the Constitution has empowered the State to make laws to impose reasonable restrictions on the Fundamental Right to free speech, yet personal responsibility expected of a citizen that he will exercise in within reasonable bonds goes with the very right, even if one were to presume that Article 19(2) does not exist. Further held that it is the abundant duty of the state to aid the exercise of the right to

freedom of speech as understood in its comprehensive sense and not to throttle or frustrate the exercise of such rights by exercising its executive or legislative power and passing orders or taking action in that direction in the name of the reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquility.

8. The learned Additional Advocate General-VII relied upon the judgment of this Court dated 28.08.2015 in W.P.No.26567 of 2015 batch case between P.Pugalthi Vs. The Deputy Superintendent of Police and anr, which reads as follows :-

"4. The learned Special Government Pleader appearing for the respondents, based on the counter affidavit filed, submitted that number of cases have been registered against the erstwhile leaders of banned association. It has also involved in the offences under the Explosives Act, apart from 302 IPC. One Ponnivalavan, District Organizer of Thamizh Desa Makkal Katchi is involved in five cases. He was also an active member of the banned organisation. What is proposed to be done is to revive the banned organisation in a different form. The volunteers of the petitioners have committed grave crimes and cases have been registered for several offences. The discrete enquiry also reveals that such meetings if permitted would create a serious law and order problem apart from disturbance of peace and public tranquillity. In support of his submission, reliance has been made on the decision of the learned single Judge in POPULAR FRONT OF INDIA, REP. BY ITS STATE GENERAL SECRETARY V. THE DIRECTOR GENERAL OF POLICE, CHENNAI AND THREE OTHERS in W.P.Nos.4049 to 4054 of 2015 dated 17.02.2015.

.....

7. It is submitted that if the permission is granted to conduct the procession, there is every chance of misleading the youths and causing danger to the public property and integrity of India. There is a strong opposition among the public in conducting the procession and if it conducted it will affect the

public tranquillity and will lead to law and order problem. Considering the above facts and circumstances and to safeguard the public property and integrity of India and considering the welfare of the public at large and further Section 30(2) of Tamil Nadu Police Act is in force in Sethiyathope Sub Division, it was decided that it would not be proper to grant permission to conduct the procession. Hence, it is reiterated that, the active leaders and members of Tamil Desa Makkal Katchi were the active participants and followers of Tamil Nadu Liberation Army (TNLA). TNLA is a banned organisation as per the Government order G.O.SS.1559 16/2000 dated 09.11.2001. Also the Indian Government has included the TNLA in the banned organisation list as per the UNLAWFUL PREVENTION OF ACTIVITIES ACT (UAPA-1967). It is banned on the basis that any existence and role if played by the organisation would affect the integrity and sovereignty of the state at large. Since the followers of Tamil Desa Makkal Katchi are the active participants of TNLA it would otherwise mean that it is the continuance of activities of TNLA. The Tamil Desa Makkal Katchi has not organised any such meeting earlier and it is the first time the party is organising the commemoration. Homage function, Procession, in large scale by assembling all the members, who are the followers of the Government banned organisation TNLA. Hence, it is illegal to allow such Homage or Procession that would affect the very basic integrity of the state."

9. Another judgment relied upon by the learned Additional Public Prosecutor dated 01.10.2018 passed in W.P.(MD)No.18773 of 2018 in the case of L.Cheziyan @ Sakthivel Vs. The Commissioner of Police and ors which reads as follows :-

"9. It is well settled position of law that the enforcing authorities are the best judge for meeting a situation prevailing in a particular locality based on which appropriate decision is to be taken for granting permission to conduct meeting in a public place or at a particular time. It is

seen from records that various criminal cases have been filed against the members of the organization and the police taking into consideration the overall situation have thought it fit to reject the permission sought for by the petitioner.

10. The learned Additional Advocate General had submitted that the permission that was granted earlier by this Court with condition was also flouted by this organization and the police have the recorded version of what was spoken in the earlier meeting which resulted in the registration of the First Information Report in crime No. 583 of 2018.

11. This Court is of the considered view that there is no illegality in the order passed by the second respondent and the second respondent has taken into consideration the entire facts and circumstances of the case and also the criminal antecedents of the members of the organization. The respondent police is the best judge to assess the situation prevailing in the particular area. This court cannot interfere with such a decision, unless this court finds that the permission has been denied for some frivolous reasons or on a general ground of law and order problem."

Though the first respondent is the best judge to judge the situation prevailing in the particular locality, in the case on hand, the petitioner is seeking permission to conduct meeting within the corner of four walls and it is not a public meeting. Therefore, there might not be any law and order problem among the public. This Court held in the above judgements in a difference set of facts and therefore the judgements are not applicable to the case on hand.

10. In the impugned order the reason for rejection mentioned is that one of the speaker i.e., Senthamizhkumaran is having two previous cases and the petitioner is having one previous case. Further expected that the other banded organization would come to the meeting and they will speak against the sovereignty of India and it leads to affect the public peace and tranquility. The learned counsel appearing for the petitioner submitted that the petitioner undertakes to file affidavit that the said Senthamizhkumaran will not attend the meeting and he will not speak in the meeting. Further submitted that the meeting to be hold inside the four walls viz., marriage

hall and they are not conducted any public meeting. It is also seen that the meeting itself to pay tribute to their deceased leader A.M.Kothandaraman. It is also seen from the list of speakers, in which the learned counsel appearing for the petitioner viz., Mr.Shankarasubbu name also find place as speaker.

11. Considering the above facts and circumstances, the order impugned in this writ petition is quashed and the petitioner is directed to submit fresh representation to the first respondent with the names of speaker along with the venue, date and time of the meeting along with the written undertaking that the said Senthamizhkumaran will not participate in the meeting to be conducted to pay tribute to their leader A.M.Kothandaraman. The written undertaking shall contain the following terms:

(a) That the petitioner takes responsibility that none of the Speakers, while they exercise their right to free speech and expression, will violate or infringe any of those heads (on which State has made laws or has power to make laws) under Article 19(2) of the Constitution (each of them should be specifically stated) and that he would abide by the Constitutional values, and that he takes responsibility, for peaceful conduct of the meeting.

(b) That no picture, cartoons, caricatures, posters and every form of visual depiction, depicting any religious symbols or other images to be used in any form as to hurt the religious sentiments of any religious group, nor shall display anything banned under the law of India.

On receipt of such representation and undertaking letter from the petitioner as stated above, the first respondent is directed to consider the same and permit the petitioner to hold meeting to pay tribute to their leader A.M.Kothandaraman in the any one of the marriage hall or covered place by four walls by fixing date and time, within a period of one week from the receipt of the said representation. The petitioner is directed to submit representation forthwith to the first respondent. It is made clear that if any violation committed by the petitioner or the speakers, the first respondent is at liberty to take appropriate action against them in accordance with law.

12. With the above directions, this Writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

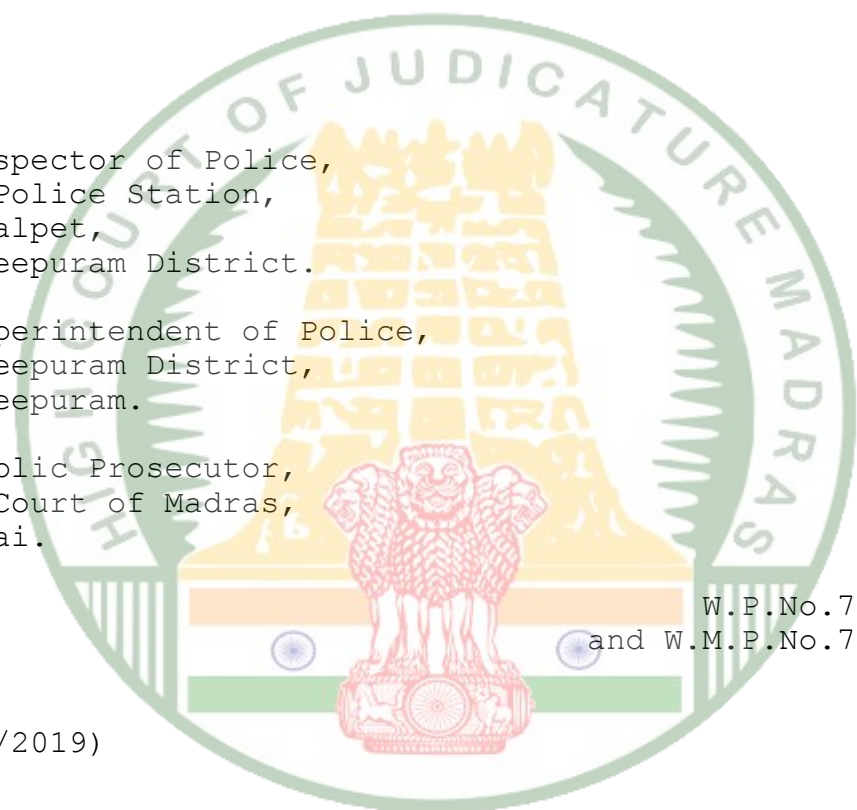
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To

1. The Inspector of Police,
Town Police Station,
Chengalpet,
Kancheepuram District.
2. The Superintendent of Police,
Kancheepuram District,
Kancheepuram.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

W.P.No.7094 of 2019
and W.M.P.No.7813 of 2019

KJ (CO)
GMY (18/06/2019)

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The text "HIGH COURT OF JUDICATURE MADRAS" is written in a green circle around the central image. Below the seal, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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