

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM:

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

W.P.No.8643 of 2019

A.Ramya

.. Petitioner

Vs.

The Returning Officer,
Election Commission of India,
No.12, Perambur Legislative Assembly Constituency,
Zone-IV, Greater Chennai City Corporation,
Chennai - 600 039. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Certiorarified Mandamus, calling for the records of respondent relating to the order in NA.KA.No.A2/0651/2019 dated 20.03.2019, passed by respondent herein and quash the same and consequently direct the respondent to grant permission and protection to conduct party candidate selection public meeting scheduled to be held on 23.03.2019.

For Petitioner : Mr.T.R.Udaya Kumar
For Respondent : Mr.Niranjan Rajagopal
Standing Counsel for ECI

O R D E R

(Order of this Court was made by S.MANIKUMAR, J.)

Ms.Ramya, a practicing lawyer, has filed the instant writ petition to quash the order in RC No.A2/0651/2019 dated 20.03.2019 passed by the Returning Officer, Election Commission of India, No.12, Perambur Legislative Assembly Constituency, Zone-IV, Greater Chennai City Corporation, Chennai, and consequently prayed for a direction to the respondent to grant permission to conduct the selection of party candidate, in a public meeting, scheduled on 23.03.2019.

2. Claiming herself to be the Founding President of Makkal Aalum Arasiyal Political Party, the petitioner has contended that in a democratic way, her party has resolved to make selection of candidates to Tamil Nadu Bye Elections scheduled on 18.04.2019 in a public meeting. According to her, in consonance

with the Model Code of Conduct for the guidance of the Political Parties and Candidates, issued by Election Commission of India, she sent an application / representation dated 19.02.2019 to the Returning Officer, Election Commission of India, No.12, Perambur Legislative Assembly Constituency, Zone-IV, Greater Chennai City Corporation, Chennai, seeking permission to conduct a public meeting at 60 ft. road, Thiruvallur Nagar, Kodungaiyur, Chennai, opposite to P6 Kodungaiyur Police Station, to select her party candidates. Said representation has been rejected. Being aggrieved the petitioner has filed the instant writ petition, on the following grounds:

(i) The Petitioner and his party have every right to express their views to general public lawfully in a democratic manner and to organize public meeting and the same is a fundamental right to speech and expression and right to assemble peaceable and without arms are guaranteed by Article 19 (1) (a) and Article 19(1) (b) of constitution of India. The impugned order is in violation of Article 19 (1) (a) and Article 19(1) (b) of constitution of India.

(ii) The model code of conduct for the guidance of the Political Parties and Candidates issued by the Election Commission of India does not prohibit holding of a candidate section public meeting by any political party and therefore the impugned order is arbitrary and illegal.

(iii). In the absence of any prohibition, not allowing the petitioner and her party to hold a candidate selection public meeting is ludicrous and reflects non-application of mind of the respondent and hence it is arbitrary and violative of Article 14 of the Constitution. It is pertinent to state that the petitioner and her party members did not involve in any act which is detrimental, in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Hence rejecting the petitioner party's permission petition dated 19.03.2019 by the respondent is unreasonable and unfair.

(iv) In a democracy, every political party and an individual, has all the right to assemble and propagate their own views and programmes in a lawful way according to their wish and desire. The authorities have no right whatsoever to dictate the design of the programmes and if any authority attempts to design a political party's or an individual's mode of expression and way of propagation, then the same would become anathema to democracy itself. Thus the impugned order is bad in the eye of law.

(v). The election commission is the custodian of democracy. The fundamental duty of election commission of India is to ensure and strengthen the participation of the most majority of the population, in this electoral democratic exercise. Thus the

petitioner party's candidate selection public meeting is an effort to boost enthusiasm among the general public to take part in this grand democratic festival and to feel every one, as an inseparable part in nation building process. The impugned order quells this very important intention of the election commission.

(vi) The respondent has violated the model code of conduct for the guidance of the Political Parties and Candidates issued by the Election Commission of India.

(vii) The respondent has violated Article 19 (1) (a) and (b) of the Constitution and therefore the action of the respondent is squarely an onslaught on her constitutional rights.

(viii) The impugned order is perverse, illegal, false and mechanical application of mind.

3. On the averments, grounds raised and inviting the attention of this Court to the Model Code of Conduct for the guidance of the Political Parties and Candidates, in particular, clause Nos.1 to 7 of the General Conduct, and Clause Nos.1 to 4, which deals with Meetings, Mr.T.R.Udaya Kumar, learned counsel for the petitioner contended that clause 1 to 4 of the General Conduct, are not attracted and the provisions do not prohibit conducting a public meeting to select the candidate in a democratic manner.

4. Learned counsel for the petitioner further contended that if selection of a candidate to any party election is made, in public meeting there could be some heated argument or the selection could be in a smooth manner, and in the case of untoward incident, petitioner or her party could seek for police assistance. According to him, right to assemble peaceably and without arms, is guaranteed under Article 19(1)(b) of the Constitution of India and therefore the order dated 20.03.2019, rejecting the request of the petitioner to conduct public meeting for selecting the candidate of a political party viz., Makkal Aalum Arasiyal Political Party, is against the Constitution of India and the provisions of the Model Code of Conduct. On the grounds raised, he prayed to set aside the order impugned and to issue the consequential direction, as prayed for.

5. Mr.Niranjan Rajagopalan, learned standing counsel, who took notice on behalf of Returning Officer, Election Commission of India, submitted that no such meeting is permissible under the Code of Conduct. Besides, permitting such meetings in public for selection of candidates to contest election would only create unrest and law & order problems. It is also his contention that the Returning Officer has categorically stated that permission is granted only for election meetings,

propaganda and establishment of booths by political parties. He also submitted that valid reasons have been assigned in the order of rejection, which does not call for any interference. For the abovesaid reasons he prayed for dismissal.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. Model Code of Conduct for the guidance of the Political Parties and Candidates, deals with many aspects, such as, General Code, Meetings, Processions, Polling Day, Polling Booth, Observers and Party in power. As we are concerned with the General Conduct and Meetings, relevant portions are extracted.

I. General Conduct

(1) No party or candidate shall include in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic.

(2) Criticism of other political parties, when made, shall be confined to their policies and programme, past record and work. Parties and Candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties. Criticism of other parties or their workers based on unverified allegations or distortion shall be avoided.

(3) There shall be no appeal to caste or communal feelings for securing votes. Mosques, Churches, Temples or other places of worship shall not be used as forum for election propaganda.

(4) All parties and candidates shall avoid scrupulously all activities which are "corrupt practices" and offences under the election law, such as bribing of voters, intimidation of voters, impersonation of voters, canvassing within 100 meters of polling stations, holding public meetings during the period of 48 hours ending with the hour fixed for the close of the poll, and the transport and conveyance of voters to and from polling station.

(5) The right of every individual for peaceful and undisturbed home-life shall be respected, however much the political parties or candidates may resent his political opinions or activities. Organising demonstrations or picketing before the houses of individuals by way of protesting against their opinions or activities shall not be resorted to under any circumstances.

(6) No political party or candidate shall permit its or his followers to make use of any individual's land, building, compound wall etc., without his permission for erecting flag-staffs, suspending

banners, pasting notices, writing slogans etc.

(7) Political parties and candidates shall ensure that their supporters do not create obstructions in or break up meetings and processions organised by other parties. Workers or sympathisers of one political party shall not create disturbances at public meetings organised by another political party by putting questions orally or in writing or by distributing leaflets of their own party. Processions shall not be taken out by one party along places at which meetings are held by another party. Posters issued by one party shall not be removed by workers of another party.

II. Meetings

(1) The party or candidate shall inform the local police authorities of the venue and time any proposed meeting well in time so as to enable the police to make necessary arrangements for controlling traffic and maintaining peace and order.

(2) A Party or candidate shall ascertain in advance if there is any restrictive or prohibitory order in force in the place proposed for the meeting if such orders exist, they shall be followed strictly. If any exemption is required from such orders, it shall be applied for and obtained well in time.

(3) If permission or license is to be obtained for the use of loudspeakers or any other facility in connection with any proposed meeting, the party or candidate shall apply to the authority concerned well in advance and obtain such permission or license.

(4) Organisers of a meeting shall invariably seek the assistance of the police on duty for dealing with persons disturbing a meeting or otherwise attempting to create disorder. Organisers themselves shall not take action against such persons.

8. While considering the request of the petitioner, to conduct a public meeting, to select candidate of Makkal Aalum Arasiyal Political Party, Returning Officer has assigned reasons, that only in respect of public meetings for elections, propaganda and establishment of booths by the political parties permission is granted. For brevity, order dated 20.03.2019, is extracted hereunder:-

From
Mr.S.Karunakaran, M.Sc., M.Phil
Returning Officer/Asst.,
Returning Officer, No.12,
Perambur Legislative Assembly Constituency (M)
No.2, North Chennai
Parliamentary
Constituency,
Zone-IV, Greater Chennai
Corporation

To
Mr.M.J.Senthil Kumar
General Secretary,
Makkal Aalum Arasiyal
Political Party
No.53A, Patel Road,
Peambur, Chennai - 11

Na.Ka.No.A2/0651/2019 Dated: 20.03.2019

Sir,

Sub: General Election - Chennai District Perambur
Legislative Assembly Constituency - within
the limits of the constituency where bye elections are
to be held, Makkal Aaluk Arasiyal Political
Party seeking permission to conduct Candidate
Selection in from of General Public - Reg.

Ref: The application dated 19.03.2019 of
Mr.M.J.Senthil Kumar, General Secretary of Makkal
Aalum Arasiyal Political Party.

In your application cited in above reference, you
have sought for permission to conduct candidate selection
public meeting on behalf of your party within the areas of
Perambur Constituency where bye-election is going to held.
Generally permissions were given only to the election
public meetings, propaganda meetings and to the
inauguration and functioning of Election offices are
given. In this circumstances, it is being informed to you
that the permission cannot be given for a candidate
selection public meeting by your party as sought in your
permission letter.

Yours truly,
-/sd/-

Returning Officer"

9. Though, petitioner has placed reliance on Article 19(1)
(b) of the Constitution of India, and claimed that her right to
form a assembly in a public place cannot be curtailed in any
manner, and the same cannot be countenanced for the reason that
no sooner the Code of Conduct for election comes into effect,
Election Commission of India, has every right and authority to
impose reasonable restrictions, in the matter of even forming an
assembly in a public place. Petitioner cannot contend that she
has unfettered right to demand against the State or Election
Commission of India that she would form an assembly, conduct

public meeting at any place of her own choice for selecting candidates for her political party. Contention that conducting a meeting in public to select a candidate, is the most democratic manner and that therefore the respondent ought to have permitted the same, cannot be accepted.

10. Petitioner has contended that the impugned order is perverse. Let us consider few decisions as what perverse means,

(i) In *Arulvelu v. State* reported in 2009 (10) SCC 206, the Hon'ble Supreme Court, at Paragraphs 27, 29 and 30, explained what "perverse" means,

"27. The expression "perverse" has been defined by various dictionaries in the following manner:

1. Oxford Advanced Learner's Dictionary of Current English Sixth Edition PERVERSE: Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

2. Longman Dictionary of Contemporary English - International Edition PERVERSE: Deliberately departing from what is normal and reasonable.

3. The New Oxford Dictionary of English - 1998 Edition PERVERSE: Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition) PERVERSE: Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. Stroud's Judicial Dictionary of Words & Phrases, Fourth Edition PERVERSE: A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

.....

29. In *Kuldeep Singh v. The Commissioner of Police*, (1999) 2 SCC 10, the Court while dealing with the scope of Articles 32 and 226 of the Constitution observed as under:

"9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the

conclusions would not be treated as perverse and the findings would not be interfered with."

30. The meaning of 'perverse' has been examined in *H. B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & Others v. Gopi Nath & Sons & Others* 1992 Supp (2) SCC 312, this Court observed as under:

"7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to Section 39(5) was proper or not, it was not open to the High Court re-appreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness - as distinguished from the legal permissibility - of the primary or perceptive facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."

(ii) In *S.R.Tiwari v. Union of India* reported in 2013 (6) SCC 602, at Paragraph 30, the Hon'ble Supreme Court, held as follows:

"30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is against the weight of evidence, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with."

(iii) In State of NCT of Delhi v. Sanjeev reported in 2005 (5) SCC 181 = AIR 2005 SC 2080, the Hon'ble Supreme Court observed thus,

".....to characterize a decision of the administrator as "irrational" the Court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards."

(iv) In State of A.P., v. Abdul Khuddus reported in 2007 (15) SCC 261, the Hon'ble Supreme Court, at Paragraph 12, held that,

"the High Court, while reversing the findings of the Special Court could also not come to a conclusion of fact that the respondents had perfected their title in respect of the schedule land by adverse possession or that the schedule land belonged to Gandhi Hill Society. Such being the position, we are unable to sustain the order of the High Court, which had set aside the findings of fact arrived at by the Special Court, which, in our view, were arrived at on consideration of the materials on record and which, by any stretch of imagination, cannot be said to be based on no evidence or surmises or conjectures and therefore, it was not open to the High Court, in the exercise of its writ jurisdiction, to set aside the findings of fact arrived at by the Special Court which were based on sound consideration of the materials on record."

(v) In The General Manager (P) Punjab & Sind Bank v. Daya Singh reported in (2010) 11 SCC 233, at Paragraph 24, the Hon'ble Supreme Court, held as follows:

"24. Absence of reasons in a disciplinary order would amount to denial of natural justice to the charge-sheeted employee. But the present case was certainly not one of that category. Once the charges were found to have been established, the High Court had no reason to interfere in the decision. Even though there was sufficient documentary evidence on record, the High Court has chosen to hold that the findings of the enquiry officer were perverse. A perverse finding is one which is based on no evidence or one that no reasonable person would arrive at. This has been held by this Court long back in Triveni Rubber & Plastics v. CCE, AIR 1994 SC 1341. Unless it is found that some relevant evidence has not been considered or that certain inadmissible material has been taken into consideration the finding cannot be

said to be perverse. The legal position in this behalf has been recently reiterated in *Arilvelu v. State*, 2009 (10) SCC 206. The decision of the High Court cannot therefore be sustained."

11. In the light of the above decisions, said contention is untenable.

12. Let us consider the meaning of "public order". Though in *State of U.P and another vs. Sanjai Pratap Gupta Alias Pappu and others*, reported in (2004) 8 SCC 591, the Hon'ble Supreme Court dealt with a case of a detenu, as to whether, his activities amounted to prejudicial to public order, warranting detention, the Hon'ble Apex Court explained the difference of law and order and public order. At paragraph Nos.7 to 13, the Hon'ble Supreme Court, observed as hereunder:-

"7. The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of the public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". The question to ask is: "Does it lead to disturbance of the current life of the community so as to amount to a disturbance of public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?" This question has to be faced in every case on its facts.

8. "Public order" is what the French call "ordre publique" and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or

public order, is: does it lead to disturbance of the current life of the community so as to amount to disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? (See Kanu Biswas v. State of W.B. [(1972) 3 SCC 831 : 1973 SCC (Cri) 16 : AIR 1972 SC 1656])

9. "Public order" is synonymous with public safety and tranquillity: "it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State" [Ed.: See Supdt., Central Prison v. Ram Manohar Lohia, (1960) 2 SCR 821 at p. 839.] . Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum, which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. [See Ram Manohar Lohia (Dr.) v. State of Bihar [(1966) 1 SCR 709 : 1966 Cri LJ 608] .]

10. "Public order", "law and order" and the "security of the State" fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State. (See Kishori Mohan Bera v. State of W.B.

[(1972) 3 SCC 845 : 1973 SCC (Cri) 30], Pushkar Mukherjee v. State of W.B. [(1969) 1 SCC 10 : (1969) 2 SCR 635], Arun Ghosh v. State of W.B. [(1970) 1 SCC 98 : 1970 SCC (Cri) 67 : (1970) 3 SCR 288] and Nagendra Nath Mondal v. State of W.B. [(1972) 1 SCC 498 : 1972 SCC (Cri) 227])

11. The distinction between "law and order" and "public order" has been pointed out succinctly in Arun Ghosh case [(1970) 1 SCC 98 : 1970 SCC (Cri) 67 : (1970) 3 SCR 288] . According to that decision the true distinction between the areas of "law and order" and "public order" is "one of degree and extent of the reach of the act in question upon society". The Court pointed out that: (SCC p. 100, para 3) "An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different." (See Babul Mitra v. State of W.B. [(1973) 1 SCC 393 : 1973 SCC (Cri) 353] and Milan Banik v. State of W.B. [(1974) 4 SCC 504 : 1974 SCC (Cri) 540])

12. The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.

13. The two concepts have well-defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and order" comprehends disorders of less gravity than those affecting "public order" just as "public order" comprehends disorders of less gravity than

those affecting "security of State". (See Kuso Sah v. State of Bihar [(1974) 1 SCC 185 : 1974 SCC (Cri) 84], Harpreet Kaur v. State of Maharashtra [(1992) 2 SCC 177 : 1992 SCC (Cri) 370], T.K. Gopal v. State of Karnataka [(2000) 6 SCC 168 : 2000 SCC (Cri) 1037] and State of Maharashtra v. Mohd. Yakub [(1980) 3 SCC 57 : 1980 SCC (Cri) 513 : (1980) 2 SCR 1158].)"

13. Contention of the petitioner that assistance of police can be taken and that police would take care of a situation, if there is an untoward incident in conducting the meeting and that therefore, the Returning Officer, ought not to have rejected the request, cannot be accepted, for the reason that no sooner the Code of Conduct has come into force, it is for the officers, empowered to consider / grant permission, to decide as to whether a public meeting of this particular nature has to be permitted or not. Having aware of the said fact, petitioner seemed to have approached the Returning Officer and submitted an application dated 19.03.2019, for seeking permission. Now petitioner cannot say that it is for the police to decide. Returning Officer has cited valid reasons for rejection. There are no merits in the writ petition warranting interference. Hence, writ petition is dismissed. No costs.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

The Returning Officer,
Election Commission of India,
No.12, Perambur Legislative Assembly Constituency,
Zone-IV, Greater Chennai City Corporation,
Chennai - 600 039. सत्यमेव जयते

+1 CC to Mr.Niranjan Rajagopalan, Advocate sr 27518.

+1 CC to Mr.T.R. Udayakumar, Advocate sr 27325.

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W.P.No.8643 of 2019

PP(CO)
SP(03/04/2019)