

(2014) 12 MAD CK 0165

In the Madras High Court

Case No : Writ Petition (MD) No. 19717 of 2014

Balasubramanian

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)(a), 19(2), 19(ii), 226
Indecent Representation of Women (Prohibition) Act, 1986 — Section 2(c), 3, 4

Citation : (2014) 12 MAD CK 0165

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Judgement

M. Venugopal, J.—Heard both sides.

2. According to the Petitioner, the petitioner is a member of "Sree Ayyanar Ezhaikathal Amman Thirukovil Committee". He belongs to Thamarakki Village, Sivagangai Taluk, Sivagangai District. In the said village, there is a temple called "Sree Ayyanar Ezhaikathal Amman Thirukovil". It has a rich heritage. For the past 50 years, in the said temple, festivals and cultural activities were conducted.

3. During this year, "Eruthukattu Thiruvizha" festival for the year 2014 falls on 09.12.2014. For the past several years, they have conducted cultural programmes for the said festival. They have also proposed to conduct cultural activities, traditional programmes and Aadalum Padalum on 09.12.2014 between 10.00 p.m. to 12.00 p.m. It is also represented on behalf of the petitioner that the petitioner had sent a representation on 03.12.2014 through post addressed to the second respondent, seeking permission to conduct the Aadal Padal programme and the same was reportedly received by the second respondent/Police on 27.11.2014 (As informed by the learned Additional Government Pleader also before this Court) in connection with "Eruthukattu Thiruvizha" festival and till date, the representation is pending on the file of the second respondent. As a matter of fact, the second respondent has not accorded permission for the said Aadal Padal programme in issue.

4. In response, the learned Additional Government Pleader appearing for the respondents submits that if permission is granted, the conduct of "Aadal Padal programme" on 09.12.2014, based on the representation of the petitioner, then there is a possibility of cropping up of law and order problem.

5. It is to be noted that that the commission of an act under the Indian Penal Code is punishable as an offence. Similarly, the act done contrary to the Indecent Representation of Women (Prohibition) Act, 1986, then the same becomes an offence. In reality, one cannot assume or presume of any illegal act/any illegality even before the grant of license for the conduct of "Adal Padal programme" at Chellampatti Village of the Petitioner to be held on 31/10/2014.

6. It cannot be gainsaid that Section 2(c) of the Indecent Representation of Women (Prohibition) Act, 1986, defines

"Indecent representation of women" means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals."

7. As a matter of fact, Section 3 of the Act, 1986 refers to Prohibition of advertisements containing indecent representation of woman. Also that Section 4 of the Act enjoins Prohibition of Publication or Sending by post of books, pamphlets, etc., containing indecent representation of women.

8. In this connection, this Court very significantly points out that there must be a subsisting right enforceable in a Court of Law on an individual and there must be a corresponding duty for issuance of Writ of Mandamus. An aggrieved person must have a legal right and he must aver that there is an infringement of public duty. At this stage, this Court worth recalls and recollects the decision of the Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, , wherein it is held that "the powers of the High Courts under Art. 226 of the Constitution of India though a discretionary one and no limits can be placed upon their discretion, they must be exercised along with recognised lines and subject to certain self-imposed limitations".

9. Apart from the above, on behalf of the Petitioner, no Statute or Enactment is cited or relied upon which confers a right upon the Petitioner to conduct/hold "Adal Padal programme".

10. One cannot brush aside an important fact that India is a signatory to the Convention of Elimination of All Forms of Discrimination against Women and the same is adopted by the United Nations General Assembly in the year 1979. Further, Art. 6 of the Convention enjoins that the state parties to take appropriate steps to suppress all forms of trafficking and exploitation of women.

11. Also, that Section 3 of the (Tamil Nadu) Dramatic Performance Act, 1954 (which came into force on 12/1/1955) speaks of "Power of the State Government to prohibit objectionable performances." Section 4 of the Act, 1954 also deals

about the Power of the Commissioner of Police in the Presidency Town or the District elsewhere to prohibit objectionable performances temporarily. Section 5 of the Act mentions about the "Service of order of Prohibition". In fact, Section 6 of the Act, 1954 deals about the penalty for disobeying the order referred to in Sections 3 and 4 and the same being served on the person concerned.

12. It is true that Art. 19(1)(a) of the Constitution speaks of free speech and expression, but the same is subject to restrictions under Article 19(ii), in the considered opinion of this Court. Also that a Script or Play or Drama will be considered as an objectionable one only when it falls within any of six sub-clauses mentioned in Section 2(i) of the Tamil Nadu Dramatic Performance Act, 1954. The provisions of the Tamil Nadu Dramatic Performance Act, 1954 would certainly fall well within the bounds of Art. 19 of the Constitution of India, as opined by this Court.

13. Undoubtedly, the right to freedom of speech and expression is a valuable and cherished the right possessed by a Citizen of our Country. It is always open to the State Government to impose/make such reasonable restrictions which are permissible as envisaged under Art. 19(2) of the Constitution of India.

14. Added further, no person can be deprived by his fundamental rights. The State by its legislative power is entitled to regulate the fundamental rights by imposing reasonable restrictions. However, the said restrictions must be related to Art. 19(2) of the Constitution of India. Each restriction must be a reasonable one. The restriction to be imposed can only be within the authority of Law. A restriction cannot be exercised merely by an executive power without any Law to back it. In this connection, this Court pertinently points out the decision of the Hon"ble Supreme Court in *The Superintendent, Central Prison, Fatehgarh and Another Vs. Dr. Raam Manohar Lohia* {AIR 1960 SCC 633 (V 47 C 100)}, whereby and whereunder, it is observed and held as under:-

"Concept of "public order" in India before the amendment of Art. 19 by the Constitution (First Amendment) Act 1951, in America and in England compared, *Romesh Thappar Vs. The State of Madras*, and *Brij Bhushan and Another Vs. The State of Delhi*, and *The State of Bihar Vs. Shailabala Devi*, , Ref.

By the amendment of Art. 19(2) by the Constitution (First Amendment) Act, 1951 the wide concept of "public order" is split up under different heads. All the grounds mentioned in cl. (2) can be brought under the general head "public order" in its most comprehensive sense. But the juxtaposition of the different grounds indicates that though sometimes they tend to overlap, they must be ordinarily intended to exclude each other. "Public order" is, therefore, something which is demarcated from the others. In that limited sense, particularly in view of "public order" is synonymous with public peace, safety and tranquility. It is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife and war, affecting the security of the State.

The distinction between the phrases "in the interest of public order" and "for the maintenance of public order", does not ignore the necessity for intimate connection between the Act and the public order sought to be maintained by the Act. (S) Virendra Vs. The State of Punjab and Another, expl.:(S) Ramji Lal Modi Vs. The State of U.P., . Ref.

The limitation that the restrictions shall be "reasonable", brings about the same result. In order to be reasonable, the limitation must have a proximate connection with "public order" and not one far-fetched, hypothetical, problematical or too remote. AIR 1950 FC 67, Ref. and applied."

15. In view of the fact that the petitioner is desirous of conducting the Aadal Padal festival on 09.12.2014 at 07.00 p.m. at Thamarakki Village, Sivagangai Taluk, Sivagangai District in connection with the festival of "Sree Ayyanar Ezhaikathal Amman Thirukovil", this Court grants permission to the petitioner to conduct the aforesaid programme in the aforesaid place on 09.12.2014 between 07.00 p.m. and 10.00 p.m., subject to the following conditions:-

(i). The "Adal Padal Programme" should be conducted by the Petitioner in an organised and peaceful atmosphere without causing any Law & Order problem.

(ii). The Petitioner is directed to file an affidavit before the second Respondent/The Inspector of Police, Sivagangai Taluk Police Station, Sivagangai to the effect that there will not be any obscene or vulgar dance during the performance by any one of the participants or others.

(iii). The Petitioner is permitted only to use box type loud speaker (and not cone type loud speaker) with 80 decibels sound.

(iv). The Petitioner is to provide adequate parking facility/place for parking of vehicles/two wheelers/four wheelers/bicycles/vehicles for the visitors of the programme, who come to witness the programme in question.

(v). The Petitioner is directed to provide adequate light and sound facilities for the programme in question.

(vi). In case, if the scheduled programme is to be conducted at an inside auditorium, strictly, the Petitioner is to make provision for two exits.

(vii). The Petitioner is to provide separate sitting place for men/women/children to view the programme in question.

(viii). The Petitioner/Organising Member is directed to apply for necessary licence by means of writing addressed to the second Respondent/The Inspector of Police, Sivagangai Taluk Police Station, Sivagangai is to accord necessary permission to the Petitioner to conduct the "Adal Padal programme" in question on 09.12.2014 scheduled between 07.00 p.m., and 10.00 p.m., of-course by imposing necessary conditions/restrictions.

(ix). The Petitioner/Organising Committee Member is to remit the necessary

money before the Government Treasury under the proper head of account for providing Police "Bando-bust" and the receipts thereof should be produced before the second Respondent/The Inspector of Police, Sivagangai Taluk Police Station, Sivagangai, prior to the commencement of the programme.

(x). The Petitioner is to record the entire "Adal Padal programme" if any through video form and to handover a copy of the video to the second Respondent Police.

(xi). It is made quite clear that in this scheduled programme which is to take place on 10.12.2014 between 07.00 p.m., and 10.00 p.m., at the Petitioner's village, if any problem/problems crop up, then, the Petitioner/Organisers is/are to own full responsibility.

(xii). If the Petitioner/any organising Committee Member violates/violate any one of the conditions as aforesaid, then the second Respondent/The Inspector of Police, Sivagangai Taluk Police Station, Sivagangai, is to take necessary action in the manner known to law and in accordance with Law including the one under the Indecent Representation of Women (Prohibition) Act, 1986, (60 of 1986) and to put an end to the said programme.

(xiii). More importantly and pertinently, if the Programme/programmes exceeds/exceed the time limit determined by this Court between 07.00 and 10.00 p.m., on 10.12.2014 evening, then the Respondent/Police without any haziness/hesitation whatsoever is directed to step in immediately and stop the "Adal Padal programme/cultural/dance/drama programme".

16. With the aforesaid directions, the Writ Petition stands disposed of. No costs.