



W.P(MD)No.16398 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2022

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.P(MD).No.16398 of 2022

and

W.M.P(MD)No.11847 of 2022

Shanthakumar,

: Petitioner

Vs

1. The Superintendent of Police,
Virudhunagar District, Virudhunagar.

2. The Deputy Superintendent Of Police,
Sivakasi,
Virudhunagar District.

3. The Inspector of Police,
Sivakasi Town Police Station, Sivakasi,
Virudhunagar District.

: Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned Original Order passed by the second



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respondent vide his Proceedings in Namuna No. 273 / Kaa. Thu. Ka / Siva / 2022, dated 23.07.2022 and quash the same as illegal and consequently direct the respondents to give permission and protection to conduct Padhayathra (Awareness Walk) on behalf of Bharathiya Janatha Party on 26.07.2022 at about 7.00 A.M / Thursday headed by State General Secretary and West District President of Bharathiya Janatha Party along with 1000 Cadres from Thiruthangal to District Collectorate, Virudhunagar via Amathur.

For Petitioner : Mr.H.Lakshmi Shankar

For M/s.Malaiyendran.V,

For Respondents : Mr.A.Thiruvadikumar,

Additional Public Prosecutor

ORDER

This writ petition has been filed in the nature of Certiorarified Mandamus, seeking to quash the proceedings in Namuna No. 273 / Kaa. Thu. Ka / Siva / 2022, dated 23.07.2022, passed by the second respondent and consequently direct the respondents to give permission and protection to conduct Padhayathra (Awareness Walk) on behalf of Bharathiya Janatha Party



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on 26.07.2022 at about 7.00 A.M / Thursday headed by State General Secretary and West District President of Bharathiya Janatha Party along with 1000 Cadres from Thiruthangal to District Collectorate, Virudhunagar via Amathur.

2.This matter is heard along with the petition in W.P(MD)No.16391 of 2022. The learned Counsel appearing for the petitioner therein/R.Muthubalaji seeks a direction to the second respondent therein, to reject the demand of the Bharathiya Janatha Party cadres to conduct Padhayathra with 1000 party members for giving a petition to the District Collector, Virudhunagar. However, the orders for these petitions are passed separately.

3.The learned Counsel appearing for the petitioner herein submitted that the petitioner is the Virudhunagar West District Advocate Wing President of Bharathiya Janatha Party (BJP). The Central Government allotted fund for the establishment of textile park in Virudhunagar District but, the State Government of Tamil Nadu, for several years had not implemented the project of establishing the textile park by utilizing the fund. In such circumstances, the petitioner's party has resolved to submit a petition to the District Collector,



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Virudhunagar on 21.07.2022, requesting for allotment of lands to form textile park at Virudhunagar District, with ten party members alone and also to promote awareness among the public about the advantages of forming a textile park in that locality, they proposed to conduct a Padhayathra - awareness walk, which is decided to be led by the West District President of Virudhunagar District BJP and State General Secretary BJP along with 1000 cadres of BJP. The Padhayathra will commence from 07.00 am from Thiruthangal to Virudhunagar District Collectorate Office via Amathur (total distance 27 Kilometers). Hence, the petitioner sent a representation, dated 19.07.2022 to the first respondent, seeking permission to conduct Padhayathra. But, the same was rejected on 20.07.2022, by the order of the second respondent in Namuna No.267/Kaa.Thu.Ka/Siva/2022. Aggrieved by the said order, he preferred a writ petition before this Court in W.P(MD)No. 16164 of 2022, seeking to quash the rejection order, dated 20.07.2022. This court set aside the said rejection order dated 20.07.2022 and allowed that writ petition with a direction to the second respondent therein, to consider the fresh representation of the petitioner, based on the circular of the Director General of Police, Tamil Nadu Chennai, in R.C.No.007301/Genl.I (1)/2019, dated 09.04.2019 and grant permission. In pursuance of that order, the



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petitioner also gave a fresh representation to the Deputy Superintendent of Police, Sivakasi, as in person, on 23.07.2022. But, the same was again rejected by the second respondent in his proceedings Namuna No. 273/Kaa.Thu.Ka/Siva/2022, dated 23.07.2022, which is now under challenge. Further, he submitted that the impugned order, dated 23.07.2022, has been passed without considering the order of this Court made in W.P(MD)No. 16164 of 2022, dated 22.07.2022. Therefore it has been passed in most arbitrary and biased manner and further, in support of his rejection order, the respondent police has stated false and baseless grounds. The proposed Padhayathra would be peacefully conducted for only highlighting the demand for the implementation of the said project and also want to create awareness among the public. The impugned rejection order violates the Fundamental right to freedom of speech and expression and right to assemble peacefully under Article 19(1) (a) and (b) of the Constitution of India. It is the duty of the police officials to provide sufficient protection to the public and the public meeting. The proposed Padhayathra has been postponed on 26.07.2022 and now, it is again postponed because of the impugned order, dated 23.07.2022. Further, to support his argument, he relied upon the following judgments:



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1. C.L.Pasupathy Vs. Engineer in Chief (WRO) and Chief Engineer (General) PWD, Chennai and another ((2009) 2 MLJ 491).

2. D.Sandilyan Vs. The Superintendent of Police, Tiruvannamalai District and another (2012 (0) Supreme (MAD) 2395).

3.Himat Lal K.Shah Vs. Commissioner of Police (AIR 1973 SC 87).

4.T.M.Thaniyarasu Vs. Commissioner of Police and others (2014 (1) LW 465).

5.The Home Secretary, Government of Tamil Nadu Vs. Era.Selvam and another (2013 (3) MLJ 513).

and thus pleaded to allow this petition.

4.The learned Additional Public Prosecutor submitted that the petitioner in W.P(MD)No.16391 of 2022 has no locus standi to file that writ petition seeking a direction to the second respondent to reject the demand made by the BJP Cadres, for conducting Padhayathra. Further, he submitted that the contention of the petitioner herein is unacceptable. The impugned order, dated 23.07.2022, has been passed for a valid reason and the proposed route for Padhayathra is a very narrow road with heavy traffic. If permission is granted, traffic will be affected and further, in that route, many schools and colleges are situated. Apart from this, the residents at Tamaraikulam Village and Thiruchuli Taluk, had objected for the formation of the textile park in



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their area. In this regard, a peace committee meeting was also conducted by the concerned Tahsildhar on 22.12.2020, but the residents of the said locality objected for the establishment of the textile park and on 25.02.2021, they again objected for the said project, at Collector Office, Virudhunagar. Moreover, it is said that the police officials have received an information, if the BJP members gave a memorandum to the District Collector, seeking formation of the textile park, the residents of Thiruchuli and others will submit a proposal to object the memorandum of the BJP members. If 1000 cadres of BJP were permitted to conduct Padhayathra, there will be a possibility of raising law and order problem. Since the respondent police are responsible for keeping the law and order under their control, the impugned rejection order was passed. Further, he relied upon the following judgements:

- 1.Amit Shani (Shaheen Bagh, In Re) Vs.Commissioner of Police and Others ((2020) 10 SCC 439).***
- 2. Himat Lal K.Shah Vs. Commisioner of Police, Ahmedabad and another ((1973) 1 SCC 227).***
- 3. Dravidar Kazhagam Vs the Secretary to Government in W.P(MD)Nos.10804 and 10585 of 2015, dated 13.04.2015,***

and thus pleaded to dismiss this petition.



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5.I have considered the matter in the light of the submissions made by both the Counsels appearing for the parties.

6.As stated by the learned Counsel appearing for the petitioner, the said Padhayathra-awareness walk, which is decided to be led by the West District President of Virudhunagar District BJP and State General Secretary BJP along with 1000 cadres of BJP is to create awareness among the people about the benefit of the formation of a textile park, in their area. According to the petitioner, the Central Government allotted fund for the formation of a textile park at Virudhunagar District, but the State Government is not utilizing the fund and also not implementing the said project. Therefore, the petition mentioned political party wanted to give a memorandum to the District Collector, Virudhunagar, with ten important party members, for implementing the said project. Meanwhile, they want to create awareness among the public by conducting Padhayatra-awareness walk and it is proposed to start from Thiruthangal to Virudhunagar District Office with 1000 members.

7.The second respondent rejected the petitioner's earlier representation, dated 19.07.2022, seeking permission to conduct Padhayathra, on 20.07.2022,



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by the proceedings in Namuna No. 267/Kaa.Thu.Ka/Siva/2022. Then, the petitioner filed a petition in W.P(MD)No.16164 of 2022, seeking to quash the proceedings in Namuna No. 267/Kaa.Thu.Ka/Siva/2022, dated 20.07.2022. This Court set aside the same with a direction that on receipt of a fresh representation from the petitioner, the second respondent shall consider the same based on the circular of the Director General of Police in R.C.No. 007301/Genl.I(1)/2019, dated 09.04.2019 and grant permission. In pursuance of that order, the petitioner gave a representation to the Deputy Superintendent of Police, as in person, on 23.07.2022, which was also rejected by the second respondent in the proceedings Namu.na.No. 273/Kaa.Thu.Ka/Siva/2022, dated 23.07.2022, which is now under challenge.

8.On a perusal of the impugned order, it is seen that the second respondent rejected the representation, on the ground that the proposed route for Padhayathra is a very narrow road with heavy traffic. If permission is granted, traffic will be affected and further, in that route, many schools and colleges are situated, hence law and order problem may arise.



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9.The petitioner is a member of the responsible political party. Right of the people to hold demonstration and Padhayatra cannot be curtailed, so long as the same is not violent or destructive. The right to protest peacefully is recognized as a fundamental right of the Constitution of India.

10.The purpose of the proposed Padhayatra is to submit a memorandum to the District Collector, Virudhunagar, to utilise the funds allotted by the Central Government and establish a textile park in Virudhunagar District. The proposed Padhayatra-awareness walk as stated by the petitioner is to be started from Thiruthangal to District Collector Office, Virudhunagar, with 1000 Cadre of BJP members and with ten important party members, they decided to present a memorandum to the District Collector, Virudhunagar, but the participants of the Padhayathra is 1000 persons.

11.In a democratic country, it is not proper to totally prohibit the peaceful demonstration and Padhayathra without any violence. The observation in the impugned order, dated 23.07.2022 is that the proposed Padhayathra will definitely cause traffic congestion and risk to the public life, which cannot be accepted and the reasons are not supported by any strong



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material to show the reason for raising of law and order problem. It is arbitrary in nature. The main object of the petitioner is to create awareness among the people and also to implement the Central Government Scheme by presenting a memorandum to the District Collector, Virudhunagar. Therefore, it should not be curtailed by rejecting the permission.

12.The rights of freedom of peaceful assembly and of association serve as a vehicle for the exercise of many other civil, cultural, economic, political and social rights. The rights are essential components of democracy as they empower men and women to express their political opinions. The rights to freedom of peaceful assembly is guaranteed in article 21 of the Covenant on Civil and Political Rights and the right to freedom of association in article 22. They are also reflected in article 8 of the International Covenant on Economic, Social and Cultural Rights and in other specific international and regional human rights treaties or instruments, including the Declaration on Right and Responsibility of Individuals, Groups and Organs of Society to Promote and portect Universally Recognized Human Rights and Fundamental Freedom (art.5). According to the article 4 of the International covenant on Civil and Political Rights, the right of peaceful assembly and the right to



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freedom of association are not absolute rights. Resolution 15/21 (OP4) makes clear that they “can be subject to certain restrictions, which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”. The rights of freedom of peaceful assembly is guaranteed in our country.

13.All the decisions relied on by the learned Counsels appearing for both the parties express the settled legal principles that Article 19(1)(a)(b) of the Constitution of India guarantees the fundamental right of every citizen to hold peaceful procession. But, it is not an absolute right. It is subject to reasonable restrictions in the interest of law and order problem and general public.

14.In this connection, the observation of the Hon'ble Supreme Court in ***Amit Sahni (Shaheen Bagh) Vs. Commissioner of Police and others***, reported in ***2020 SCC Online SC 808***, is to be noted, which runs as follows:

'The Constitutional scheme comes with the right to protest and express dissent, but with an obligation towards certain duties. Article 19(1), one of the cornerstones of the Constitution,



confers upon its citizens two treasured rights under clauses (a) and (b) thereof. These rights, in cohesion, enable every citizen to assemble peacefully and protest against the actions or inactions of the State. The same must be respected and encouraged by the State, for the strength of a democracy such as ours lies in the same. Despite the law facing a constitutional challenge before the Supreme Court, that by itself will not take away the right to protest of the persons who feel aggrieved by the legislation. However, these rights are subject to reasonable restrictions, which, inter alia, pertain to the interests of the sovereignty and integrity of India and public order, and to the regulation by the police authorities concerned in this regard. Each fundamental right, be it of an individual or of a class, does not exist in isolation and has to be balanced with every other contrasting right.'

15. Therefore, the proposed Padhayathra can be permitted with a condition that they may conduct the awareness walk on the one side of the road, that too, without obstructing the traffic.

16. In view of the above, the impugned order passed in Namuna.No. 273/Kaa.Thu.Ka/Siva/2022, dated 23.07.2022, is hereby set aside and the petitioner is at liberty to give a fresh representation to the second respondent, fix a date for the proposed Padhayathra and also give an undertaking stating that they will conduct the Padhayathra-awareness Walk without causing any inconvenience to the general public. The second respondent is also directed



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to pass appropriate orders based on the guidelines issued by the Director General of Police, Tamil Nadu Chennai in R.C.No.007301/Genl.I(1)/2019, dated 09.04.2019, grant permission and police protection for the Padhayathra.

17.With the said directions, this writ petition stands allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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V.SIVAGNANAM, J.

lr

To

1. The Superintendent of Police,
Virudhunagar District, Virudhunagar.
2. The Deputy Superintendent Of Police,
Sivakasi,
Virudhunagar District.
3. The Inspector of Police,
Sivakasi Town Police Station, Sivakasi,
Virudhunagar District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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