

(2004) 04 KL CK 0027
In the High Court Of Kerala
Case No : O.P. No. 22738 of 2002

Fr. Abraham

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Dramatic Performances Act, 1961 — Section 10

Citation : AIR 2004 Ker 317 : (2004) 2 KLT 431

Hon'ble Judges : Pius C. Kuriakose, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; K.M. Joseph, P. Jayasankar,
Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Whether a Writ Petition under Article 226 of the Constitution of India can be successfully maintained against an order which has already been upheld by another Division Bench in exercise of its appellate powers u/s 10 of the Kerala Dramatic Performances Act, 1961, is the question that has come up for consideration in this case?

2. Petitioner, Rev. Fr. Abraham Vellamthadathil has approached this court seeking a writ of certiorari to quash Exts. P1, P3 and P6 orders. Ext. P1 is the order passed by the District Collector and District Magistrate, Kottayam on 15.10.1990 u/s 4(2) of the aforesaid Act prohibiting staging of the drama "Jesus Christ Super Star" for a period of two months in any part of Kottayam district when he was convinced that staging of the drama would cause communal disharmony and lead to serious breach of peace. Drama was about to be staged in the Corpus Christi School, Kottayam. The order was challenged by Mary Roy before this court u/s 10 of the Act. A Division Bench of this court in Mary Roy v. District Collector 1991 (1) KLT 75 while dismissing the appeal held as follows:

"On the facts of this case, the order appealed against prima facie discloses

enough materials to show that the District Collector could be satisfied that the drama about to be performed is an objectionable performance. We have earlier extracted the three objections voiced against the staging of the drama. Substantial portions of the script of the drama have been quoted in the order. A perusal of the said script would show that the entire approach is against the fundamental beliefs of the Christian faith and that the presentation of Jesus in the play is both sacrilegious and blasphemous, which will outrage the religious feelings of Christians. The substantial question that arises for consideration of this Court, at this stage, is whether prima facie there are ground or materials for the District Collector to be satisfied about the existence of any one of the conditions specified in Section 4(1) of the Act to pass the order appealed against. On that aspect, as we have indicated above, prima facie the order appealed against discloses the ground from which it could be said that the District Collector was honestly satisfied that the performance of the drama is objectionable and that it is likely to lead to a breach of the peace. The earlier bench decisions of this Court in *Antony v. Dist. Collector* 1987 (1) KLT 132 and *Parameswaran v. Dist. Collector* 1988 (1) KLT 54 are relevant in this context."

3. The District Collector has passed an order u/s 4 of the Act prohibiting the staging of the drama temporarily for two months from the date of the order unless the Government by notification in the gazette, otherwise direct. Government later issued a notification dated 14.12.1990 prohibiting the staging of the drama until further orders. Aggrieved by the decision of the Division Bench of this court in *Mary Roy's case*, supra 1991 (1) KLT 75 Mary Roy filed SLP No 16645 of 1990 before the Apex Court and the Apex Court passed an interim order on 1.5.1991, which reads as follows:

"After hearing learned counsel for the parties and having regard to the facts and circumstances of the case and specially the issue involved relating to the fundamental right of freedom of expression of the petitioners, we permit the petitioners to stage any one show of the drama in question at the open air theatre of the school. It will be exclusively for the benefit of the children of the same school and their teachers and parents, no other outsider will be permitted to witness the show. The drama shall be staged on 7.6.1991 or any other subsequent date under intimation to the District Magistrate and the Superintendent of Police who are directed to take adequate steps for the protection and safety of the school children and also the school authorities. Adequate number of policemen shall be deputed and steps should be taken to ensure that no unauthorised persons enter the theatre and the security and safety of the persons inside is fully ensured."

The order was reiterated by the Apex Court on 3.6.1991 permitting the Principal to stage the drama any time after 12.6.1991 instead of 7.6.1991. The SLP and the Writ Petition were later allowed to be withdrawn, with the result, decision of this court in *Mary Roy's case*, supra 1991 (1) KLT 75 holds the field.

3A. Petitioner who appeared in person attacked the reasons stated by the District

Collector in the impugned order dated 15.10.1990 which has already been upheld; by another Division Bench of this court in Mary Roy's case. On facts another Division Bench of this court exercising appellate powers u/s 10 of the Act found no illegality in the reasoning of the District Collector, then a co-ordinate Bench of this court exercising writ jurisdiction under Article 226 of the Constitution of India will not be justified in setting aside that order. Constitutional court will not upset the decision rendered by a co-ordinate Bench exercising appellate powers even if the order violates the fundamental rights. Petitioner tried to contend that though the order has already been upheld by a co-ordinate Bench exercising appellate power since the said order is violative of the fundamental rights, this court under Article 226 of the Constitution of India should interfere with the said order. We find it difficult to accept the contention of the petitioner. On facts, when a co-ordinate Bench in its appellate jurisdiction found no illegality in the order passed by the District Collector, judicial discipline demands that we shall not disturb the said finding even though we are sitting as a Constitutional Court.

4. We are also not prepared to accept the contention of the petitioner that the order passed by the District Collector is violative of the fundamental rights of the petitioner guaranteed under Articles 14, 16 and 19 of the Constitution of India. Reasons for prohibiting the staging of the drama have been stated by the District Collector in the impugned order which has already been upheld in Mary Roy's case by another Division Bench. We fail to see how the fundamental right of the petitioner is affected. Restraint is not total but only partial and confined to Kottayam district alone. Further we also notice that the District Collector while passing the impugned order is guided by the sentiments expressed by the representative bodies of Christian community like All Kerala Catholic Congress, Kottayam Catholic Movement, Marthoma Yuvajana Sakyam, Catholic Association, Fr. Augustin Pinhero and five others, Convener, Action Council, Fr. Mathew Pulickiaparambil & Ors., etc. Sentiments and wishes of the members of the community were taken into consideration by the District Collector. Petitioner advocates for the people of Kottayam district and was disturbed by the yardstick followed by the District Collector for judging the temperament and attitude of the people of the Kottayam district. Reasonableness of the restriction in our view has to be determined in an objective manner and from the stand point of the interest of the general public and the community at large and not from the point of view of the persons like the petitioner. Petitioner is a highly educated person and well informed. He holds a Master's degree in Philosophy, Theology and English. He is well versed in the principles of Christian faith. Petitioner has further stated that "The Rock Opera Jesus Christ Super Star" written by Andrews Lloyd Webber and Jim Rice is a reputed literary piece staged and enjoyed all over the world and even at Vatican. Pulse of the community members of Kottayam district is better known to the District Collector at Kottayam and the elected Government. They have to approach the issue from the stand point of the interests of the ordinary common man of the Kottayam district who have faith in the community and not

from the stand point of persons like the petitioner who is well educated and well informed of men and matters.

5. We are therefore not prepared to say that fundamental rights of the petitioner is in any way affected by the order of the District Collector which has got life only for a period of two months. Government have passed further order extending the period until further orders. If situation improves the Government can always modify its order. Under the Act, the order passed by the Government u/s 4(3) is also appealable u/s 10 and no appeal has been preferred against the Government Order. Considering the entire facts and circumstances of the case and considering the fact that the order impugned has already been upheld by another Division Bench on merits, we find no reason to grant the reliefs prayed for and the writ petition is accordingly dismissed. Advocate Sri K.M. Joseph who appeared as amicus curie deserves our appreciation.