

(2014) 12 MAD CK 0196

In the Madras High Court

Case No : Writ Petition (MD) No. 19477 of 2014

C. Selvaraj

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 02-12-2014

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
Penal Code, 1860 (IPC) — Section 294(b), 323, 324, 341

Citation : (2014) 12 MAD CK 0196

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Judgement

M. Venugopal, J.—Heard both sides.

2. According to the Petitioner, there is a temple called Sri Marutha Kali Amman Kovil in his village and he is a Temple Committee member of Sri Marutha Kaliammal Kovil Thiruvizha Committee. The said village was constructed by their forefathers. The said temple is in existence from time immemorial. The deity in the said temple was worshipped by their ancestors and they used to celebrate Karthigai festival every year in the Tamil month of Karthigai.

3. The villagers of the petitioner now have uniformly decided to celebrate the said Karthigai Deepa Festival in a grand manner. As such, they have decided to conduct several traditional and cultural programmes every day including karakattam, cultural dance and songs. In this connection, they approached the respondents to grant permission to conduct Aadal Padal Programme scheduled on 03.12.2014 at 07.00 p.m. Also, the petitioner had made a representation to the second respondent on 21.11.2014 in person and it appears that no further action was taken in the matter. Then, he addressed a representation through registered post on 25.11.2014 to the first respondent, seeking permission and protection for the purpose of conducting the said Aadal Padal festival in Marugalpatti Village, A.Vadipatti, Devathanapatty Via, Periakulam, Theni District

and to give protection in connection with the festival of Sri Marutha Kaliyamman temple. Since no action has been taken on the side of the respondents in regard to the representations so made by the petitioner, the petitioner has focussed the instant writ petition before this Court.

4. Per contra, the Learned Additional Government Pleader for the Respondents submits that in the year 2012, a problem arose between two communities, as a result of which, in Cr.No. 187 of 2012, under Sections 341, 294(b), 323 and 324 of I.P.C, a case was registered. As such, if permission to conduct the Adal Padal programme is granted to the petitioner on 03.12.2014, then, there is a possibility of cropping up of communal clash and in this regard, the respondents raised this kind of objection.

5. It is to be noted 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 SUPREME COURT CASES 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 tranquillity. 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 03.12.2014 at 07.00 p.m in Marugalpatti Village, A.Vadipatti, Devathanapatty Via, Periakulam, Theni District and sought adequate police protection in connection with the festival of Arulmigu Sri Marutha Kaliamman Kovil, Marugalpatti Village, A.Vadipatti, Devathanapatty Via, Periakulam, Theni District, this Court grants permission to the petitioner to conduct the Aadal Padal programme at the Village Ground on 03.12.2014 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, Jayamangalam Police Station, Theni District 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/Inspector of Police, Jeyamangalam Police Station, Theni District is to accord necessary permission to the Petitioner to conduct the "Adal Padal programme" in question on 03.12.2014 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/Inspector of Police, Jeyamangalam Police Station, Theni District, 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 First Respondent Police.

(xi). It is made quite clear that in this scheduled programme which is to take place on 03.12.2014 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/Inspector of Police, Jeyamangalam Police Station, Theni District, 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 03.12.2014 evening, then the second 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.