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W.P.No.339 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P. No.339 of 2023

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 Certiorari, calling for the records relating to the order passed by the respondent dated 21.12.2022, quash the same in so far as the conditions viz: first part of the condition No.i, ii, iv, v, vii, viii, ix & x is concerned.

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 Certiorari, calling for the records relating to the order passed by the respondent dated 21.12.2022, quash the same in so far as the conditions viz: first part of the condition No.i, ii, iv, v, vii, viii, ix & x is concerned.

2.The learned counsel for the petitioner submitted that he filed W.P.No.33057 of 2022 seeking the relief of 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.

3.This Court on 14.12.2022, disposed of W.P.No.33057 of 2022 holding that 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. In pursuance of the order, the respondent imposed conditions vide his letter dated 21.12.2022 numbering about ten conditions. Of these conditions, petitioner had no qualms over the condition numbers 2, 5



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to 10. However, the conditions that i) the speech shall not eulogise the banned outfit, or its leaders either directly or indirectly and should not be against the sovereignty of the Nation, ii) competition time should not exceed three hours i.e. between 10.00 a.m to 13.00 hours on 23.12.2022 and iii) petitioner should video-graph the entire programme and the same to be submitted to the respondent are not appropriate. Petitioner is aggrieved against these conditions.

4.The learned counsel for the petitioner further submitted that when the oratory competition is conducted on the eve of 68th Birth Anniversary of late Prabakaran on condition that the speech shall not eulogise the banned outfit, or its leaders either directly or indirectly and should not be against the sovereignty of the Nation is not correct and is against the freedom of speech of the participants in the oratory competition. Petitioner required minimum of eight hours for organizing the oratory competition. When the Police is going to cover the programme for legal scrutiny, the condition that petitioner should also video-graph the entire programme is also not required.

5.The learned Government Advocate (Criminal side) opposed this



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petition on the ground that nobody would be permitted to eulogise the banned outfit or its leader. With regard to other conditions, he requested the orders from this Court.

6.Considered the rival submissions and perused the records.

7.As already stated, this Court on 14.12.2022 ordered the respondent to permit the conduct of oratory competition on the 68th Birth Anniversary of late Prabakaran with suitable conditions. When the oratory competition is conducted on the eve of 68th Birth Anniversary of late Prabakaran, a condition that speech should not eulogise the leader of banned outfit that is LTTE leader Prabakaran is not just and appropriate. We have already seen from the orders relied by the learned counsel for the petitioner that freedom of speech and expression should not be restrained.

8.It is observed in ***W.P.No.23467 of 2010 [Pugazendhi Thangaraj Vs. The Commissioner of Police, Chennai City Police, Egmore, Chennai and one other]***,

31.Similarly, we are of the opinion that the provisions in



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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.

9.That apart, when the petitioner claims that he requires eight hours to complete the programme, the condition that the programme should be conducted between 10 a.m. to 13.00 p.m. is also not proper and appropriate. Similarly, when the Police is going to cover the programme for legal scrutiny, they can also video-graph the event. They cannot require the petitioner to video-graph the entire programme and submit it to the petitioner. Therefore, aforesaid conditions namely condition Nos.1, 3 and 4 are set aside. Petitioner



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may be given eight hours time to conduct the programme from 10.00 a.m. on 23.12.2022. The respondent can make its own arrangement for video-graphing the oratory competition. It is made clear that the speech shall not be against the sovereignty of the nation, should not affect the sovereignty of the friendly relations of SAARC nations. Other conditions are upheld.

10. Accordingly, this Writ Petition is disposed of. No costs.

10.01.2023

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Index : Yes/No

Internet: Yes/No



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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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10.01.2023