



W.P.(MD).No.12564 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.05.2023

CORAM:

**THE HONOURABLE MR.JUSTICE M.S.RAMESH
and
THE HONOURABLE MS.JUSTICE P.T.ASHA**

W.P.(MD).No.12564 of 2023

B.Kanakaraj

... Petitioner

Vs

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

2.The Inspector of Police
Allinagaram Police Station,
Theni District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondents to grant permission and necessary protection to conduct the "Adal Padal" Programme on 31.05.2023 at 07.00 P.M. to 11.00 P.M. in connection with "Thiru Vizha" of Arulmigu Sri Selva Vinayagar and Cowmariamman Thirukovil at Rathinam Nagar, Theni, Theni District.



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For Petitioner : Mr.V.Manikandan

For Respondents : Mr.M.Siddharthan,
Additional Government Pleader.

ORDER

[Order of the Court was made by P.T.Asha, J.]

The petitioner, who claims to be a President of the Thiruvizha Festival Committee of Arulmigu Sri Selva Vinayagar and Cowmariamman Thirukovil at Rathinam Nagar, Theni, Theni District, has invoked the extraordinary jurisdiction that this Court exercises under Article 226 of the Constitution of India for a Mandamus to the respondents to grant permission to conduct a cultural program (Adal Padal) to be held on 31.05.2023 at 07.00 P.M. to 11.00 P.M. in connection with "Thiru Vizha" at the said temple.

2. The petitioner would contend that this temple is having rich and cultural heritage and that the Temple Festival is an age old function that is being conducted in the aforesaid temple. For the current year, the festival is proposed to be held on 31.05.2023. One of the features of the function is a cultural event



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on 31.05.2023, which is styled as “Adal Padal”. The petitioner would submit that he has made a representation on 09.05.2023 vide registered post to the respondents to grant permission to conduct the said cultural festival which has not been considered to date. Hence, the petitioner has approached this Court.

3. Heard the learned counsel on either side.

4. This petition has been filed before the Bench categorising it as a “Public Interest Litigation”. We are at loss to understand as how the conduct of a dance program in a temple in a small village would partake the character of a public interest. Further, the person, who has invoked the jurisdiction of this Court is one of the Organisers and the affected party. Considering the fact that today, the Bench has over 84 and odd cases of the same genre, we have decided to examine the following factors:

- (a) whether a public interest is involved in the aforesaid cases; and
- (b) whether the extraordinary jurisdiction of this Court has to be exercised in a matter of this nature.



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5. Article 226 of the Constitution of India has been incorporated in the constitution by the framers of the constitution to ensure power to every High Court exercising jurisdiction in their respective territories to issue to any person or authority including an appropriate case any Government, Writs in the nature of a Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari for the enforcement of the rights conferred by Part-III for any other purposes. Part-III of the Constitution deals with “fundamental rights” and a violation of these rights would give a right to the affected party to approach the highest Court of the State by way of a writ petition invoking the provisions of Article 226 of the Constitution of India. The failure to grant permission (not even a refusal) to conduct a cultural event does not constitute a violation of a fundamental right as guaranteed under Part III of the Constitution of India. Therefore, the invocation of the provisions of Article 226 of the Constitution of India, that too, in the guise of a Public Interest Litigation appears to be erroneous.



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6. In the affidavit filed in support of the writ petition, there is no iota of a pleading that a fundamental right has been breached. Therefore, on this ground, the writ petition appears to be misconceived.

7. Let us now examine as to whether the issue on hand involves a public interest. In the judgment in ***People's Union for Democratic Rights and others Vs. Union of India and others*** reported in (1982) 3 SCC 235, the Hon'ble Supreme Court observed as follows with reference to what constitutes a "Public Interest Litigation":

"2. Public interest litigation, as we conceive it, is essentially a cooperative or collaborative effort on the part of the petitioner, the State or public authority and the court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them."

8. In ***Ashok Kumar Pandey Vs. State of West Bengal and others*** reported in ***AIR 2004 SC 280***, the Hon'ble Supreme Court has elaborated on the petitions filed as Public Interest Litigation as follows:



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“4. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be “publicity interest litigation” or “private interest litigation” or “politics interest litigation” or the latest trend “paise income litigation”. If not properly regulated and abuse averted it become also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant or poke ones into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.”



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9. The Hon'ble Supreme Court in State of ***Uttaranchal Vs. Balwant Singh Chaufal and others*** reported in ***(2010) 3 SCC 402***, was considering the appointment of a counsel as the Advocate General of the State of Uttaranchal. The writ petition was originally filed before the Division Bench of the High Court of Uttarakhand at Nainital as a Public Interest Litigation. While dealing with the above issue, the Bench had discussed the origin and development of a Public Interest Litigation and in paragraph 43 therein, it stated as follows:

“43. In this judgment, we would like to deal with the origin and development of public interest litigation. We deem it appropriate to broadly divide the public interest litigation in three phases:

- Phase I.—It deals with cases of this Court where directions and orders were passed primarily to protect fundamental rights under Article 21 of the marginalised groups and sections of the society who because of extreme poverty, illiteracy and ignorance cannot approach this Court or the High Courts.*
- Phase II.—It deals with the cases relating to protection, preservation of ecology, environment, forests, marine life, wildlife, mountains, rivers, historical monuments, etc. etc.*



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- *Phase III.—It deals with the directions issued by the Courts in maintaining the probity, transparency and integrity in governance.*

Thereafter, we also propose to deal with the aspects of abuse of the public interest litigation and remedial measures by which its misuse can be prevented or curbed.”

10. After discussing the march of law under the aforesaid three phases, the learned Judges went on to frame directions for preserving the purity and sanctity of Public Interest Litigations as follows:

“181. We have carefully considered the facts of the present case. We have also examined the law declared by this Court and other courts in a number of judgments. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and



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discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.



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(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations.”

11. In the case on hand, it is seen that the same has been filed only by the Organiser, who is invoking the jurisdiction of this Court to further their private interest in the litigation. Therefore, this writ petition that has now been filed under Article 226 of the Constitution of India and styled as a Public Interest Litigation cannot by any stretch of imagination be considered as one filed to espouse a “public interest”.

12. From the aforesaid discussions, it is amply clear that none of the writ petitions involve a public interest and those writ petitions cannot be entertained under the category of public interest.

13. It is brought to the notice of this Court that pursuant to the various orders of this Court, the Director General of Police, Tamil Nadu issued two



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circulars bearing Rc.No.159539/Crime.4(3)/2018, signed on 31.10.2018 and Rc.007301/GenII(1)/2019, dated 09.04.2019 setting out the conditions to be imposed before permission is given for the Adal Padal program. Despite such circulars, the authorities to whom petitions are made for granting permission are not acting upon the same.

14. The authorities, who are vested with the administrative duty of permitting or not granting permission for the conduct of such programs in a public arena, are time and again abdicating their responsibility as a result of which such representations are now being converted into writ petitions and this Court exercising constitutional jurisdiction is made to exercise the function which is with the Police Department thereby lowering the dignity of this constitutional office.

15. Therefore, this Court, in order to give a quietus to such issues, disposes of this writ petition with the following directions:



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- (a) On the seventh day from the date of the receipt of the representation, for the conduct of the cultural program (Adal Padal), associated with any temple festival, if the authorities do not take steps either to grant permission or reject permission, there shall be a deemed permission on the eighth day;
- (b) On such deemed permission, the organisers, who shall be the responsible members of the festival committee, shall ensure that only cultural programs having some relevance to the temple or the festival in question would be conducted and there shall not be any obscene display/dance being conducted;
- (c) The program shall not extend beyond 10 p.m.;
- (d) No women participating in the cultural program would be depicted or portrayed in an obscene or undignified manner either in the form of clothing or otherwise;
- (e) The music that shall be used shall be in sync with the precincts of the temple and double meaning songs should not be played;



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(f) There shall be no supply of alcohol or any intoxicating material in and around the area where cultural program is scheduled to be held;

In case of violation of any conditions, it is open to the authorities to initiate such action as is required under law and the persons who are the organisers/committee members shall be held responsible. The Public Prosecutors shall ensure circulation of this order to the Superintendent of Police of all the Districts for issuing suitable instructions to their subordinate officers. No costs.

[M.S.R., J.] [P.T.A., J.]
24.05.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

Nsr/Abr



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Theni District.
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M.S.RAMESH, J.
and
P.T.ASHA, J.

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