
(1983) 01 KL CK 0006
In the High Court Of Kerala

A.X. Varghese

APPELLANT

Vs

Vayar Ravi and Others

RESPONDENT

Date of Decision : 19-01-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 107, 108, 109, 118, 186

Citation : (1983) CriLJ 579 : (1983) 1 ILR (Ker) 623

Hon'ble Judges : M.P. Menon, J

Bench : Single Bench

Judgement

M.P. Menon, J.—The petitioner, seemingly a public-spirited journalist, has been coming to this Court frequently; this is his fourth approach within a month or so, to my knowledge. The first was for contempt of court against the Chief Minister of Kerala. The second also was for contempt, against the Home Minister and the Irrigation Minister. The third was for directing the President of India to impose President's rule in the State. Undaunted by the results, he has now come to see whether the Home Minister, the Chief Minister and the Director General of police (respondents 1 to 31 could be prosecuted at the instance of this Court, for certain offences said to have been committed by them,

2. The allegations are these : The police opened fire on unsocial elements and hooligans when the Muslims of Alleppey were observing Miladi Sherief on 29th December, 1982. A protest hartal was organised the next day at Trivandrum. Fully knowing that the hooligans and unsocial elements of that city also would indulge in nefarious activities, taking advantage of the situation, the two Ministers directed the police not to move a little finger for maintaining law and order. The result was that houses and huts were destroyed, bazaars set on fire, and property looted. One man was burned to death. The airport became unserviceable. Murder, arson, robbery and dacoity became the order of the day. The Ministers were being kept informed about the "holocaust" from time to time, and still they declined to lift the embargo. They later admitted that they had miscalculated the situation. The acts and omissions of respondents (1) to (3)

amounted to the following offences under the Indian Penal Code :

(i) offence u/s 186. inasmuch as the police were obstructed in the performance of their duty in connection with the prevention of cognizable offences:

(ii) offence u/s 118, involving concealment of ,the existence of a design to commit offences punishable with death or imprisonment for life;

(iii) offence of abetting, under Sections 107 - 109; and

(iv) offence u/s 221 on the part of the 3rd respondent, in intentionally omitting to apprehend persons liable to be apprehended. And the prayer is for mandamus to the 4th respondent-Home Secretary to "start investigation" into the aforesaid offences committed by the Ministers and the Director General.

3. I take it that the petitioner's approach is bona fide and not designed to create sensations, or to use this Court as a Ploy for games which should be played outside its portals. Even so, there are limits to this Court's jurisdiction under Article 226. Mandamus goes to a person or authority for the performance of a public duty in which the applicant has some interest, an interest more immediate and genuine than that of the public in general; the applicant must at least belong to a group with a special interest in the matter. The writ will not issue for undoing things already done, unless relief could be granted by declaring those things as null and void. The remedy is discretionary, and relief will not normally be granted when other efficacious remedies are available.

Mandamus has always been regarded as an extraordinary, residuary and "suppletory" remedy, to be granted only when there is no other means of obtaining justice. Even though all the requirements for securing the remedy have been satisfied by the applicant, the court will decline to exercise its discretion if a specific alternate remedy equally convenient, beneficial and effectual", is available (de Smith -- "Judicial Remedy of Administrative Action".)

The question whether performance of public duties in the nature of law-enforcement in general can be secured by mandamus, is controversial. In *Gouriet v. Union of Post Office Workers* (1977) 1 All ER 696 Lord Denning said that any member of the public could seek declaration and injunction against threatened transgression of the law by a department of the Government or a public authority : but the House of Lords demurred *Gouriet v. Union of Post Office Workers* (1977) 3 AllER 70 Lord Wilberforce was of the view that when law was so violated, the remedy of the individual was to bring a private prosecution; and in the case of an anticipated breach, coupled with reluctance on the part of the law-enforcing agencies to take preventive steps, "the power of judicial innovation" could not be strained to assert public rights in advance. "The decisions to be made as to the public interest are not such as courts are fitted or equipped to make", said the court,

4. Again, when the Court of Appeal said in *Regina v. I.R.C.* [1980] 2 WLR 579 that any "person aggrieved" by the failure of a public authority to do its duty had

a "sufficient interest" to apply for judicial review, the House of Lords thought that the approach was far too broad. Lord Wilberforce cautioned : (1981) 2 WLR 722. inland Revenue Commissioner v. National Federation of Self-Employed and Small Businesses Ltd.

...it will be necessary to consider the powers or the duties in law of those against whom the relief is asked, the position of the applicant in relation to those powers and duties, and to the breach of those said to have been committed. In other words, the question of sufficient interest cannot, in such cases, be considered in the abstract or as an isolated point; it must be taken together with the legal and factual context. The rule requires sufficient interest in the matter to which the application relates...

5. The petitioner's prayer is not for mandamus to the authorities to protect the life, liberty and property of the citizens of Trivandrum; had it been so, it could probably have been granted : this Court has been ordering "police protection" in specified cases. On the other hand, his prayer is to direct the prosecution of certain offenders on the ground that without such direction, the police would not act. But it is well-known that even without any such direction, any person can file a complaint before a Magistrate. Section 190 of the Criminal P. C. empowers any magistrate to take cognizance of offences on complaint, on police report or upon information received from any person. Chapter XV of the Code deals with "complaints to Magistrates". In my view, the petitioner has thus an effective alternate remedy. No one has so far suggested that the magistracy of this State could be brought under pressure, or would be over-awed by personalities. It may be that in respect of an offence u/s 186, the complaint has to come from the public servant concerned, but that is the policy of law which even this Court cannot ignore.

6. Again, what is the petitioner's "interest"? He is a resident of Fort Cochin. Assuming that there was a time gap between the beginning of vandalism at Trivendrum and efforts to quell it, and further assuming that any one from that place could be treated as belonging to a special class subjected to special experiences during the interval, the petitioner does not even belong to that class. If the police had been restrained, and respondents 1 to 3 had committed offences in that connection, the petitioner cannot be said to have any interest in prosecuting them, distinct from the interest of any other person. "In the matter to which the application relates", and in regard to the position of the applicant in relation to the duties which require performance, he does not stand apart from any other citizen. Assuming again that the Home Secretary could be compelled to "start investigation" as prayed for, how could such investigation be different from the investigation any Magistrate could order u/s 202 of the Cri. Procedure Code ?

7. Both from the standpoint of locus standi and availability of alternate remedies, I think, the petitioner's attempt to invoke the extraordinary jurisdiction of this Court has to fail. Jay Engineering Works Ltd. and Others Vs. State of West Bengal

and Others, was a case where the Government had issued instructions contrary to the provisions of the Cr. P.C. and the Police Act, and the court directed the police to ignore those instructions and render police protection in accordance with law. The question in S.N. Sharma Vs. Bipen Kumar Tiwari and Others, was about the High Court's power under Article 226 to stop police investigations vitiated by want of bona fides. These cases have nothing in common with the facts of the present.

8. It is suggested that this Court alone can haul up highly placed persons suspected of violating the law, and restore public confidence. This is a need-less reminder, because this Court has never been shirking its duty in regard to matters within its jurisdiction. But it has equally to resist the temptation to tilt at phenomena appearing outside its horizon.

9. Counsel makes such of the reported admission of the Ministers that there was some miscalculation on their part and asks whether such miscalculation which brought untold miseries on innocent people should go unpunished. If he expects an answer in the negative, it is UP to his client to resort to the ordinary remedies already referred to. Where is the man who has made no mistake in his lifetime? Even Don Bradman must have been bowled for a duck once in his cricketing career. And who knows there will not at least be a few, who still consider that the police was asked to lie low, as a measure of expediency and political wisdom ? Sir Henry Maine said in "Ancient Law":

In the Homeric literature the deceitful cunning of Ulysses appears as a virtue of the same rank with the prudence of Nestor, the constancy of Hector and the gallantry of Achilles.

It is all a question of how you look at it as an ordinary citizen, and not a matter for judicial assessment. The position in Gouriet's case 1977 All ER 70 (HL) (supra) was that ,the Post office workers had widely proclaimed their intention to violate the law, that the Attorney General had failed to initiate relator action and that the citizens had no recourse except to seek the intervention of the courts. Dealing with the problem, Lord Eraser said, (1977) 3 All ER 70 (119):

Enforcement of criminal law is of course a very important public interest, but it is not the only one, and may not always be the predominant one. There may even be more important reasons of public policy why such procedure should not be taken at a particular moment, and it must be proper for the Attorney General (acting of course not for party political advantage) to have regard to them. He may have information that there is a good prospect of averting the threatened illegal conduct by negotiation. Or he may know that the time would be particularly inopportune for a confrontation...If the Attorney General were to commit a serious error of judgment by withholding consent to relator proceedings in a case where he ought to have given it. the remedy must in my opinion lie in the political field by enforcing his responsibility to Parliament and not in the legal field through the courts. That is appropriate because his error

would not be an error of law but would be one of political judgment, using the experience Of course not in a party sense, but in the sense of weighing the relative importance of different aspects of the public interest. Such matters are not appropriate for decision in the courts.

The above remarks must apply with equal force to the alleged miscalculation of all elected representatives of the people. If those in power have attempted to buy happiness or safety at the expense of others, they are answerable to the legislature, and also perhaps to the higher tribunal Of public opinion. The remedy is political, not judicial.

Dismissed.