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W.P.Nos.31369 & 31374 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.09.2023

Pronounced on : 03.11.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.Nos.31369 & 31374 of 2022
and WMP.Nos.30816, 30818 of 2022

1.Sri Satya Sai Recreation Society Yanam

Rep by its General Secretary

Lanka Vankanna Babu

S/o.Chittabbai

Having Office at : D.No.7.13.001, Ferry Road

Yanam - 533 464, Pondicherry.

...Petitioner in WP.No.31369 of 2022

2.Surya Society for Social Service

Rep by its General Secretary

Dongala Sridhar

S/o.Bhaskara Ramarao

Having Office at : D.No.1.12.012, Mettakur Road

Yanam - 533 464, Pondicherry.

...Petitioner in WP.No.31374 of 2022

Vs

1.Union of India

Rep by its Secretary

Local Administration

Union Territory of Puducherry

Secretariat, Pondicherry.



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2.The Sub Collector cum
Sub Divisional Magistrate, Yanam
Yanam.

... Respondents in both WPs

Prayer in WP.No.31369 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus calling for the records leading to the second respondent herein dated 07/11/2022 No.14869/SDMY/D3/Gamble/2021-22 and quash the same and further direct the respondents and their subordinates from interfering with the day to day affairs and rights of the petitioner's society, without any reasonable cause at the premises at D.No.1-12-012, Mettacur Road, Yanam, Puducherry & 1-16-098, Draksharama Road, Mettacur Road, Yanam.

Prayer in WP.No.30818 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus calling for the records leading to the second respondent herein dated 07/11/2022 No.14869/SDMY/D3/Gamble/2021-22 and quash the same and further direct the respondents and their subordinates from interfering with the day to day affairs and rights of the petitioner's society, without any reasonable cause at the premises at D.No.1-12-012/001 Mettacur Road, Yanam, Puducherry.

For Petitioner : Mr.V.Chandraprabu
(In W.P.No.31369/2022)

For Petitioner : Mr.Srinath Sridevan,
(In W.P.No.31374/2022) Senior Advocate
Assisted by Mr.Surya Teja, SS Nalla



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For Respondents : Mr. Ramasamy Meyappan
Govt. Advocate (Pondy)
for R1, R2

COMMON ORDER

The petitioners herein are the registered Societies whose objectives include welfare activities in the neighbourhood, promotion of sports and cultural activities, besides providing entertainment and recreation activities. Their grievance is that the second respondent-police often interfere with the activities of the Societies in the guise of surveilling of illegal activities therein. Earlier, both the petitioner- societies were constrained to file W.P.No.7241 of 2022 and W.P.No.8569 of 2022 respectively, for a mandamus directing the respondents from interfering with the affairs of the petitioner-societies which includes playing rummy besides its other recreational activities without any reasonable cause. Both these petitions came to be disposed of by this Court. To be specific, W.P.No.7241 of 2022 was disposed of, by following as many as 10 stipulations indicated in yet another decision of this Court in W.P.2972 of 2012, which reads as below :

"11.

a) *The petitioner association shall not indulge in any illegal*



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activity other than playing Rummy (13 cards) with stakes by its members and guests;

- b) If there is any evidence of gambling in some other way, the respondent police have a right to enter the premises of the petitioner's association, inspect and take action as per law;*
- c) The respondent police are also advised not to disturb the petitioner association frequently under the guise of inspection as it would disturb the peace, harmony of the petitioner association;*
- d) The petitioner and the members of the petitioner club are entitled to carry on lawful activities within their premises and there should not be any interference from the police authorities, so long as their activities are not in violation of the provisions of the Public Gambling Act, 1867/Tamil Nadu Gaming Act, 1930;*
- e) In the normal circumstances, there should be no interference in the lawful functioning of the clubs, by the police. It is not permissible for the police to enter the club premises as a routine measure, so long as the clubs are functioning within the framework of law;*
- f) If the police authorities have specific information or reasonable doubt that the activities carried on by the club or its members are not in accordance with law or they indulge in unlawful activities, in violation of the provisions of the Public Gaming Act, 1867 / Tamil Nadu Gaming Act, 1930 or any other enactment, it would be open to them, after recording reasons in the General Diary maintained in the police station, to proceed to enter the club premises, conduct*



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investigation, interrogate those who involve themselves in such activities and take appropriate action on merits and as per law;

- g) While exercising the powers conferred on the police authorities, they should follow the mandatory provision as contained in Section 5 of the Tamil Nadu Gaming Act, 1930 / Public Gaming Act, 1867;*
- h) It is always open to the club or its members to challenge the action taken by the police, if it is not in accordance with law;*
- i) In case the police authorities are of the opinion that a situation has arisen to suspend the operation of the club in exercise of the powers conferred, they have to issue an order in writing. When there is no authority to the police to issue an order of suspension orally, they are not entitled to pass such oral orders; and*
- j) Before passing orders for the purpose of closure of the club, in exercise of the powers conferred on the authorities, they should follow the principles of natural justice. The club should be given an opportunity to submit their objections and if so desired, a further opportunity of personal hearing should also be given."*

2. Based on the orders of this Court in W.P.No.7241 of 2022 and W.P.No.8569 of 2022, the petitioners continued its activities, but, subsequently the Commissioner of Yanam Municipality issued show cause notices dated 30.09.2022 to both the petitioners, requiring them to show



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cause why its activities might not be stopped for obtaining trade licence.

This was followed by closure notices dated 20.10.2022, issued by the said authority. And these notices came to be challenged by the petitioners respectively in W.P.No.28869 of 2022 and W.P.No.28872 of 2022, and this Court vide its common order dated 07.12.2022, required the Commissioner, Yanam Municipality to consider the compliances of the petitioners filed under Section 355 of the Puducherry Municipalities Act, 1973, to treat them as it were filed under Section 349 of the Act, and pass appropriate orders.

3. It is in this background, even during the pendency of the aforesaid writ petitions, the second respondent issued impugned notice dated 07.11.2022, to the Superintendent of Police, Yanam, requiring it to monitor the recreation clubs in Yanam, which includes both the petitioner-Societies. This impugned notice is now under challenge in the present writ petitions *inter alia* on the ground that, said action was arbitrary, and the second respondent in the guise of his power under Section 145 Cr.P.C., cannot unilaterally act.

4. Heard both sides. The counter in these cases have not been filed. Mr.Srinath Sridevan, the learned senior counsel appearing for the petitioner



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in W.P.No.31374 of 2022 submitted that in an identical issue pertaining to another Society at Yanam, a Division Bench of this Court has passed an order in W.P.No.33878 of 2022. And the relevant portion of the order is extracted :

"8.The said direction will apply to the facts of the present case. It is made clear that the police must strictly follow the provisions of the Puducherry Gaming Act, 1965 and cannot pass a blanket order as has been done in the present case. We view the order passed by the Superintendent of Police as an attempt to get over the order passed by this Court on 01.06.2022 and we frown on this attitude.

9.The impugned order is also arbitrary in the sense, the Superintendent of Police has said only the organisers of the club and caretakers (3 Nos.) alone are entitled to enter the premises. Such an order is exfacie arbitrary. A club, by its very nature of business, involves persons who are its members to visit its campus, in order to relax and to mingle with like-minded persons. The law of this Country does not enable the police to dictate how many guests or how many members that a club can have.

10.Right to form an Association is a fundamental right under Article 19(1)(c) of the Constitution of India. Similarly, the right to assemble peaceably and without arms is protected under 19(1)(b) of the Constitution of India. The ground on which these rights can be restricted is if any activity which affects the



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sovereignty and integrity of India and public order. These rights too can be restricted only by a law that is made by the Union Territory of Puducherry. The impugned order does not speak of any act of the petitioner which affects the sovereignty and integrity of this nation or has resulted in breach of public order. The Police, being a branch of the executive arm, does not have such a power. If such a power is conceded to the police, it is the beginning of the end of the road to freedom which has been guaranteed under the Constitution of India. Therefore, on this ground too, the impugned order is liable to be set aside. "

5. Turning to the impugned proceedings of the second respondent dated 07.11.2022, while the respondents may intend to interpret it as one issue under Section 145 Cr.P.C., there is nothing in the proceedings to indicate it. The impugned proceedings is cryptic and it reads as below :

""

The above clubs are reportedly causing havoc to the peaceful life of residents of Yanam region and creating enmity among the rival groups which may lead to Law and Order problem in Yanam region.

Hence, the Superintendent of Police, Yanam, is hereby directed not to allow any outsiders inside the club apart from the organizers and care takers (restricted to 3 Nos.) of clubs and to guard the premise by posting police personnel 24x7 for strict



compliance and ensure no club activities being carry out. If any new clubs to be established, the same procedure has to be followed. Compliance report in this regard shall furnish to this office without fail."

6. This Court considers that the proceedings itself is bad for the following reasons :

- (a) that on the date which the proceedings bear, both the clubs have already received a closure notice dated 20.10.2022 from the Commissioner, Yanam Municipality. In a scenario such as this, unless there is a breach of the closure notices, Societies could not have carried on its activities.
- (b) The Societies are accused of causing havoc to the peaceful life of the residents, but it is not very explicit. If at all there is any threat to peace, specific allegations should have been specifically made, and an opportunity to defend the same should have been given to the petitioners. This was not done.
- (c) It also says no outsiders should be entertained in the premises. It is not the job of the police to restrain movement, and it is for the



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Societies to decide who should enter. The second respondent in over enthusiasm appears to have infringed rights to which the Societies are entitled to.

(d) The impugned proceedings does not whisper how and in what ways the conditions stipulated in W.P.No.7241 of 2022 was violated.

7. This Court considers that there is an arbitrary exercise of administrative powers by the second respondent, and it has to go. Once the Municipality grants permission to the petitioner-Societies to hold its activities in the premises, the second respondent is only required to keep a vigil whether the conditions stipulated by this Court in W.P.No.7241 of 2022 is complied. However, in the garb of verifying or ascertaining the compliances of those conditions, the second respondent cannot interfere and embarrass the members of the Societies. And at all times, it has to give a proper show cause notice, hold enquiries, and does not meddle his power to stop the activities without notice, unless it has credible materials about commission of cognizable offence within the persons of the societies.



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8. These petitions are accordingly allowed and the impugned notice dated 07.11.2022 issued by the second respondent is hereby quashed. The second respondent is now directed to follow what is hereinabove indicated. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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N.SESHASAYEE.J.,

ds

Pre-delivery order in
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