

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12/7/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.34114 of 2017
a n d
W.M.P.No.37865 of 2017

A.Ashvathamam ... Petitioner

Vs

1. The State of Tamil Nadu
rep. By its Secretary
Department of Hindu Religious &
Charitable Endowments
Secretariat, Fort St. George
Chennai.
2. The Commissioner
Hindu Religious & Charitable Endowments Department
Uthamar Gandhi Salai, Nungambakkam
Chennai. ... Respondents

Prayer Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents not to open the Hindu temples at mid-night for western new year celebrations.

For petitioner ... Mr.A.Ashvathamam
Party-in-Person

For respondents ... Mr.M.Maharaja
Special Government Pleader
(HR & CE)

O R D E R

(Order of the Court was made by S.Manikumar,J)

Mr.A.Ashvathamam, a practising Advocate, has filed the instant writ petition, for a writ of mandamus, directing the respondents not to open the Hindu temples at mid-night for western new year celebrations.

2. Case of the petitioner is that even though there is lot of opposition from Hindu people and Hindu Institutions, the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai/the second respondent permit opening of Hindu temples at mid-night for western new year celebration. Hence the petitioner has come forward with the instant writ petition praying for the relief as stated supra.

3. Mr.A.Ashvathamam/Party-in-Person submitted that Hindu temples are constructed under "Hindu Agama Rule". According to the petitioner, as per Agama Rule, temple should be closed around 9 p.m., every day, after solemnising the "Arthajama pooja" and it should be opened between 4.30 a.m., and 6.00 a.m., which is called as Brahma Muhurtham. The abovesaid "Agamangal" state that "Saiva and Vainava temples" are opened at night times only during "Mahasivarathiri" and "Vaikunda Egathesi", respectively. Lot of scientific reasons are there, behind those "Agamangal", which insist that temples should be opened only after sunrise.

4. Party-in-Person has submitted that vide, Notification, in Rc.No.29/HDPT/2017, Andhra Pradesh Government, have given specific instructions to Hindu temples not to celebrate the western new year and not to open Hindu temples at midnight. The said Notification further states that greeting and holding celebrations on 1st January, is not in line with the Indian Vedic System. He further stated that it has come to the notice of the Commissioner (Endowments) that English culture has spread to the temples and they are extending greetings to the devotees and spending lakhs of rupees, on floral decorations and welcome banners, for the New Year, which is not appropriate, and in accordance with Hindu tradition.

5. Party-in-Person has further submitted that the second respondent has no power to violate "Agama Rules", Hindu and Tamil culture and customs. If this undue procedure of opening Hindu temples at mid-night is allowed, it would be a sabotage to the values of Hindu & Tamil culture and according to him violates the rights conferred under Article 25 and 26 of the Constitution of India.

6. Rebutting the averments, Mr.M.Maharaja, learned Special Government Pleader (HR & CE), by producing a copy of a Hon'ble Division Bench, order, dated 11/2/2003, passed in W.P.No.46833 of 2002 (Chandrasekaran Vs. The Chief Secretary, State of Tamil Nadu and 2 others), submitted that the prayer sought for by the Party-in-Person, has been already considered and rejected.

7. Heard Mr.A.Asvathamam, Party-in-Person and

Mr.M.Maharaja, learned Special Government Pleader (Hindu Religious & Charitable Endowments) Department for the respondents.

8. Order made in W.P.No.46833 of 2002, dated 11.02.2003, reads thus:-

"Petitioner/Party-in-person not present. We have heard Mr.G.Sugumaran, learned Special Government Pleader appearing for the respondents.

2. This pro bono publico seeks a direction to all the Hindu temples under the control of the second respondent to keep the temples closed between 10.00 p.m, on 31st December and 4.00 a.m., on 1st January of every English calendar year. The matter is not justiciable. Hence writ petition is dismissed."

9. Prayer made in the instant writ petition is as follows:-

"To direct the respondents not to open the Hindu temples at mid-night for western new year celebrations."

10. Similar prayer has already been rejected by this Court.

Hon'ble Supreme Court has held that Judicial Comity is an integral part of judicial discipline and to maintain judicial discipline, corner stone of the judicial integrity requires that judgments of Coordinate Benches must be respected.

(i) In Lily Thomas vs. Union of India, reported in 2000 (6) SCC 244, the Hon'ble Supreme Court, reiterated the principle that rulings of Larger Bench should be followed and those of Coordinate Bench of equal strength not to be different from and must be followed.

(ii) In fact, the Hon'ble Supreme Court has criticised the decisions of Coordinate Benches, which have not followed the earlier judgments by another Coordinate Bench. Hon'ble Supreme Court in Official Liquidator v. Dayanand, (2008) 10 SCC , wherein at paragraph Nos.90 and 91, held thus:-

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing

minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law."

11. Contention of the petitioner that there are Agama rules governing the opening and closing of temples, and there are scientific reasons for the above, have to be proved before a Civil Court. The contention that opening of the temples, at midnight, for western new year celebration, affects his fundamental rights under Article 25 of the Constitution of India, cannot be countenanced for the reason that several thousands of people go to temples on January 1st of every year, and it has become the practice of many, for several years. Article 25 of the Constitution of India, reads thus:--

25. Freedom of conscience and free profession, practice and propagation of religion. - (1) Subject to public order, morality and health and to the other

provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.- In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

12. Religious practices not opposed to public order, health, morality and other parts of the Constitution of India, cannot be curtailed by a Writ of Mandamus. Petitioner, as a matter of right cannot seek for a prayer to close down the temples on January 1st of every year.

13. On the aspect as to when mandamus can be issued, we deem it fit to consider few decisions,

(i). In State of Kerala v. A.Lakshmi Kutty reported in 1986 (4) SCC 632, the Hon'ble Supreme Court held that a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.

(ii) In Raisa Begum v. State of U.P., reported in 1995 All.L.J. 534, the Allahabad High Court has held that certain conditions have to be satisfied before a writ of mandamus is issued. The petitioner for a writ

of mandamus must show that he has a legal right to compel the respondent to do or abstain from doing something. There must be in the petitioner a right to compel the performance of some duty cast on the respondents. The duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law.

(iii) Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

(a) In the decision reported in (1996) 9 SCC 309 (State of U.P. and Ors. v. Harish Chandra and Ors.) in paragraph 10, the Apex Court held as follows:

10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in (2004) 2 SCC 150 (Union of India v. S.B. Vohra) the Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in (2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain) in paragraphs 11 and 12 the Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person,

corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will

result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

(iv). When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)

14. On the reliance to a notification issued in Andhara Pradesh, we are of the view that the same is not binding on

State of Tamil Nadu.

15. In the light of the above discussion and decisions, instant writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

mvs/dm

To

1. The Secretary
State of Tamil Nadu
Department of Hindu Religious & Charitable Endowments
Secretariat, Fort St. George
Chennai.
2. The Commissioner
Hindu Religious & Charitable Endowments Department
Uthamar Gandhi Salai, Nungambakkam
Chennai. Ports
Chennai.

+1cc to Mr.A.Ashvathamam, Counsel for Petitioner, Advocate
SR.No.59060

+1cc to Special Government Pleader SR.No.60347

Writ Petition No.34114 of 2017

GMV (18/07/2019)

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