

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

W.P.No.20967 of 2019

ORDER:

This Writ Petition was initially filed seeking to declare the action of the 2nd respondent-Deputy Superintendent of Police, in not granting permission for holding condolence meeting on 29.09.2019 at Gundala Village and Mandal, Bhadrachalam District, Telangana State, as per the petitioner's application dated 20.09.2019, following the demise of Late Punem Linganna, the deceased in a fake encounter dated 31.07.2019 as illegal and arbitrary.

Subsequently, the petitioner filed I.A. No.2 of 2019 seeking to amend the prayer in the writ petition to that of questioning the Notice dated 21.09.2019 issued by the Sub-Divisional Police Officer, Kothagudem, whereby the representation of the petitioner dated 20.09.2019, seeking permission to conduct mourning meeting of late Punem Linganna @ Linganna, was rejected.

The learned counsel for the petitioner had submitted that the communication of refusal to accord permission was handed over to the petitioner only on the late evening of 25.09.2019, while the matter had come up initially on 24.09.2019 on which date, the Special

Government Pleader had taken time to get instructions in the matter. Hence, the petitioner may be permitted to amend the prayer to that of the prayer sought for in the I.A. No.2 of 2019. This Court having regard to the reasons stated in the affidavit and considering the submissions made allowed the amendment of prayer.

Brief case of the petitioner is that one Punem Linganna, who is stated to be an active member of CPI (ML) New Democracy Political party, is claimed to have been killed in a fake encounter on 31.07.2019, and the petitioner's intent to conduct a meeting to mourn the demise of the said Punem Linganna by holding condolence meeting at the open site of Manala Narayana Murthy at Gundala village. The petitioner made a representation to the police authorities on 20.09.2019 seeking for permission to conduct such meeting on 29.09.2019. Since no response from the Police authorities was received, according permission as sought for in the representation dated 20.09.2019, petitioner filed the present writ petition and sought for the relief of granting permission to hold the meeting. The further case of the petitioner is that, one Gummadi Narsaiah, Ex.MLA, Yellandu, P.Ranga Rao, Ch.Aruna Ex-ZPTC and Gouni Ilaiah and others, who are all belonging to

mainstream local political parties will address the gathering on the said occasion. Therefore, he, seeks a direction to the respondents' authorities to accord permission to conduct the meeting on 29.09.2019.

On behalf of the respondents, while denying the averments of the writ petition, counter affidavit is filed, *inter alia*, stating that initially the petitioner made a representation dated 05.09.2019 to the 2nd respondent seeking to accord permission to organize condolence meeting on 20.09.2019 at the aforementioned place, but the respondent authorities rejected the said representation to accord permission vide Notice C.No.381/SDPO-K/2019 dated 17.09.2019. After that the petitioner made another representation dated 20.09.2019 seeking to accord permission to conduct condolence meeting on 29.09.2019. On perusal of the said representation, and keeping in view the tension prevailing in Yellandu Sub-Division with regard to the exchange of fire that took place on 31.07.2019 between the Police party and UG extremist of CPI (ML) ND Party, the same was rejected vide impugned notice dated 21.09.2019. In the counter filed, the ground for rejection of such permission, it is stated that there is every possibility of more than Ten thousand members of

attending the meeting. Further, it is claimed that at the said condolence meeting, about 100 persons of Gundala Mandal who are accused in attack on police in Cr. No.34/2019 are likely to attend and may resort to attack on the police station. It is also claimed that Armed cadre of banned organisation published pamphlets and distributed instigating people in the name of condolence meeting of Linganna.

Heard Sri V. Raghunath, learned counsel appearing for the petitioner and the learned Special Government Pleader for the respondents and perused the material on record.

The main grievance of the petitioner is that the respondent authorities are not granting permission to hold/conduct a condolence meeting on 29.09.2019 at open place of Manala Narayanamurthy, Gundala village and Mandal, Badradri Kothagudem District, in memory of deceased Punem Linganna, who is stated to be killed in a fake encounter on 31.07.2019.

The reasons assigned by the respondent authorities for not according permission are as follows:

“The proposed meeting place i.e. Gundala is an agency and fully effected with extremists; that in Gundala Mandal about 100 persons who are accused in attack on Police in Cr. No.34 of 2019 under Section 147, 148, 307, 353, 398 read with 149 IPC, Section 25(1B)(a),

27 of Indian Arms Act are likely to attend the condolence meeting; that armed cadre of banned organisation are likely to take part; that the petitioner Mukthi Satyam, MPP Gundala who is accused in Cr. No.34 of 2019 under Sections 147, 148, 307, 353, 398 read with Section 149 IPC, Section 25(1B)(a), 27 of Indian Arms Act of Gundala Police Station and absconding since the date of offence fearing arrest in the above case, he is trying to mobilize the sympathizers of Linganna (deceased); that the deceased Punem Lingaiah is native of Rollagadda village and his family members are residing at Gundala, talking advantage of meeting the supporters, family members and relatives of the deceased may attack on Police again and there is every possibility of damage of the public properties also; that the proposed meeting place is an open place which is an extent of 1 acre also at a distance of 200 metres from the Police Station Gundala and there is every chance of there being attack on the police station; that the CPI (ML) N.D. party, North-East Telangana Regional Committee published pamphlets in connection with condolence meeting of Linganna instigating the people by distributing pamphlets with provocative content.”

The learned counsel for the petitioner, while assailing the reasons given in the permission rejection letter submits that the reasons stated with regard to number of participants and persons of banned organisations taking part are not genuine and reiterated the averments of the writ petition. He would further contend that not granting permission to conduct condolence meeting on 29.09.2019 is a clear violation of Articles 14, 19(1)(a) and 21 of the Constitution of India.

The learned Counsel further submits that they would conduct the proposed meeting in a peaceful and Gandhian way and would abide by any of the conditions that would be imposed by this Court. Hence he seeks a direction to the respondents to accord permission.

The learned counsel, in support of his case, placed reliance on the cases reported in ***President, Madiga Reservation Porata Samithi v. Prl.Sec., Home Department, Hyderabad and others***¹ and ***Telangana Democratic Forum v. State of Telangana and others***².

On the other hand, the learned Special Government Pleader urged that having regard to the various grounds as indicated in the counter affidavit, opposing to grant permission to conduct meeting on 29.09.2019, the petitioner may be directed to conduct the proposed meeting on some other day, but not on 29.09.2019. It is also urged by the learned Special Government Pleader that the petitioner is free to conduct condolence meeting on any subsequent date after 08.10.2019 by making an appropriate application in that regard and abiding by the conditions to be imposed by the authorities in relation to the proposed meeting.

¹ MANU/AP/0230/2016

² MANU/AP/04532016

The learned Special Government Pleader appearing for the respondents would further submit that proposed meeting place i.e., 'Gundala' is an agency area and fully effected with extremists and there is every possibility of some of the members of the banned organisation attending the above meeting by mingling with other participants as more than Ten Thousand members are likely to take part. There is also a possibility of attack on the police and a possibility of damage of public properties also under the guise of general party members.

It is also more particularly urged by the learned Special Government Pleader that in the area where the meeting is proposed to be conducted, the State authorities may not be in a position to maintain law and order on the said date in view of the congregation of people, who are likely to attend the said meeting. On the basis of the above, the Special Government Pleader submits the impugned notice may be sustained by dismissing the writ petition.

Having given due consideration to the submission made on either side, in so far as the right to hold the public meeting and non-grant of permission which is stated to be in violation of Article 19(1)(a) of the Constitution of India is concerned, the same should not

detain this Court for long, inasmuch as the scope of Article 19(1)(a) of the Constitution of India and the right of a citizen with regard to freedom of expression has been considered by the Hon'ble Supreme Court in any number of cases and in the decision of **Ramlila Maidan Incident, In re**³, wherein the Hon'ble Supreme Court observed thus:

“Another important precept of exercise of power in terms of Section 144 CrPC is that the right to hold meetings in public places is subject to control of the appropriate authority regarding the time and place of the meeting. Orders, temporary in nature, can be passed to prohibit the meeting or to prevent an imminent breach of peace. Such orders constitute reasonable restriction upon the freedom of speech and expression. This view has been followed consistently by this Court. To put it with greater clarity, it can be stated that the content is not the only concern of the controlling authority but the time and place of the meeting is also well within its jurisdiction. If the authority anticipates an imminent threat to public order or public tranquillity, it would be free to pass desirable directions within the parameters of reasonable restrictions on the freedom of an individual.”

. Further, this Court in **President, Madiga Reservation Portals Samithi** (1 *supra*), while dealing with the fundamental right guaranteed under Article 19(1)(a) of the Constitution of India, was pleased to hold

³ (2012) 5 SCC 1

that such fundamental right is not an absolute right and would be subject to restrictions envisaged in Article 19(2), 19(3) and 19(4) of the Constitution of India, and reasonable restrictions can be imposed in the interest of public order, which reads as under:

“23. The right of the members of the Samithi to take out a Ratha yatra, a procession, for the purpose of advocating their ideology and hold a congregation at Vijayawada, can be traced to Article 19(1)(a), (b) and (c) of the Constitution. However, though the right is conferred the status of a fundamental right, it is not absolute as it would be subject to the restrictions envisaged under Article 19(2), (3) and (4). Significantly, such a right would be subject to reasonable restrictions in the interest of public order. It is in this context that Section 30 of the Police Act, 1861, assumes importance. The Section reads thus:

30. Regulation of public assemblies and processions and licensing of the same:-

(1). The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

(2). He may also, on being satisfied that it is intended by any person or class of persons to convene or collect an assembly in any such road, street or thoroughfare, or to

form a procession which would, in the judgment of the magistrate of the District, or of the sub-division of a District, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for such a licence.

(3) On such application being made, he may issue a licence specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this section:

Provided that no fee shall be charged on the application for.

(4). He may also regulate the extent to which music may be used in streets on the occasion of festivals and ceremonies.”

Having regard to the views as expressed by this Court in **President, Madiga Reservation Porata Samithi** (1 *supra*) and the powers vested under Section 30 of the Police Act, 1861, in relation to the granting of permission for assemblies and processions, it has to be seen whether the action of the second respondent authority in the facts of the present case refusing to accord permission to the petitioner would meet the conditions stipulated therein. For better appreciation, impugned notice dated 21.09.2019 reads as under:

“You submitted you representation dated 20.09.2019 through speed post and the same

was received in this office on 21.09.2019 for accord permission to conduct Mourning meeting of Late Punem Lingaiah @ Linganna of CPI ML (ND) Party UG cadre extremist State General Secretary, at Gundala at the Open site of Manala Narayana Murthy on 29.09.2019 from 1100 hours to 1600 hours. In view of Exchange of Fire took place at Rollagadda forest area on 31.07.2019 in between Policy party & UG Cadre extremists of CPI ML (ND) party, the N.D. Party leaders, Sympathisers and UG Cadre Extremists attacked on the Police party and try to snatch the weapons and also caused injuries to the Police Personnel and created law and order problem. Under the circumstances mentioned supra your representation is considered and rejected.”

It is clear from the above, the reason assigned for rejecting to grant permission, is exchange of fire took place at Rollagadda forest area on 31.07.2019 whereat attempts to snatch the weapons from the police personnel was made and also caused injuries to police personnel creating law and order problem. The learned Special Government Pleader also categorically averred that in view of the said exchange of fire still tension prevails and the CPI (Maoist) called to observe formation fortnight from 21.09.2019 to 08.10.2019.

It is not out of place to mention that the law and order is primarily within the domain of police and they are the best placed authority to assess the situation

practically. Therefore, the reasons assigned in the impugned notice for rejecting to grant permission by the police authority cannot be given lesser significance.

This Court in **Telangana Democratic Forum** (2 *supra*), while referring to the decision of the Hon'ble Apex Court in *State of Karnataka v. Dr. Praveen Bhai Thodadia*⁴ wherein the Hon'ble Supreme Court observed -*"the Courts should not normally interfere with matters relating to law and order which are primarily within the domain of administrative authorities, as they are, by and large, the best placed to assess and handle the situation depending upon the peculiar needs and necessities within their special knowledge."*

observed as under:

"Unless the order passed is patently illegal and without jurisdiction or with ulterior motives and on extraneous considerations of political victimization by those in power, normally, interfere should be the exception and not the rule as the Court cannot in such matters substitute its view for that of the competent authority."

Keeping in view the above observations of this Court and in particular having regard to the concern expressed

⁴ MANU/SC/0291/2004= (2004) 4 SCC 684

by the State particularly with regard to the public order and tranquillity, in normal circumstances interference into the impugned order passed by the authorities is not called for. However, considering that the petitioners had approached the respondents to hold the meeting on an earlier date and as further time has passed by since then, this Court is of the view that the permission as sought for by the petitioner can be granted by imposing reasonable restrictions in relation thereto including the change in the place of meeting. This Court is thus, of the view that the proposed meeting on 29.09.2019, as sought to be conducted by the petitioner, be permitted subject to the following conditions and directions:

1. The petitioner, Mukthi Satyam, and G. Narsaish, Ex.MLA, representing the political party of which the petitioner claims to be a member shall give an undertaking in the form of an affidavit to the Police authorities to the effect that they will abide by the conditions and the meeting will be conducted in non-violent manner and without any arms and in the event of happening of any untoward incident, the above persons would be held responsible.

2. The petitioner shall offer three alternative venue/sites to Police to hold the meeting on 29.09.2019, since it is categorically averred in the counter affidavit of the respondents that proposed meeting place is at a distance of 200 meters from the Police Station Gundala and in view of large conglomeration of people, supporters and there is every possibility of arising of law and order problem. Upon such offering, the 2nd respondent or any higher authority shall approve one of the locations for holding meeting. In the event of suggested venues not meeting the criteria specified herein, the authorities are free to reject the same by recording the reasons.
3. Suggested alternative places shall be within the place of 'Gundala', but not in the proximity to any of the sensitive institutions/establishment.
4. The meeting shall be held/conducted within the four walls, either temporary or permanent nature of construction, as if it is in-house meeting, but not in an open place.
5. Proposed scheduled meeting shall be between 11 a.m. to 2 p.m. only on 29.09.2019 only and the

persons, who attend the meeting, shall disburse from the place of meeting by 3:00 pm.

6. The organisers of the meeting, including the petitioner, shall not use the DJ boxes and horn type speakers except the box type speakers, and the volume not being in excess of 85 DB level.
7. There shall not be any open procession or mike announcements with procession, but for individual movement of those who want to attend the meeting and participate are permitted.
8. There shall not be any speeches, which are in the nature of spreading heatedness or sedition.
9. The organisers of the meeting shall furnish a list to the Police authorities containing the names of the persons who would be addressing the meeting, which is restricted to six in number, concession of two more is considered in the event if any one of the six permitted speakers is absent.
10. There shall not be any movements in groups of more than two persons either while coming to the meeting or after the meeting is over.
11. Participants of the meeting shall be restricted to 1000 persons in all and particularly considering the fact that this Court had permitted for holding

condolence meeting at Yellandu in respect of the deceased person on 28.08.2019, which is stated to be 60 kilo metres away from the present proposed place of meeting.

12. There shall not be any unveiling of statue by the organisers or any person attending the said meeting.

13. The Police authorities are permitted to cover the schedule meeting with CC TV footage/coverage with any photograph; including the use of O.B. van or other media for transmission if required.

14. The Police authorities are permitted for frisking of persons to ensure that there are no carriage of any arms or any lethal weapons and install metal detectors to screen the participants and also permitted to deploy women police force.

15. In the event of any person being found in possession of any weapon, the Police are empowered to take them into custody and arrest such persons and act in accordance with law.

16. If any of the person involved in any crime, against whom non-bailable warrants are pending execution or who are absconding or jumped bail

bond found attending the meeting, the Police are permitted to take them into custody.

17. The parties to the writ petition are directed to act on the basis of the operative portion of this order.

Accordingly, this Writ Petition is disposed of with the above directions. There shall not be any order as to costs.

Consequently, miscellaneous applications, if any pending, shall stand closed.

Date: 27.09.2019
LSK

T. VINOD KUMAR, J

