

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM:

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

W.P.No.11507 of 2019

P.Pugalenth

.. Petitioner

Vs.

1. The Election Officer &
the Revenue Divisional Officer,
Ariyalur District,
Ariyalur.

2. The Deputy Superintendent of Police,
Ariyalur Sub Division,
Ariyalur, Ariyalur District.

3. The Inspector of Police,
Ariyalur Police Station,
Ariyalur District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Certiorarified Mandamus, calling for the records in the order bearing No.Na.Ka.A.3/600/2019 dated 10.04.2019 passed by the respondent no.1 and quashing the same, and directing the respondents to permit the petitioner to hold a public meeting between 5 PM and 10 PM on 14 April 2019 near Perarignar Anna Statue at Ariyalur for the purposes mentioned in the said representation of the petitioner dated 29.03.2019.

For Petitioner : Mr.V.Radhakrishnan
for Ms.S.Nadhiya

For Respondents: Mr.Niranjan Rajagopalan

O R D E R

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

Mr.P.Pugalenth, petitioner / President of a political party viz., 'Thamizhdesa Makkal Katchi' and an Advocate, has proposed to organize a public meeting at Ariyalur District on 14.04.2019,

Tamil New Year Day, to propagate Tamil Language and Tamil Culture. He made a representation on 07.03.2019 to the Inspector of Police, Ariyalur Police Station, Ariyalur District, the 3rd respondent.

2. Inspector of Police, Ariyalur Police Station, Ariyalur District, the 3rd respondent, returned the petitioner's representation on 19.03.2019, informing that the petitioner should approach the Election Officer & Revenue Divisional Officer, Ariyalur District, Ariyalur, 1st respondent. Again he made a representation to 1st respondent for holding a public meeting between 5.00PM and 10.00PM on 14.04.2019 near Perarignar Anna Statue, Ariyalur. Said petition has been rejected by the impugned order dated 10.04.2019. Being aggrieved, petitioner has filed the instant writ petition for a certiorarified mandamus, to call for the records in the order bearing No.Na.Ka.A.3/600/2019 dated 10.04.2019 passed by the respondent no.1 and to quash the same, and consequently to direct the respondents to permit him to hold a public meeting between 5 PM and 10 PM on 14 April 2019 near Perarignar Anna Statue, Ariyalur.

3. On the above averments, Mr.V.Radhakrishnan, learned counsel for the petitioner submitted that the two reasons assigned are usual reasons. He further submitted that 1st respondent should be an Astrologer to predict as to what the petitioner and his party would address in the public meeting on 14.04.2019, scheduled to propagate Tamil Language and Culture. According to him, such a meeting is intended only to distribute books to the children.

4. Learned counsel for the petitioner further submitted that when Unlawful Activities Prevention Act, 1967 is in force, if the petitioner or any of the members of the political party, to which he belongs, makes any statement, contrary to the integrity and sovereignty of the nation, then arrest can be made and there cannot be any total ban on the freedom of speech and expression, guaranteed under Article 19(1)(a)(b) of the Constitution of India. It is also his contention that on the previous occasions, meetings have been permitted by the competent authorities. Inspector of Police, Ariyalur Police Station, Ariyalur, the 3rd respondent is not an authority to curb the fundamental rights of writ petitioner and the members of the political party, to which he belongs.

5. Mr.Niranjan Rajagopalan, learned counsel for the respondents made serious objection to the prayer sought for.

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

7. Order impugned dated 10.04.2019 passed by the Chief Assistant Election Officer, 27 Chidambaram Parliamentary and the Revenue Divisional Officer, Ariyalur, reads thus

Na.Ka.A.3/600/2019 Dated: 10.04.2019

Sub: Public Meeting - Chennai-Mr.Pugalenth, Leader, Tamildesa

Makkal Katchi Petition for permission to hold the said

public meeting between 5 PM and 10 PM on 14.4.2019,

Sunday, near Perarignar Anna Statue at Ariyalur - Reg.

Ref: 1. Petition dated 8.3.2019 from Mr.Pugalenth, President, Tamildesa Makkal Katchi, Chennai.

2. Letter Na.Ka.No.226/Ka.Thu.Ka.(a)/2019 of Deputy

Superintendent of Police, Ariyalur dated 10.04.2019.

Order:

As per the reference No.1 Mr.Pugalenth gave a request for permission for Save Tamil Language and Tamil Culture to hold the said public meeting between 5 PM and 10 PM on 14.4.2019 Sunday, near Perarignar Anna Statue at Ariyalur.

As per the reference letter No.2 the petitioner's political party given the representation on the account of the day of Tamilarasan's Birthday and to try the campaign for the banned organization of Tamil Nadu Liberation Army.

The Inspector of Police, Ariyalur Police seized a calendar which was published by Pathumai Pathippakam from the Tamil Kalam Book Stall, Ariyalur and filed a case in Cr.No.480/2018 u/s.153-B & 505(1)(b) IPC @ 153-A(1)(a)(b) r/2 34 and 505(1)(b)IPC dated 21.12.2018. He was cited as 2nd accused in this case. The petitioner's political party namely Tamildesa Makkal Katchi given the representation to try the campaign secretly for the banned organisation of Tamil Nadu Liberation Army (TNLA) and Tamil National Retrieval Troops (TNR).

The abovesaid organization was banned by the Government because it claim separate Tamil Nadu. They have spread the ideology to People

The Deputy Superintendent of Police and Inspector of Police given lattes that if permission given, law and order problem and National Security problem will arise. Therefore, they refused to give permission.

Therefore, reference No.2 as per the

recommendation of the Deputy Superintendent of Police has refused your request based on the reference the petitioner request that the public meeting dated 14.4.2019 near Perarignar Anna Statue at Ariyalur, permission was ordered as rejected.

Sd/-

The Chief Assistant Election Officer
27 Chidambaram Parliamentary and the
Revenue Divisional Officer, Ariyalur.

8. Perusal of the order dated 10.04.2019 shows that petition dated 08.03.2019 of Mr.Pugalenthi, President of Tamildesa Makkal Katchi, has been considered. Inspector of Police, Ariyalur Police Station appears to have seized a calendar which was published by Pathumai Pathippakam from the Tamil Kalam Book Stall, Ariyalur and filed a case in Cr.No.480/2018 u/s.153-B & 505(1)(b) IPC @ 153-A(1)(a)(b) r/2 34 and 505(1)(b)IPC dated 21.12.2018. Petitioner has been cited as Accused No.2.

9. The Chief Assistant Election Officer, 27 Chidambaram Parliamentary and the Revenue Divisional Officer, Ariyalur, 1st respondent has been apprised of the fact that Tamildesa Makkal Katchi, has proposed to campaign for organisations viz., Tamil Nadu Liberation Army (TNLA) and Tamil National Retrieval Troops (TNR), which are banned by the Government under the Unlawful Activities Prevention Act, 1967

10. That apart, Deputy Superintendent and Inspector of Police, have given letters that if permission is given, then law and order and national security problem, will arise. Acting on the inputs given by the law enforcing agency, Chief Assistant Election Officer, 27 Chidambaram Parliamentary and the Revenue Divisional Officer, Ariyalur, 1st respondent has taken a decision, not to grant permission to the petitioner and his party to hold a public meeting on 14.04.2019 near Perarignar Anna Statue, Ariyalur.

11. On the aspect as to whether, law enforcing agency has to be given a latitude in the matter of conducting public meeting, maintenance of law and order, we deem it fit to consider a decision of the Hon'ble Division Bench of this Court in Rama.Muthuramalingam, State Propaganda Committee Member vs. The Deputy Superintendent of Police, Mannargudi reported in 2004 SCC OnLine Mad 798:(2004) 5 CTC 554:(2004) 4 LW 737:(2005) 1 Mad LJ 1:AIR 2005 Mad 1, wherein it is held as follows:

" 9. Under our Constitution, the Legislature, the Executive and the Judiciary have there own broad spheres of operation. Ordinarily, it is not proper for one of these three organs of the State to encroach upon the domain of another, otherwise the

delicate balance in the Constitution will be upset and there will be a reaction.

10. Maintenance of law and order is ordinarily an executive function and it is ordinarily not proper for the judiciary to interfere in this matter. The administrative authorities have expertise in law and order problems through their long experience and training, and the Courts should not ordinarily interfere in such type of matters. The judiciary must therefore exercise self-restraint and not try to interfere with the functions of the executive or the legislature. By exercising self-restraint it only enhances its prestige.

11. This court should not ordinarily interfere in administrative matters, since the administrative authorities are specialists in matters relating to the administration. The Court does not have the expertise in such matters, and ordinarily should leave such matters to the discretion of the administrative authorities. It is only in rare and exceptional cases, where the Wednesbury principle applies, that the Court should interfere, vide *Tata Cellular v. Union of India*, 1994 (6) SCC 651; *Om Kumar v. Union of India*, 2001 (2) SCC 386, etc.

26. The expression public order was added in Article 19(2) by the Constitution (First Amendment) Act, 1951, in order to meet the situation arising from the Supreme Court decision in *Romesh Thappar Vs. State of Madras* (AIR 1950 SC 124). After this amendment reasonable restrictions from the point of view of public order can be placed on the right to freedom of speech and expression and to assemble peaceably. The term 'public order' is synonymous with the public peace, safety and tranquility, vide *Superintendent., Central Prison, Fategarh Vs., Ram Manohar* (AIR 1960 SC 633), *Madhu Limaye Vs. Sub Divisional Magistrate, Monghyr* (AIR 1971 SC 2486), etc.

27. It is thus evident that the right to freedom of speech and expression and to assemble peaceably without arms is subject to reasonable restrictions from the point of view of Public Order.

28. The question arises, who is to determine the matter relating to Public Order? The answer is given in Entry 1 to List II (State List) of the 7th Schedule to the Constitution, which states that public order is a matter within the jurisdiction of the State. Article 162 of the Constitution states:

"Subject to the provisions of this Constitution, the executive power of a State shall extend to the

matters with respect to which the legislature of the State has power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

29. It is thus evident that public order is a matter within the domain of the State Legislature and the State Executive. That being so, it is not proper for the Judiciary to interfere in matters relating to public order, unless there is violation of some constitutional or statutory provision. There are various considerations for the administration in this matter and the Court should not ordinarily interfere with administrative decisions in this connection. It must be remembered that certain matters are by their very nature such as had better be left to the experts in the field instead of the courts themselves seeking to substitute their own views and perceptions as to what is the best way to deal with the situation. In the present case, this Court should not interfere in a matter which relates to the administration, which is in the best position to know about the public order. What public order problem would arise if speeches are permitted or prohibited in connection with the arrest of Sankarachariyar and other incidental matters? How should the problem be tackled? It is the administration that best knows these problems and their solution. This Court should therefore exercise self-restraint and should not embarrass the administrative authorities in this connection.

43. Having laid down the broad principles, we may now come to the facts of the present case. The order dated 15.11.2004 by the Deputy Superintendent of Police, Mannargudi has already been quoted above in this judgment. The said order has denied permission for holding a public meeting as prayed for by the appellant. Against that order the appellant filed a writ petition before this Court, which has been disposed off by the learned single Judge by his order dated 23.11.2004. In the impugned order, the learned single Judge permitted the appellant to approach the competent executive authority for seeking permission to hold a public meeting, as prayed for, and directed the said authority to pass appropriate orders within three days of the receipt

of the application, provided the appellant-Kazhagam did not create any law and order problem in the locality, nor affect the public peace and tranquility. To this extent the directions of the learned single Judge are unexceptionable. However, in our opinion, the further direction of the learned single Judge in paragraph-10 of his order that the appellant should not speak about the arrest of the Sankarachariyar in the alleged murder case, nor justify the same, nor speak with reference to the investigation connected therewith, were uncalled for and unnecessary. The learned single Judge should have left it entirely to the administrative authorities to decide in their discretion and on the facts of the case, whether speaking about the arrest of the Sankarachariyar or justifying the same or speaking with reference to the investigation connected therewith would create any law and order problem or affect the public order. In our opinion, the entire matter should have been left at the discretion of the administrative authorities, who are best equipped to decide what would disrupt the public order or the law and order situation and what would not. By saying that the appellant should not speak about the arrest of the Sankarachariyar, nor justify the same, nor speak with reference to the investigation connected therewith, the learned single Judge has in fact taken over the task of the administrative authorities, which was not within his domain. It is entirely for the administrative authorities to decide whether speaking about the arrest of the Sankarachariyar or justifying the same or speaking with reference to the investigation would create any law and order or public order problem or not.

44. In the circumstances, we modify the direction contained in paragraph 10 of the impugned order and we leave it entirely to the discretion of the administrative authorities to decide whether permitting the appellant-Kazhagam to hold a public meeting, as prayed for, or whether speaking about the arrest of the Sankarachariyar and justifying the same, or speaking with reference to the investigation connected therewith would create a law and order or public order problem or not. If the administrative authorities feel that it may create a law and order or public order problem, then they may prohibit such activities.

45. With the above observations, this writ appeal is disposed of. No costs. Consequently, connected W.A.M.P. is closed."

12. Law enforcing agency is the competent authority to furnish details, as to whether a public meeting should be allowed to be conducted or not, more so, during elections. In the case on hand, the information furnished is that Tamildesa Makkal Katchi, is now attempting to campaign for Tamil Nadu Liberation Army (TNLA) and Tamil National Retrieval Troops (TNR), which organizations are banned by the Government. Such information furnished to 1st respondent cannot be ignored.

13. Contention of the petitioner that in the light of the provisions of Unlawful Prevention of the Act, 1967 and if either the petitioner or member of the political party, to which he belongs, makes any statement, contrary to the integrity and sovereignty of the nation, then arrest could be made and therefore, permission ought not to be refused, cannot be countenanced in law for the reason that the police and competent authority in the matter of maintenance of law and order, public order and Model Code of Conduct, can always take preventive measures as well. Better to take preventive measures than to allow a person to conduct a meeting and thereafter, take penal action, as suggested. Contention that the Inspector of Police, cannot curb the fundamental rights of the petitioner and the members of the party, to which the petitioner belongs, cannot be accepted, because, he has only furnished inputs to the 1st respondent, who has taken the decision.

14. In view of the above discussion and decision, action of 1st respondent in considering the recommendations of the Deputy Superintendent of Police and Inspector of Police, cannot be said to be arbitrary or erroneous and therefore, the order impugned dated 10.04.2019, cannot be interfered with. We find no merits in the writ petition warranting intervention. Writ petition is dismissed, accordingly. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar (AD-IV)

//True copy//

WEB COPY
Sub Assistant Registrar

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To

1. The Election Officer &
the Revenue Divisional Officer,
Ariyalur District,
Ariyalur.

2. The Deputy Superintendent of Police,
Ariyalur Sub Division,
Ariyalur, Ariyalur District.

3. The Inspector of Police,
Ariyalur Police Station,
Ariyalur District.

+1cc to Ms.S.Nadhiya, Advocate SR.No.36549

+1cc to M/s.GR Associates, Advocate SR.No.36584

+1cc to Government Pleader, High Court, Madras SR.No.36282

W.P.No.11507 of 2019

RSK(CO)
GMY(31/05/2019)



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