

(1993) 09 MAD CK 0079
In the Madras High Court
Case No : Writ Petition No. 17754 of 1993

Dr. A. Seppan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 24-09-1993

Acts Referred:

Constitution of India, 1950 — Article 14
Madras City Police Act, 1888 — Section 41

Citation : (1993) 09 MAD CK 0079

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : M.O. Kandasamy Singh, for the Appellant;

Final Decision : Dismissed

Judgement

Bakthavatsalam, J.—The prayer in the writ petition is to issue a writ of mandamus directing the Respondents to permit the Periyarists and Ambedkarists to take out procession with Silambam and sword fight and garlanding Ambedkar statue at Port Trust and Periyar statue at Simpson, Mount Road, Madras on 26.9.1993 at 3 p.m. to 6 p.m.

2. The Petitioner as the State President of Republic Party of India (Gavai), Tamil Nadu State and also the editor of. "Unaru" Tamil monthly has come up to this Court with the aforesaid prayer.

3. It is alleged in the affidavit that the Chief Minister of Tamil Nadu on 21.8.1993 has made an appeal to the public against organising religious processions, that accordingly Muslims did not take out the Meelad-un-Nabi procession, that for the Vinayaka Chathurthi celebrations, the Government and the police, with ulterior motives received the requests from the ruling religious organisations for taking out a procession in Madras for immersion of Ganesha Idols in the sea water illegally. It is further alleged that several idols were installed both in public and private places, that the organisations said that according to Hindu religious

practices the idols would have to be immersed in the sea and that it had never happened before or after Periyar, Anna or even M.G.R. times. It is further alleged in the affidavit that the Chief Secretary to Government, Tamil Nadu state announced in "The Hindu" dated 23.9.1993 that in a secular Annaism state, it would not be proper for the Government to promote the Vinayaka Chathurthi procession or discourage the religious sentiments of Muslim brethren and Buddhist and Periyar and Ambedkarist feelings. It is also stated that the Government headed by Advanist Anti Scheduled Caste authorities is abusing the constitutional values by all means either in Legislative Assembly and Ayodhya issue. It is further alleged in the affidavit that the Petitioner's friend Raja Chellappa, President of Thanthai Periyar Ambedkar Paghutharivu Kazhagam is celebrating the Periyar E.V.R. birth day and inauguration of his new political party from 17.9.1993 onwards for about 10 days, that they are continuing the great leader Periyar meetings from 18.9.1993 to 27.9.1993, and that particularly on 26.9.1993, they proclaimed to carry out a proces-sion from Port Trust Ambedkar Statue to Mount Road Simpson Periyar Statue" by garlanding and slogan giving proposal. It seems that they showed registered letter with acknowledgment to the Commissioner of Police, Madras- 8 for granting permission and protection on 26.9.1993 at Mount Road and Triplicane, that he was not even permitted to meet the Commissioner of Police who is always helping those who are engaged to do "Vinayaka Procession" on the same day. It is further stated that the State Government is directing the City Police Commissioner to allow the Vinayaka Chathurthy Procession on three routes mentioned by the Police, that persons like the Petitioner are discriminated indirectly refusing permission for Periyar Ambedkar Procession on the same day i.e. on 26.9.1993 and as such the permission granted for Vinayaka Chathurthi celebrations is violative of Article 14 of the Constitution of India. It is further stated that the Vinayaka religious procession will cause pollution and enmity between three religions, viz. Hindus, Muslims and Buddhists like the Petitioner herein. It is stated that as such the Petitioner prays that this Court should direct the Respondents to refuse permission for Vinayaka Chathurthi celebration processions and immersions of idol in the Triplicane sea on 26.9.1993.

4. I have heard the Learned Counsel for the Petitioner and have gone through the affidavit filed in support of the writ petition. First of all, I am not satisfied that a mandamus can be issued on the facts and circumstances of this case. Section 41 of the Madras City Police Act, empowers the Commissioner to regulate and organise all assemblies, meetings and processions in public places if an application is made by any person, institution it is for the Commissioner of Police to consider and grant or refuse permission, taking into consideration the law and order situation. Surely, it is not for this Court to issue a mandamus to refuse permission. Such a mandamus, I do not think, can be issued by any stretch of imagination. That apart, the allegations made in the affidavit are purely based on newspaper - reports and no copy of the order granting permission to any procession for celebration of Vinayakar Chathurthi is produced before this Court.

this Court had an occasion to consider the issue in Writ D. Gopalan v. The Secretary to the Government of Tamil Nadu Home Department Madras W.P. No. 15575 of 1993 wherein a writ petition was filed for the very same purpose styling as "public interest litigation" to forbear the Respondents therein from issuing any permission for any religious procession that may be contemplated by the general public either on the occasion of Meeladi Nabi or Vinayakar Chathurthi. this Court has considered the issue and dismissed the writ petition. In that case, this Court has referred to the decision of the Supreme Court in Asif Hameed and others Vs. State of Jammu and Kashmir and Others, for the proposition that it is well settled that all the three organs of the Constitution of India, namely, Legislature, Executive and Judiciary have to function within their spheres demarcated in the Constitution and no one can usurp the function of the other. What the Petitioner now wants before this Court is to usurp the role of the executive by issuing a direction as prayed for. It is true that the judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. While exercising such power, the only check on our own exercise of power is the self imposed discipline of judicial restraint. If the prayer of the writ petition is looked at the backdrop of the decision cited above, I do not think that a writ of mandamus, as asked for, can issue. It is the job of the Executive to look after the law and order problem and that it is not for this Court to suggest as to how to maintain law and order. If it is true that the Commissioner has granted permission as stated by the Learned Counsel for the Petitioner, the law and order problem would have been taken note of by the Commissioner of Police, when granting such permission. As stated by the Petitioner, three routes were given for the celebration of Vinayakar Chathurthi. It is for the Second Respondent to grant or refuse permission to the Petitioners. As such, I do not see any merit in this writ petition. The request of the Petitioner as extracted above, is by way of a direction and I do not think such a direction can be issued. Accordingly, this writ petition is dismissed.