



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2021

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THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.1780 of 2021
and
W.M.P.(MD)Nos.1510 and 1511 of 2021

Vellaithurai

... Petitioner

Vs.

- 1.The District Collector/
The District Disaster Management Authority,
Madurai, Madurai District.
- 2.The Superintendent of Police,
Madurai District, Madurai.
- 3.The Inspector of Police,
Othakadai Police Station,
Madurai.
- 4.M.Natarajan Pusari,
South Zone Secretary,
Veera Muthariayar Munnetra Sangam,
1/345, Valayankulam,
M.Malayanpatti Pusari Complex,
Madurai - 625 022.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, calling for records relating to the impugned proceedings of the 2nd respondent dated 29.01.2021 in Na.Ka.En.G-1/1038/11/2021 and the consequential impugned order passed by the 1st respondent in Na.Ka.En.C3/77/2020, dated 29.01.2021 and quash the same as illegal.

For Petitioner: Mr.Jerin Mathew for M/s.K.Sankar

For R1 to R3 : Mr.Sricharan Rengarajan

Additional Advocate General assisted by
Mr.K.P.Krishnadoss, Special Government Pleader

: Mr.B.Prasanna Vinoth
(for one of the objector/Supporting the petitioner)



ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

Heard Mr.Jerin Mathew, learned counsel appearing for the petitioner, Mr.Sricharan Rengarajan, learned Additional Advocate General, assisted by Mr.K.P.Krishnadoss, learned Special Government Pleader appearing for the respondents 1 to 3 and Mr.Prasanna Vinoth, learned counsel supporting the case of the petitioner, having given a representation against the permission given, which is under challenge before us.

2.The *pro bono* is on the permission granted by the respondent No.1 dated 29.01.2021, placing reliance on the report given on the same date by the respondent No.2.

3.By the impugned proceedings, the respondent No.2 has sent a communication, after conducting an enquiry, that there is no objection for granting permission to the proposed meeting scheduled to be held at 4.00 p.m. today (31.01.2021), from the point of view of law and order situation after taking adequate measures to deal with the pandemic situation. Respondent No.1, accordingly, passed an order granting permission to conduct the meeting at 4.00 p.m. on 31.01.2021, subject to the terms and conditions mentioned thereunder.

4.Learned counsel appearing for the petitioner and Mr.Prasanna Vinoth, learned counsel, made the following submissions:

(i) The impugned order is one without adequate application of mind.

(ii) The respondent No.1 being the District Disaster Management Authority, heading the Commission, ought to have considered the relevant materials from the point of view of the said disease, instead of merely accepting the 'No Objection Certificate' given by the second respondent.

(iii) The relevant Government Orders have not been taken note of.

(iv) The measures required to be undertaken have not been indicated in the impugned order. It does not speak about the exact number of the persons, who can be allowed and the timing for the proposed meeting.

(v) The respondent No.4 and the other office bearers are having number of criminal cases against them. They are known for instigating communal unrest. The respondent Nos.1 and 2 did not take



into consideration the earlier decision made by the Station Officer in this regard. Accordingly, the learned counsels submitted that the impugned orders are liable to be set aside.

5. Learned Additional Advocate General appearing for the official respondents made the following submissions:

(i) Learned counsel for the petitioner has made wrong reliance upon Government Orders passed and what is relevant is the Government Order passed by the State Government in G.O.Ms.No.770, Revenue and Disaster Management (D.M-IV) Department, dated 16.12.2020, wherein a clear distinction has been made with respect to the permission to be given for the activities such as sporting and political meeting and 50% of the total capacity is permitted and subsequent orders have been passed on 27.01.2021, giving the discretion to the respective State Government. Accordingly, the decision has been made.

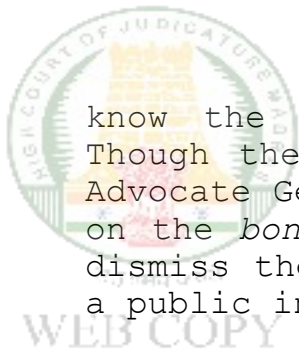
(ii) There is a conscious application of mind on the part of the first respondent. The permission has been given taking into consideration the relevant materials and after taking note of the further fact that three such meetings were permitted to be held.

(iii) There is no *bonafide* in the writ petition filed, as there is no indication as to how the petitioner got all the communications between the respondents. This coupled with the further fact that the earlier meetings, though conducted with the prior permissions given, have not been questioned by the petitioner.

(iv) Insofar as the law and order situation is concerned, the same would be taken care of by the respondent No.2. The respondent No.2, being the head of the police force in the District, has considered the relevant materials, including the rejection order made earlier. As there was a review done, there is no need for considering the refusal at the hands of the Station Officer, which is earlier in point of time. The official respondents being the instrumentality of the State are not only to protect but also facilitate the fundamental rights enshrined under Article 19(1) (b) of the Constitution of India, as held by the Honourable Apex Court.

(v) When these aspects are taken into consideration, this Court is not expected to conduct a roving enquiry under Article 226 of the Constitution of India, which would also extend to maintain law and order. As the aforesaid factors have been taken note of and adhered to, during the proposed meeting there is no room for apprehension and therefore, the writ petition is liable to be dismissed.

6. The petitioner has filed two typed set of papers before us. They contained documents pertaining to the communications between the respondents, including the private respondent. On a query, the learned counsel for the petitioner fairly submitted that he does not



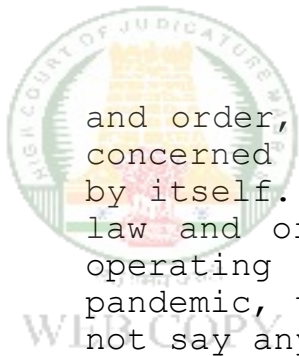
know the source from which those documents have been obtained. Though these documents are not disputed by the learned Additional Advocate General, we are of the view that they create serious doubts on the *bonafides* of the petitioner. However, we do not propose to dismiss the writ petition on that ground, as even otherwise we find a public interest involved.

7. Coming to the impugned orders passed, we need to express our views that they have not been passed on considering the relevant materials. The respondent No.2 has not taken into consideration the decision made by the Station House Officer, though not bound by it. Similarly, the said authority is not an authority to deal with the pandemic situation. If that is the position, the respondent No.1 being the competent authority ought to have considered the issue independently from the point of view of the pandemic. On a perusal of the impugned order passed by the respondent No.1, we do not find such an exercise has been done.

8. Though the learned Additional Advocate General made reliance upon the Government Order in G.O.Ms.No.770, Revenue and Disaster Management (D.M.VI) Department, dated 16.12.2020, no reliance has been made in the impugned order passed by the first respondent. Perhaps, this is an after thought resulting from the advocacy of the learned Additional Advocate General. In the same line, there is no need for the petitioner to challenge the order passed by the second respondent, which is only a communication by way of 'No Objection Certificate' to the first respondent for the purpose of granting permission from the point of view of law and order. As stated above, we are quite surprised, how this communication came into the hands of the petitioner at an alarming speed.

9. The meeting is scheduled to be held at 4.00 p.m. today (31.01.2021). Any order passed by us would attain the character of a final one. Though the respondent No.4 has been arrayed as a party respondent, order passed by us being in the nature of interim order, could have the effect of the final order. Secondly, the participants have started arriving for attending the meeting and any prohibitory order, if passed, would certainly create a law and order problem. If such a situation arises, then the order of the Court would be a cause for creating a law and order problem. We do not wish to create such a situation, after all, a Court order will have to consider the fact situation and be balanced.

10. Even otherwise, we are not inclined to stop the ongoing meeting as similar meetings have held with the permission of the respondent No.1. Therefore, there is nothing wrong in the ultimate permission granted, even though by not considering the relevant materials. As stated above, we cannot go into the finer aspects of the steps taken either by the respondents No.1 and 2 or by the respondent No.4 from the point of view of the pandemic. The Court



and order, or control the pandemic in a Writ of Certiorari. We are concerned with the decision making process as against the decision by itself. The learned Additional Advocate General has assured that law and order situation would be taken care of and the standard operating procedure will be followed to prevent the spread of pandemic, though we are constrained to note that impugned order does not say anything about the number of persons, who could be permitted in tune with the G.O.Ms.No.770, Revenue and Disaster Management (D.M.VI) Department, dated 16.12.2020, nor the timing which can be permitted along with the ingress and egress of the participants.

11. Accordingly, the writ petition stands disposed of as under:

1. The respondent Nos.1 and 2 will have to inform the respondent No.4 about the closing hours for the conclusion of the meeting.
2. The respondent No.4 shall be told that no provocative speeches should be made by all the speakers and if done, the consequences would follow.
3. An affidavit of undertaking will have to be obtained from the respondent No.4 before the starting of the meeting with the organisers, including himself, would be responsible for any law and order situation and no inciting and inflammatory speeches would be made.
4. The undertaking would also include the compliance of the Covid - 19 preventive measures, including the conditions imposed in the impugned order and adherence to the time limit.
5. The official respondents shall make sure that the entire meeting shall be videographed, which could be used as a part of evidence in the event of such necessity arises.

12. As we are fixing the responsibilities on the official respondents as well as the private respondent, we are inclined to post the matter for compliance.

13. Post the matter on 04.02.2021.

14. We make it clear that in the event of any non-compliance or violation to adhere the law and order, we would pass appropriate orders in the next hearing date.

No costs. Consequently, connected miscellaneous petitions are closed.

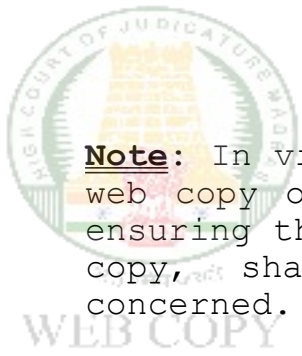
Sd/-

Assistant Registrar (WRIT)

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/ /2021

Sub Assistant Registrar



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 District Collector/
The District Disaster Management Authority,
Madurai, Madurai District.
- 2.The Superintendent of Police,
Madurai District, Madurai.
- 3.The Inspector of Police,
Othakadai Police Station,
Madurai.

COPY TO:

- (i) THE SECTION OFFICER,
WRIT SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
- (ii) THE SPECIAL GOVERNMENT PLEADER,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

Order made in
WP (MD) No.1780 of 2021 and
WMP (MD) Nos.1510 and 1511 of 2021
31.01.2021

SRS/31.01.2021/6P/6C