
(2014) 12 MAD CK 0017
In the Madras High Court
Case No : W.P. (MD) No. 20057 of 2014

E. Palpandi

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 10-12-2014

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, 5

Citation : (2014) 12 MAD CK 0017

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Judgement

M. Venugopal, J.—Heard the Learned Counsel for the Petitioner and the Learned Additional Government Pleader appearing for the Respondents.

2. According to the Petitioner, in his village there is a temple called "Arulmigu Bhagavathi Amman" and the said Amman Deity was worshipped by his ancestors and they used to celebrate Karthigai Festival every year in the Tamil month of Karthigai. The villagers now uniformly decided to celebrate the "Karthigai Deepa Festival" in a grand manner. As such, they are decided to conduct several traditional and cultural programmes including Karakattam, cultural dance and songs. For that, the Petitioner made a representation to the Second Respondent on 02.12.2014 in person and prayed for grant of permission and to conduct "Aadal Padal Programme" on 12.12.2014 at 7.00 p.m., at Chinnamanur, Theni District and to grant adequate police protection in connection with the said festival. Since no action was taken, another representation, dated 08.12.2014, was sent through registered post to the First Respondent seeking permission for the conduct of the said "Aadal Padal Programme" and grant police protection for the purpose of conducting the said festival. Till date the permission sought for by the Petitioner has not been granted by the Second Respondent.

3. Per contra, it is the submission of the Learned Additional Government Pleader appearing for the Respondents 1 and 2 that if permission to conduct "Aadal Padal

Programme" is granted to the Petitioner on 12.12.2014, then the participants will dress up like Communal Leaders and take part in the programme at the dais, then there is a possibility for cropping up of law and order problem. Furthermore, though the Second Respondent had received Petition on 09.12.2014, the petition is pending at the stage of enquiry.

4. It is to be remembered 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 the Petition mentioned Temple Festival to be held on 12/12/2014.

5. 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."

6. 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.

7. 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".

8. 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".

9. 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.

10. 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.

11. 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.

12. Undoubtedly, 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 envisaged under Art. 19(2) of the Constitution of India.

13. Added further, no individual can be deprived of 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."

14. In view of the fact that since the Petitioner is desirous of conducting the "Adal Padal programme" on 12.12.2014, this Court grants him permission to conduct the said programme at Chinnamanur, Theni District on 12.12.2014 between 7.00 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 and other Members of the Committee are directed to file an affidavit in a collective form before the Second Respondent/Inspector of Police, Chinnamanur Police Station, Theni District 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 adequate parking facility/ place for parking of vehicles/two wheelers/four wheelers/bicycles/vehicles for the visitors of the programme who come to the Temple to view the programme.

(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, Chinnamanur Police Station, Theni District is to accord necessary permission to the Petitioner/Festival committee Members to conduct the programme on 12.12.2014 scheduled 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 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, Chinnamanur Police Station, Theni District, prior to the commencement of the programme.

(x). The Petitioner/Celebration Committee Members is/are to record the entire "Adal Padal programme" if any through video form to handover a copy of the video to the Second Respondent Police.

(xi). It is made quite clear that in the schedule programme which is to take place on 12.12.2014 between 07.00 p.m., and 10.00 p.m., at the petition mentioned Temple, if any problem/problems crop up, then, the Petitioner/Organisers is/are to own full responsibility.

(xii). If the Petitioner/Festival Committee Members violates/violate any one of the conditions as aforesaid, then the Second Respondent/Inspector of Police, Chinnamanur 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, if the Programme/programmes exceeds/exceed the time limit determined by this Court between 07.00 and 10.00. p.m., on 12.12.2014 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.

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