
(2014) 10 MAD CK 0262

In the Madras High Court

Case No : Writ Petition (MD) No. 17079 of 2014

Duraiselvam

APPELLANT

Vs

The Superintendent of Police Office

RESPONDENT

Date of Decision : 17-10-2014

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) 10 MAD CK 0262

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Judgement

M. Venugopal, J.—According to the Petitioner, in Panankulam Village, there is a temple called Shree Nadiamman Temple. In the said Temple, "Kumbabishegam" is going to be conducted on 25/10/2014. At that time, the Villagers had proposed to conduct cultural activities, traditional songs and dance on 25/10/2014. It appears that the Villagers had given advance to the famous dance party of the locality. Accordingly, to conduct the said "Adal Padal programme" on 25/10/2014, the Petitioner had approached the Second Respondent to get permission in regard to the cultural activities on 4/10/2014. But the permission was refused to conduct "Adal Padal programme" on 25/10/2014. Immediately, another representation dated 11/10/2014 was sent to conduct dance programme on 25/10/2014. However, the Petitioner had not received any positive response.

2. Per contra, it is the submission of the Learned Additional Government Pleader that if permission is granted to conduct "Adal Padal programme" on 25/10/2014 night, then there is a possibility of cropping up of Law & Order problem and this is the real apprehension of the Respondent/Police.

3. It is to be borne in mind that the commission of an act under IPC is undoubtedly a punishable offence. Likewise, an act done contrary to the Indecent Representation of Women (Prohibition) Act, 1986, becomes an offence, as and when the same is committed. One cannot assume or presume of any illegal act/

illegality even before the grant of license for the conduct of "Adal Padal programme" at Arulmigu Shree Nadiamman Temple, situated at Panankulam Village, Alangudy Taluk, Pudukkottai District scheduled to be held on 25/10/2014.

4. At this stage, this Court aptly recalls and recollects 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.?

5. Indeed, Section 3 of the Act, 1986 speaks of "Prohibition of advertisements containing indecent representation of woman". Added further, Section 4 of the Act enjoins "Prohibition of Publication or Sending by post of books, pamphlets, etc., containing indecent representation of women".

6. It is to be noted that in a Writ of Mandamus, there must be a subsisting right enforceable in a Court of Law on an individual. Equally, there must be a corresponding duty for issuance of Writ of Mandamus, as opined by this Court. Further, an aggrieved/affected party must have a legal right and he must aver that there is an infringement of public duty. At this stage, it may not be out of place for this Court to pertinently point out that in 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".

7. As far as the present case is concerned, no statute or enactment is cited or relied upon on the side of the Petitioner which confers a right upon him to conduct Adal Padal programme.

8. It cannot be forgotten 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.

9. 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.

10. Undoubtedly, Art. 19(1)(a) of the Constitution speaks of free speech and

expression, but the same is subject to the 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 when it falls within any of six sub-clauses described in Section 2(i) of the Tamil Nadu Dramatic Performance Act, 1954. The provisions of the Tamil Nadu Dramatic Performance Act, 1954 certainly fall well within the ambit/purview of Art. 19 of the Constitution of India, in the considered opinion of this Court.

11. It cannot be gain said that the right to freedom of speech and expression is a valuable and cherished 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 specified under Art. 19(2) of the Constitution of India.

12. Continuing further, no person can be deprived of his fundamental rights. However, the State Government by its legislative power is entitled to regulate the fundamental rights by imposing reasonable restrictions. However, the said restrictions must be relied to Art. 19(2) of the Constitution of India. Each restriction should 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 context, this Court cites the decision of the Hon"ble Supreme Court in *The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia*, , 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 *Romesh Thappar Vs. The State of Madras*, and *air Brij Bhushan and Another Vs. The State of Delhi*, and *The State of Bihar Vs. Shailabala Devi*, AND (1940) 310 US 296, 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.?

13. Be that as it may, since the Petitioner is desirous of conducting the "Adal Padal programme" on 25/10/2014, this Court grants him permission to conduct the said "Adal Padal/cultural programme like traditional and cultural dance and songs at Arulmigu Shree Nadiamman Temple, situated at Panankulam Village, Alangudy Taluk, Pudukkottai District, between 07.00 p.m., and 10.00 p.m., subject to the following conditions:-

(i). The programme in question should be conducted by the Petitioner in a serene and organised fashion, without causing any Law & Order problem.

(ii). The Petitioner and other Members of the Festival Committee/Celebration Committee is/are directed to file an affidavit in a collective form before the Second Respondent/Inspector of Police, Keeramangalam Police Station, Pudukkottai 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/Celebration Committee is to provide requisite parking facility/place for parking of vehicles/two wheelers/four wheelers/bicycles/other vehicles, so as to enable the visitors of the programme, who come to the Temple to view the programme in a comfortable manner.

(v). The Petitioner/Festival Committee Member/s is/are 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/Organisers are to make provision for two exits.

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

(viii). The Petitioner/Organising Committee Member/s is/are directed to apply for necessary licence by means of writing addressed to the Second Respondent and the Second Respondent/Inspector of Police, Keeramangalam Police Station, Pudukkottai District is to accord necessary permission to the Petitioner/Festival Committee members to conduct Adal Padal programme (viz., Folk programme, Drama and Pattimandram) on 25/10/2014 at the petition mentioned temple between 07.00 p.m., and 10.00 p.m., of course, by imposing necessary conditions/restrictions.

(ix). The Petitioner/Festival Committee Member/s is/are to remit appropriate 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 prior to the commencement of the programme.

(x). The Petitioner/Celebration Committee Members is/are to record the entire "Adal Padal programme" (folk programme, drama and patti mandram programme), through video form and to handover a copy of the video to the Second Respondent Police.

(xi). It is made quite clear that if any problem/problems crops/crop up, in the Adal Padal programme scheduled to take place between 07.00 p.m., and 10.00 p.m., on 25/10/2014, then, the Petitioner/Organisers is/are to own full responsibility.

(xii). It is made clear that the Petitioner is not permitted either to conduct the programme of western music and songs or a Cabaret Dance during the said Adal Padal programme on 25/10/2014 at Arulmigu Shree Nadiamman Temple, situated at Panankulam Village, Alangudy Taluk, Pudukkottai District.

(xiii). If the Petitioner/Festival Committee Members violates/violate any one of the conditions aforesaid, then the Second Respondent/Inspector of Police, Keeramangalam Police Station, Pudukkottai District to step in immediately to take necessary timely 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.

(xiv). Last but not the least, If the Programme/programmes exceeds/exceed the prescribed time limit determined by this Court between 07.00 p.m., and 10.00 p.m., on 25/10/2014 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/patti mandram programme.

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