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W.P.No.33057 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P. No.33057 of 2022 and
W.M.P.No.32466 of 2022

Pugazendhi Thangaraj

... Petitioner

Vs.

The Inspector of Police,
K-10, Koyembedu Police Station,
Chennai – 107.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus or direction calling for the records relating to order of rejection in notice dated 03.12.2022 on the file of the respondent, quash the same and direct the respondent to permit the petitioner to conduct oratory competition on 10.12.2022 or any other subsequent date.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.S.Santhosh
Government Advocate (Crl. Side)



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ORDER

This writ petition has been filed to issue a Writ of Certiorarified Mandamus or direction calling for the records relating to order of rejection in notice dated 03.12.2022 on the file of the respondent, quash the same and direct the respondent to permit the petitioner to conduct oratory competition on 10.12.2022 or any other subsequent date.

2.The learned counsel for the petitioner submitted that petitioner is a supporter of Tamil Eelam Freedom Fighters and used to conduct public meetings to support the Tamil Eelam Fighters. He planned to conduct a oratory competition on the 68th birthday celebrations of LTTE leader late Prabakaran. This competition was scheduled to be held in a private place situated at No.72, 1st Main Road, Sri Ayyappa Nagar, Chennai – 92, on 03.12.2022 at 2.00 PM. However, the respondent Police refused to give permission and gave a notice dated 03.12.2022. Therefore, this petition is filed for quashing the notice dated 03.12.2022 and seeking permission to conduct LTTE competition on 23.12.2022.



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3.In reply, the learned Government Advocate (Criminal Side) opposed this petition on the ground that the meeting might lead to law and order problem among the public and affects the public tranquillity. Other objection is LTTE is banned organisation. The deceased leader Prabaharan was the leader of the said organisation. Petitioner is encouraging the students to join his organisation namely “தமிழீழ ஆதரவு கலைஞர்கள் மற்றும் இளைஞர்கள்”. The proposed competition relates to celebration of 68th Birthday ceremony of the deceased leader of the banned organisation which might lead to indirect support to the said banned organisation. It will spoil the future of the youths and sowing the seeds of terrorism in the minds of the youth. Thus, he submitted that, the petition has to be dismissed.

4.In response, the learned counsel for the petitioner produced copies of the orders passed in W.P.No.2043 of 1997 dated 30.04.1998, W.P.No.23467 of 2010 dated 14.03.2011 and W.P.No.30803 of 2014 dated 26.11.2014, for the proposition that when the petitioner is not a banned organisation, the support extended to the banned organisation, cannot be considered illegal. Any restraint on proposed oratory competition would amount to restriction on freedom of speech and expression, which is not



permissible. Therefore, the learned counsel for the petitioner submitted that petitioner is prepared to abide by the conditions that may be imposed by this Court or respondent Police. An affidavit is filed along with the list of participants and events. Thus, he prayed to give permission for conducting oratory competition on 23.12.2022.

i)In ***1999-1-L.W.(Crl.)73 [P.Nedumaran Vs. State of Tamil Nadu, represented by the Secretary to Government, Home Department, Fort St.George, Chennai – 9 and three others]***, it is observed that,

18.The fact that the petitioner-Association is voicing a view point which may not be popular cannot be a justification for preventing that point of view being projected. The petitioner-Association has not been declared as unlawful Association. If the petitioner-Association does anything which constitutes an offence under the Unlawful Activities (Prevention) Act, it is always open to the authorities to initiate prosecution under that Act.

19.The meeting which the petitioner had wanted to hold was to have been held on the 19th January, 1997, well over a year ago. If the petitioner were to make a fresh application for holding a meeting, the authorities ought not to refuse permission mechanically. They should be in a position to satisfy the Court that such refusal falls strictly within the ambit of the permissible grounds for restricting the



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exercise of fundamental rights under Article 19 of the Constitution. A mere apprehension that some disturbance may be caused in the meeting place would not be sufficient. Under Section 41 of the Madras City Police Act, the police have the power to depute one or more police officers to be present at the meeting. If, at the meeting, such police officers were to find that anything illegal was being done, it would be open to them to take such further action as may be considered necessary in the circumstances. A blanket order refusing to permit the meeting to be held is not the method of relating the exercise of fundamental rights of free speech, expression and assembly.

20.It is necessary to observe that the presence of some persons who may not be regarded as supporters of the banned organisation at the meeting by itself cannot be taken as proof of that meeting not being one which was meant to express support for a banned organisation.

21.The prayer in the petition that the respondents be directed to permit the future meetings cannot, however, be granted as the circumstances that may exist on the date of the proposed meeting cannot be visualised in vacuum. As and when an application is made, the respondents will consider the same in accordance with law, and in the light of what has been observed in the course of this order.

ii)In W.P.No.23467 of 2010 [Pugazendhi Thangaraj Vs. The



Commissioner of Police, Chennai City Police, Egmore, Chennai and one

other], it is observed that,

31. Similarly, we are of the opinion that the provisions in various statutes i.e. 3 (5) of TADA or [Section 10](#) of the Unlawful Activities (Prevention) which on their plain language make mere membership of a banned organization criminal have to be read down and we have to depart from the literal rule of interpretation in such cases, otherwise these provisions will become unconstitutional as violative of Articles 19 and 21 of the Constitution. It is true that ordinarily we should follow the literal rule of interpretation while construing a statutory provision, but if the literal interpretation makes the provision unconstitutional we can depart from it so that the provision becomes constitutional."

16. As seen from the above, the Supreme Court also dealt with [Section 10](#) of the Unlawful Activities (Prevention) Act and held that mere support to a banned organization will not by itself can become an offence.

17. In the present case, the petitioner had expressed his intention very clear. He wants to send a petition to the Governor of Tamil Nadu. For this purpose, he wants signatures from public collected from a public place. The entire exercise was to express to the Government of India through the



office of the Governor of Tamil Nadu that the people in the State are opposing the ban order imposed by the Government of India under the UAP Act. It is not clear as to how the said activity can be either illegal or unlawful, especially in the context of the constitution guarantee given to the citizens of India. In the counter affidavit, the stand taken by the respondents did not justify the impugned order.

18.In the light of the above factual matrix and the legal precedents set out above, the impugned order has to be necessarily set aside on both grounds, i.e., not giving an opportunity to the petitioner herein before issuing the rejection order as well as the reasons adduced for rejecting his request was not valid.

19.Since the petitioner himself has filed a memo seeking permission to conduct the signature campaign if permitted by this court on 30.3.2011 between 4.00 p.m and 7.00 p.m near Panagal Maligai, Saidapet, the respondents are directed to permit the petitioner to conduct his Signature Campaign near Panagal Maligai, Saidapet on 30.03.2011 between 4.00 p.m. and 7.00 p.m. and also to provide sufficient protection to carry out his legitimate constitutional guarantee.



iii) In ***W.P.No.30803 of 2014 [P.Manimaran Vs. The Assistant***

Commissioner of Police, Thiagaraya Nagar Range, Matley Road,

Thiagaraya Nagar, Chennai – 600 017 and other other] , it is observed

that,

14. I agree. It is seen that several organisations and political parties object to the screening of films such as "DAM 999", "KATHI", etc. and also object to the publication of books on the ground that they hurt the sentiments of someone. On such occasions they even demand the Government to curtail the fundamental right to freedom of expression or other people. But when their own applications for holding Public Meetings and organising Processions are rejected, they invoke [Article 19 \(1\) \(a\)](#) of the Constitution.

15. Therefore, it is clear that no one has absolute faith in the Fundamental Right to Freedom of Speech and Expression. People understand [Article 19 \(1\) \(a\)](#) to mean a Fundamental Right to Freedom of their own expression and not that of others who hold a view point that cannot be tolerated by them. But fortunately, the Government and the Court alone maintain consistency, the Government uniformly rejecting the request of all groups and the Court uniformly allowing the request of all groups.

16. Therefore, in the result the writ petition is allowed directing the respondents to grant permission to the



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*petitioner to hold a Public Meeting subject to the usual terms
and conditions that they may incorporate.*

5.Considered rival submissions. In the light of the law settled on freedom of speech and expression and discussed in the aforesaid judgments, this Court is of the view that the petitioner may be permitted to conduct oratory competition on the 68th birth anniversary of late Prabakaran with suitable conditions that may be imposed by the respondent.

6.Accordingly, this Writ Petition is disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

14.12.2022

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Index :Yes/No

Internet:Yes/No

Note: Issue order copy on 21.12.2022



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G.CHANDRASEKHARAN.J.,

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To

1.The Inspector of Police,
K-10, Koyembedu Police Station,
Chennai – 107.

2.The Public Prosecutor,
High Court of Madras.

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W.M.P.No.32466 of 2022

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