



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.03.2019
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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WP(MD)No.2921 of 2019
and
WMP(MD)Nos.2200 & 2201 of 2019

Sunnath Wal Jamath Pallivasal and
Kanni Beebi Darga Mosque,
Rep.by its President,
A.Akeem Raja

... Petitioner

Vs.

1.State of Tamil Nadu,
by its District Collector,
Dindigul District, Dindigul.

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

3.The Sub Collector,
Dindigul District, Dindigul.

4.The Inspector of Police,
Palani Taluk Police Station,
Palani, Dindigul District.

5.K.Chinnathambi

6.P.Thannasi

7.R.Sekar

... Respondents

(R5 to R7 are impleaded as per court order
dated 25.02.2019 in WMP(MD)No.3478 of 2019)

Prayer : This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent herein in his proceedings in Na.Ka.No.8850/2018/A7 dated 03.01.2019 quash the same and to direct the respondents to give adequate protection in the event of any funeral procession through kottaikaliyamman street situated in Balasamudram Village, Dindigul District.

For Petitioner : Mr.G.Chandrasekar

For Respondents : Mr.M.Karuppasamy,

Government Advocate for R1 to R4

Mr.S.Karthick for R5 to R7

**ORDER**

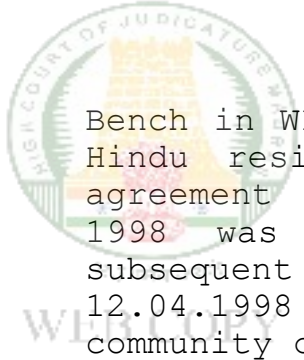
The writ petitioner represents the Muslims residing in Balasamudram Village in Dindigul District. Their graveyard is located in Survey No.53/1. It can be reached either through Kottaikaliyamman street or through Mandukal street. According to the petitioner, the shorter route is through Kottaikaliyamman street. There is no dispute that it is a public street. Kumbabisekham was performed for Kottaikaliyamman Temple on 17.01.2019. The third respondent has passed an order dated 03.01.2019 restraining taking of dead bodies through the said street till 21.03.2019. This order is under challenge in this writ petition.

2.The learned counsel appearing for the writ petitioner apart from reiterating the contentions set out in the affidavit filed in support of this writ petition, pointed out that the issue on hand is no longer *res integra*. When a similar issue arose way back in the year 1997-98, successive compromises were entered into between the parties and they were also breached. That led to the filing of WP.No.5202 of 1998 by the then Secretary of Gani Beebi Darga Mosque for directing the authorities to give adequate security to the Muslims of Balasumudram village when they take out the dead bodies to their graveyard in accordance with the agreement dated 25.01.1998.

3.The Hon'ble First Bench (The Hon'ble Mr.Markandey Katju, The Chief Justice and The Hon'ble Mr.Justice F.M.Ibrahim Kalifulla) by order dated 14.07.2005 allowed the said writ petition. The Hon'ble First Bench observed that the Muslims in Balasamudram Village are entitled to take their bodies through public streets and that the authorities will ensure that there are no communal clashes or disturbance of public order by anyone. Whoever tries to create communal tension or ill will must be dealt with with an iron hand in accordance with law including the relevant provisions of the I.P.C., Cr.P.C., and other penal statutes. The authorities concerned were directed to comply with the judgment in its letter and spirit punctually.

4.The learned counsel appearing for the writ petitioner contended that the order impugned in this writ petition runs counter to the aforesaid decision. He therefore prayed for setting aside the order impugned in this writ petition and allowing this writ petition. The official respondents have filed a detailed counter affidavit. Some of the residents representing the Hindus filed WMP (MD)No.3478 of 2019 for impleading themselves. Their impleading petition was allowed by this Court since they have a direct stake in the matter.

5.As rightly contended by the learned counsel appearing for the impleaded respondents and the learned Government counsel appearing for the official respondents, in respect of the very same issue, there was one other writ petition instituted before the Principal



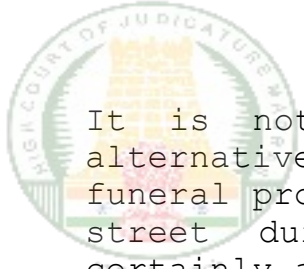
Bench in WP.No.26004 of 2005. WP.No.26004 of 2005 was filed by a Hindu resident of the said village for enforcing a subsequent agreement entered into between the parties. While WP.No.5202 of 1998 was for enforcing the agreement dated 25.01.1998, the subsequent writ petition was for enforcing the agreement dated 12.04.1998 arrived at between the Muslims and Devendrakula Velalar community of Balasamudram Village.

6. In terms of the agreement dated 12.04.1998, the Muslims were to take the funeral procession only through Mandukal street. While disposing of WP.No.26004 of 2005, the Hon'ble First Bench (The Hon'ble Mr. Markandey Katju, The Chief Justice and The Hon'ble Mr. Justice A. Kulasekaran), referred to the earlier order dated 14.07.2005 in WP.No.5202 of 1998 affirming that dead bodies can be carried through Kottaikaliyamman street and held as follows :

"15. Of course, if at a particular time poojas (e.g. Aarti) are being conducted in the temple it is better if the Muslims avoid that time so that the feeling of the Hindus are not hurt, but they can carry their dead bodies at other times. A balance should be struck in this connection, but it is upto the local authorities to make such an arrangement. In a secular country nobody's feelings should be hurt; neither the feelings of Hindus nor of Muslims nor of Christians nor of any other community. No doubt in view of Article 25 of the Constitution the Muslims can carry dead bodies through any public street of their choice, but since Article 25(1) specifically states that this right is subject to public order, the authorities can direct that dead bodies will not be carried through the street when a particular pooja is being conducted in the temple so that the feelings of Hindus may not be hurt. In this way a balance can be struck. The District Collector and the Revenue Divisional Officer, Palani will hence ensure that proper arrangements are made in this connection so that there may not be any communal clash."

7. Since the order dated 16.08.2005 made in WP.No.26004 of 21005 pointedly refers to the earlier order dated 14.07.2005 made in WP.No.5202 of 1998, this Court will have to necessarily go only by the subsequent decision. As already pointed out both the decisions were rendered by the Hon'ble First Bench presided over by the very same Hon'ble Chief Justice. The official respondents as well as the learned counsel appearing for the impleaded respondents do not assert that dead bodies can never be taken through the Kottaikaliyamman temple street. On the other hand, they only contend during Pooja time, festival time, and on special occasions such as Kumbabishekam and the following mandala period, the funeral procession should not be taken through the Kottaikaliyamman temple street.

8. One can take judicial notice of the fact that the Mandala period following Kumbabisekham is extremely auspicious and significant. In this case, Mandala period expires on 21.03.2019.



It is not as if the Muslims have no alternative route. An alternative route is very much available. Any insistence that the funeral procession will be taken only through Kottaikalam temple street during the Mandala period following Kumbabisekham is certainly an invitation to communal trouble. It will only encourage the communal and fundamentalist elements on either side. The second respondent has not forbidden the funeral procession of the Muslims alone. If he had done so, that would be a clear violation of the equality principle enshrined in Article 14 and 25 of the Constitution of India. On the other hand, he has forbidden taking of funeral processions of all religions. Thus, there is no discrimination on the ground of religion. The order is to be enforced uniformly. Hence, the Muslims cannot have any cause for complaint. Though a temple may have a compound, the events taking place in the streets immediately adjacent to it do have an implication. If any death takes place in the Sannadhi street, the temple is even closed on such occasions. This is a practice one can observe throughout Tamil Nadu.

9. Let us visualise a hypothetical situation. The deities of a temple are taken in a procession through the public streets. A number of temples do have chariots for carrying the deities through what are known as "Therodum Veethi". Of course, they are public streets. When a deity is being taken in a procession, can a funeral procession overtake it?. Can one be heard to contend that through a public street, one can take funeral procession even if a deity is going in front?. If such arguments are going to be countenanced, the communal amity prevailing in the society will come under severe strain.

10. Unlike the fundamental freedoms enshrined in Article 19, Article 25 starts with "Subject to public order, morality and health and to the other provisions of this Part". The expression "subject to" has been interpreted by the Hon'ble Supreme Court in the decision reported in (2012) 4 SCC 463 (Union of India vs. Brigadier P.S. Gill) holding that the phrase "subject to" conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject.

11. Hence, the right to freedom of religion will have to give way to the demands of public order. Of course, the authorities cannot insist that the essential religious practices must be given up. If a legitimate right is sought to be stifled at the instance of the trouble makers, certainly the authority will have to step in and uphold the right and suppress the opposition. In this case, the executive have kept in view the ground realities. It is not as if the taking of funeral procession through the street in question has been forbidden forever. On the other hand, the restriction applies only under three circumstances, (a) during pooja time, (b) during festival time and (c) on special occasions such as Kumbabisekham. More than anything else, the petitioner is having an alternative route to reach the graveyard. Thus, the petitioner can



very well exercise his right. It has only been regulated. Instead of taking the funeral procession through one street, it is to be taken through another street. The order impugned in this writ petition is going to work itself out by 21.03.2019. It does not warrant any interference.

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12. There is yet another relevant fact to be taken note of. The fourth respondent in his counter affidavit has averred that following the decision of the Hon'ble First Bench in WP.No.26004 of 2005 on 16.08.2008, the Tahsildar, Palani conducted a peace committee meeting and it was decided that the Muslims will not carry their dead bodies for 15 days when Chithirai festival is held in the Tamil month of Chithirai. Another peace committee meeting was conducted by the RDO, Palani on 27.01.2009 and it was decided that no funeral procession will be taken through Kottaikalamman temple street for 53 days during Kumbabishekam and the period following it. Proceeding bearing No.564/09/A6 dated 31.01.2009 was also issued. It is relevant to note that this was not challenged. The proceedings impugned in this writ petition are in consonance with the proceedings dated 31.01.2009.

13. The famed Journalist "Kuldip Nayar" has written a book "On Leaders and Icons". He narrates an incident that took place in one of the prayer meetings of Mahatma Gandhi. Let me quote the author.

"Last to come was a bitter Punjabi Hindu who had migrated from Pakistan. He threw a long knife at the Mahatma's feet and said that his only son aged twelve was killed by Muslims. The Mahatma was sorry to hear his tragic story and advised him to pick up a twelve-year-old Muslim orphan from the crowd and bring him up in the best tradition of Islam, so as to shame the bigoted".

14. Let us not forget that the nation was vivisected in the name of religion. The Muslim-majority regions became Pakistan which declared itself an Islamic State. India chose to tread the path of secularism. The constitution is our groundnorm. The fabric of secularism that has been so carefully woven should not be torn asunder by permitting the right to freedom of religion to trump the demands of public order. The order passed by the third respondent is in tune with the order dated 16.08.2005 made in WP.No.26004 of 2005.

15. There is no merit in this writ petition. It stands dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-I)

/ True Copy /



To

1.The District Collector,
Dindigul District, Dindigul.

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

3.The Sub Collector,
Dindigul District, Dindigul.

4.The Inspector of Police,
Palani Taluk Police Station,
Palani, Dindigul District.

+1 CC to M/s.S.KARTHIK, Advocate (SR-53197[F] dated 12/03/2019)

+1 CC to M/s.SPL GP (SR-53249[F] dated 12/03/2019)

+1 CC to M/s.G.CHANDRASEKAR, Advocate
(SR-53159[F] dated 12/03/2019)

WP (MD) No.2921 of 2019

and

WMP (MD) Nos.2200 & 2201 of 2019

11.03.2019

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