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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.08.2020

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THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.P. (MD)No.9745 of 2020

and

W.M.P. (MD)Nos.8752 and 8753 of 2020

B.Ramaswamy

...Petitioner

-Vs-

1.The State of Tamil Nadu,
Rep by its Secretary,
Revenue and Disaster Management Department,
For St.George, Chennai-600 009.

2.The State of Tamil Nadu,
Rep by its Secretary,
Department of Home,
Fort St.George, Chennai-600 009.

3.The State of Tamil nadu,
Rep by its Secretary,
Hindu Religious and Charitable
Endowments Department,
Fort St.George, Chennai-600 009.

4.The Director General of Police (Law and Order),
Chief Office, Mylapore, Chennai-600 004.

5.The Additional Director General of Police (Law and Order),
Chief Office, Myalpore, Chennai-600 004. ...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned press release 583 dated 13.08.2020 issued by the first respondent State of Tamil Nadu, quash the same and further direct the respondents herein to permit the Vinayaka Chathurthi Festival Celebrations, 2020 in the State of Tamil Nadu by prescribing necessary Standard Operation Procedures (SOP).

For Petitioner : Mr.Isaac Mohanlal

Senior Counsel for Mr.Ragatheesh Kumar

For Respondents : Mr.Vijay Narayan,

Advocate General

assisted by Mr.K.P.Krishna Doss

Special Government Pleader



ORDER

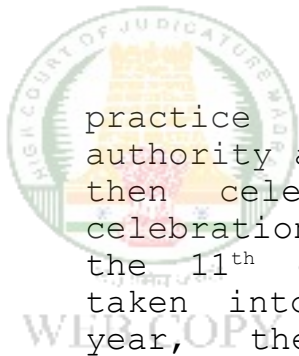
[Order of the Court was made by **M. SATHYANARAYANAN, J.,**]

This writ petition styled as Public Interest Litigation is filed by a resident of Thoothukudi. In the affidavit filed in support of this writ petition, the petitioner would aver among other things that he is a practicing Advocate before the Hon'ble Supreme Court of India as well as before this Court and he is also an Associate Member of National Lok Adalat Court of Delhi. Apart from that, he is also a State Secretary of Desiya Chinthai Kazhagam-DCK (Tamil Nadu Unit of All India Prajnpravah). The petitioner further claims that he is a Columnist and Chief Editorial Member of Desiya Murasu (English Edition) of DCK of RSS and Co-Convenor RSS Delhi Prant and All India Public Outreach Team. The petitioner also claims that he is involved in several public activities and a public spirited person.

2. Though the said averments are made, there are no supporting materials available in the form of averment or any documents in the typed set of papers. The petitioner would state that the Ganesh / Vinayagar Chathurthi is one amongst the consecrated Hindu festivals of our country and it is celebrated to mark the birth anniversary of Lord Ganesha / Vinayaga. It is celebrated with grate faith and pomp across the country especially in the State, which comes next to the State of Maharastra.

3. The petitioner would further aver that this year (2020), Vinayagar Chathurthi falls on 22.08.2020 and the traditional and customary practice is installing a statute of Lord Ganesha / Vinayaga and offering prayer for 11 days and on the 11th day, the idols of Lord Ganesha / Vinayaga are taken on the procession for immersion in the local rivers / water bodies, sea etc. The petitioner would further state that very recently, he came across the press release bearing No.583, dated 13.08.2020 released by the Director of Information and Public Relation, Chennai-09, as to restricting and forbearing the public from installing the idols of Lord Vinayaga in the public places as well as procession of the said idols, with the further request that the concerned devotees may celebrate the festival in their residents and also had given other guidelines as per the prevalent Covid-19 Pandemic. The petitioner made a challenge to the said press release by filing this writ petition.

4. Mr.Isaac Mohanlal, learned Senior Counsel assisted by Mr.K.Ragatheesh Kumar, learned counsel would submit that the function of the festival of Vinayagar Chathurthi celebrated in the great figure in the State for over three decades and the usual

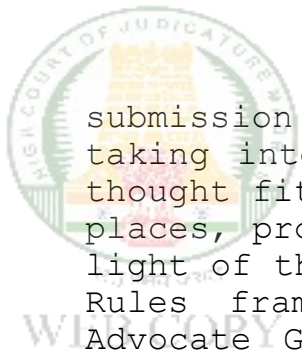


practice / custom is to get permission from the concerned authority and install idols of Lord Ganesha in the public places and then celebration will go on for 11 days and during the celebration, free food will also be distributed and at the end of the 11th day, the installed idols of Lord Vinayaga would be taken into procession for the purpose of immersion. In this year, the said traditional practice followed over three decades, sought to be set at naught on account of prevailing Covid-19 pandemic virus.

5. It is the further submission of the learned counsel for the petitioner that there cannot be a complete ban in respect of the traditional religious activity as it is also impinge upon the fundamental rights of a particular citizen to have the particular religious practice and as done in the earlier years, reasonable restrictions can also be imposed and implementation of the same can also be ensured through revenue administration and law and order machinery.

6. The learned Senior Counsel has also invited the attention of this Court to the orders passed by the Hon'ble Supreme Court reported in **2020 SCC online SC 533 [Odisha Vikash Parishad vs. Union of India and others]**, **2020 SCC online SC 616 [Nishikant Dubey vs. Union of India and others]** as well as the order rendered by the Hon'ble Division Bench of the Jammu and Kashmir High Court in **2020 SCC online J&K 353 [Court in its own motion vs. Union Territory of Jammu and Kashmir]**. Insofar as the orders of the Hon'ble Supreme Court of India, the procession of Lord Jagannath at Puri sought to be stalled and on the assurance given by the State of Orissa, the procession went on very peaceful manner without public participation. Insofar as the decision of the Hon'ble Division bench of Jammu and Kashmir High Court is concerned the State Government was requested to take into consideration the sentiment and do the needful and in the light of the said order, this Court may issue appropriate directions to the State Government to celebrate the said function with reasonable conditions and restrictions especially for the reason that it is going on without any break for merely three decades and hence, he prays for appropriate orders.

7. Mr.Vijay Narayan, learned Advocate General assisted by Mr.K.P.Krishadoss, learned Special Government Pleader appearing for the respondents 1 to 5 would submit that though challenge has been made to the impugned press release, dated 13.08.2020, it has been culminated into a Government Order in G.O.Ms.No.418, dated 14.08.2020 and the said Government Order also taken into consideration in the order dated 23.08.2017 in W.P.No.21953 of 2017 **[K.R.Ramaswamy alias Traffic Ramaswamy vs. The Chief Secretary, Government of Tamil Nadu, Chennai-9 and 9 others]**. It is the



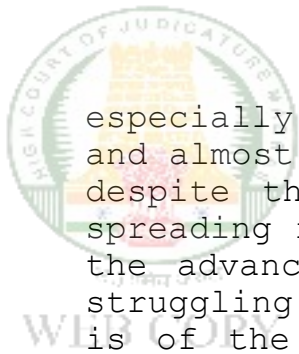
submission of the learned Advocate General that the State Government taking into consideration of the prevalent facts and circumstances thought fit to ban the installation of the Vinayagar Idols in public places, procession and immersion on the water bodies and also in the light of the provisions of the Disaster Management Act, 2005 and the Rules framed therein, it cannot be faulted with. The learned Advocate General would also plead that this Court can also take judicial note of the fact that the spread of the Covid-19 Pandemic virus is fast and thick and maintaining of social distance and wearing masks has become a standard format and it is extremely difficult to enforce the same through law and order and other machinery and taking into consideration of the prevalent situation confirm the decision taken by the State and therefore, he prays for dismissal of this writ petition.

8. This Court has carefully considered the rival submissions and also perused the materials placed before this Court.

9. The first respondent has passed G.O.(Ms).No.193, Revenue and Disaster Management (D.M.11) Department, dated 15.04.2020 by taking into consideration the order issued by the Ministry of Home Affairs, Government of India imposed some restrictions in the State of Tamil Nadu upto 03.05.2020 and it has been extended periodically from time to time. In the said Government Order, the permissible and non-permissible activities are enumerated and as per paragraph 1 of the said Government Order, the activities, which are prohibited are enumerated and as per Clause (xii) "all religious places / places of worship shall be closed for public. Religious congregations are strictly prohibited." Subsequently, there was an extension of lock-down with the very same conditions passed by the first respondent vide G.O.(MS)No.396, Revenue and Disaster Management (D.M.II) Department, dated 31.07.2020 and as already pointed out it is being extended from time to time. This Court can take judicial note of this fact that the spread of Covid-19 Pandemic virus is fast and thick and have potency to affect the persons, who are having less immunity, especially the persons with comorbid conditions and as of now there are no vaccines available to prevent the said decease and no medicine available to treat the infection and what is now done is only in the form of immunity boosters.

10. The Covid-19 needs that public in places in the form of wearing masks and maintaining social distance and despite that the people used to congregate in large numbers and as rightly pointed out by the learned Advocate General, it is extremely difficult to strictly enforce the same through law and order machinery especially in respect of festival occasions, especially in this case, which relates to celebration of Vinayagar Chathurthi.

11. The petitioner pleads his case on religious practices and sentiments. In the considered opinion of this Court, the religious sentiments should yield to the practical difficulties



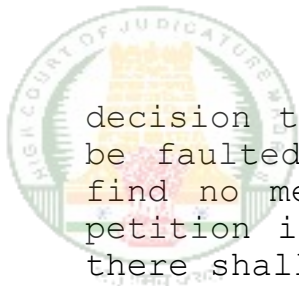
especially on account of outbreak of this Covid-19 pandemic virus and almost the entire country has become a red zone and hot spot and despite the endeavour is being taken to control the same, it is spreading fastly not only in this country but also world wide. Even the advanced countries having better medical facilities, are also struggling to contain this pandemic virus and therefore, this Court is of the considered opinion that the State Government in public interest, took such a decision.

12. In **2013 5 SCC 253 [Kalinga Mining Corporation vs. Union of India and others]**, judicial review of administrative action had been reiterated and it is relevant to extract the said paragraphs herein:-

"It is by now well settled that judicial review of administrative action / quasi judicial orders passed by the Government is limited only to correcting errors of law or non-compliance with / breach of fundamental procedural requirements which may lead to manifest injustice. When the conclusions of the authority are based on evidence, the same cannot be reappreciated by the Court in exercise of its powers of judicial review. The Court does not exercise the powers of an appellate Court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative / quasi-judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available that the Court would be justified to interfere with the decision. The scope of judicial review is limited to the decision-making process and not to the decision itself, even if the same appears to be erroneous. Where the Court comes to the conclusion that the administrative decision is arbitrary, it must interfere. However, the Court cannot function as an appellate authority substituting its own judgment for that of the administrator."

13. It is a well settled law that in the case on hand, the State Government functions in terms of the provisions of the Disaster Management Act, 2005 and the rules framed therein. Unless this was brought to the knowledge of this Court that the decision taken to ban the installation of the Vinayagar Idols in public places etc., is mala fide or bristles with arbitrariness, this Court will not normally interfere with such policy decision of the State Government. The State Government has exercised its power purely in public interest and also in exercise of powers under the Disaster Management Act.

14. This Court on considering all the materials placed on record and rival arguments is of the considered opinion that the



decision taken by the Government in terms of G.O.(Ms)No.148 cannot be faulted with, in the light of the reasons assigned above, and find no merits in this writ petition. In the result, this writ petition is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar ()

// True Copy //

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Secretary,
Revenue and Disaster Management Department,
For St.George, Chennai-600 009.
- 2.The Secretary,
Department of Home,
Fort St.George, Chennai-600 009.
- 3.The Secretary,
Hindu Religious and Charitable
Endowments Department,
Fort St.George, Chennai-600 009.
- 4.The Director General of Police (Law and Order),
Chief Office, Mylapore, Chennai-600 004.
- 5.The Additional Director General of Police (Law and Order),
Chief Office, Mylapore, Chennai-600 004.

+1 CC to M/s.GP (SR-14741[F] dated 24/08/2020)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-14585[F] dated 21/08/2020)

+1 CC to M/s.GP (SR-14658[F] dated 21/08/2020)

W.P.(MD)No.9745 of 2020
20.08.2020