

(2023) 03 KL CK 0228

In the High Court Of Kerala

Case No : Writ Petition (C).No.10165 Of 2023

Arattupuzha Kshethra Upadesaka Samithy

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 23-03-2023

Acts Referred:

Citation : (2023) 03 KL CK 0228

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

**Advocate : Aswini Sankar R.S., K.Ramakumar, T.Ramprasad Unni,
N.K.Subramanian, T.H.Aravind B. S. Syamantak, S. Manu**

Final Decision : Allowed

Judgement

P.V.Kunhikrishnan, J

1. This writ petition is filed with following prayers:

i. To call for the records leading upto Ext.P8 and quash the same by the issuance of a Writ of Certiorari or any other appropriate Writ, order or direction.

ii. To issue a Writ of Mandamus commanding the respondents to permit exhibiting fireworks between 08.30 to 09.00 p.m. on 28th of March, 2023, between 09.00 to 09.30 p.m. on the 2nd of April, 2023 and between 10.30 to 10.45 p.m. on 3rd April, 2023 in the Arattupuzha Pooram festival in Thrissur District pursuant to the application Ext.P4 on the dates specified therein.

iii. To issue such other writs, orders or directions as this Hon'ble Court may deem fit and proper in the circumstances of the case.

(SIC)

2. Petitioner is Arattupuzha Kshethra Upadesaka Samithy, represented by its Secretary. According to the petitioner, for the last several decades, the Arattupuzha Pooram had been accompanied by exhibition of fireworks without

causing any danger to any human beings as necessary precautions are taken by the organizers to prevent any danger to the public. According to the petitioner, the fireworks usually are conducted in safe distance of the temple where there are no inhabitants at all. This year, Pooram is scheduled on 28th March to 03rd April. The petitioner submitted Ext.P4 application for fireworks display, which was rejected by Ext.P8 order. The petitioner submits that in the last Pooram, a Division bench of this Court considered all the contentions and objections of the respondents and thereafter allowed fireworks as per Exts.P6 and P7. It is submitted that the petitioner will take all necessary precautions to avoid any danger and the fireworks may be allowed on any stringent conditions. Hence this writ petition.

3. Heard the learned counsel for the petitioner and the learned Government Pleader. I also heard the learned DSGI.

4. The Senior Counsel Adv.K.Ramkumar appeared for the petitioner, as instructed by Adv.N.K.Subramanian. The Senior Counsel takes me through Exts.P6 and P7 judgments of this Court and submitted that the petitioner is ready to follow all the stipulations in Exts.P6 and P7. The Senior Counsel also submitted that it is the duty of the petitioner also to see that there is no danger to the public because of the fireworks display. In such circumstances, a similar order like Exts.P6 and P7 may be passed by this Court is the submission. The Government Pleader submitted that there is nothing to interfere with Ext.P8 order and there are sufficient reasons mentioned for rejecting the prayer. The DSGI, on the other hand, takes me through the recent guidelines issued by the Petroleum And Explosives Safety Organisation (PESO), Government of India bearing No.M-42/D1 dated 01.02.2023. The DSGI takes me through Clause (2) of the above guidelines which says that fireworks magazine licensed in Form LE-3 of Explosives Rules, 2008 to store display fireworks at display site issued by PESO shall be in possession of the applicant. Hence it is submitted that there is nothing to interfere with Ext.P8. The DSGI also takes me through Clauses (7) and (8) of the guidelines.

5. This Court considered the contention of the petitioner and the respondents. Ext.P6 is a judgment passed by a Division Bench of this Court as far as the same temple is concerned. Ext.P7 is also another judgment passed by a Division Bench of this Court. On a perusal of these judgments, I am of the considered opinion that the petitioner Samithi can be allowed to conduct the fireworks in this year also strictly in terms of the conditions imposed by this Court in Exts.P6 and P7. It is true that respondents are only taking steps to see that there is no danger. But a festival with fireworks which is conducted for last several decades need not be interdicted by this Court. As far as the safety and danger is concerned, necessary conditions can be imposed by the authorities concerned. The DSGI submitted about permanent magazine as one of the conditions necessary. A perusal of Exst.P6 and P7 judgments will show that the same contentions were raised and it is stated by this Court that portable magazine is enough instead of permanent

magazine. Therefore an order can be passed allowing the fireworks on conditions which can be stipulated by the statutory authorities. In this case the Pooram is starting on 28.03.2023. I think the other legal questions raised by the respondents can be left open. Therefore, the matter is to be reconsidered by the 3rd respondent immediately. According to me, the fireworks are to be allowed, but, stringent conditions can be imposed by the 3rd respondent keeping in mind the safety of all. To facilitate the 3rd respondent to pass fresh orders, Ext.P8 can be set aside.

6. The Government Pleader submitted that PESO may be directed to supervise the entire area and issue necessary directions also. The Police Department also will do the needful. But the respondents should see that the fireworks is done in the temple in this year also subject to any stringent conditions. I make it clear that the fireworks can be conducted only with 15kg gun powder. Such a condition also can be imposed on the 3rd respondent.

Therefore, this writ petition is allowed in the following manner:

1. Ext.P8 is set aside.
2. The 3rd respondent is directed to pass fresh orders taking into consideration all the aspects including danger, safety, etc. by imposing appropriate conditions and directions in accordance with law and pass orders allowing the fireworks in Arattupuzha Pooram festival in Thrissur District. Necessary orders shall be passed in two days. The petitioner will appear before the 3rd respondent along with a copy of this judgment with necessary documents on 24.03.2023 at 11 am.
3. Petroleum And Explosives Safety Organisation (PESO) and the Police Department will supervise the entire fireworks and issue necessary directions also, if necessary.
4. I make it clear that if the petitioner refused or failed to comply with the conditions and directions of the statutory authorities, the 3rd respondent is free to pass appropriate orders in accordance with law.