
(2012) 06 MAD CK 0051

In the Madras High Court

Case No : Writ Petition No. 14737 of 2012 and M.P. No. 1 of 2012

G. Pavendhan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 11-06-2012

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1)(a), 19(2)
Madras City Police Act, 1888 — Section 41

Citation : (2012) 06 MAD CK 0051

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Manoharan, for the Appellant; A. Navaneetha Krishnan, Advocate General Assisted by Mr. M. Dig Vijaya Pandian, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K. Chandru

1. This writ petition is filed by the petitioner, who is a practicing Advocate and claiming to be the Organizer for the campaign against the murder of

Satish Kumar, S/o. R. Sankarasubbu, an Advocate in Chennai. In this writ petition, they have sought for a direction to consider their representation

dated 5.6.2012 given to the second respondent Commissioner of Police. By the representation dated 5.6.2012, the petitioner's campaign group

wanted to conduct a protest rally on 13.6.2012 at 11.00 A.M. starting from Mandro Statue and ending in the Chepauk State Guest House via

Anna Salai, Walaja Road. The handbill which was circulated informed the intention of the campaign group to organize the rally to protest against

the functioning of the CBI over the investigation in respect of the murder of Satish Kumar, S/o. R. Sankarasubbu due to the conspiracy of the State

Police and also to bring to light the real truth behind the murder, they have organized the rally of Advocates, Farmers, Workers, Students,

Intellectuals and humanists. The demand is to condemn the C.B.I. in attempting to close the enquiry and also to arrest the Inspector of Police

Sureshbabu, who attempted to hide the murder. The demand for the State Government was for the removal of Sureshbabu from the police force

and to demand the Commissioner of Police not to protect Sureshbabu who was connected with the murder of Satishkumar.

2. When the matter came up for admission, the learned Advocate General appeared and filed a counter affidavit on behalf of the Commissioner of

Police, i.e., the second respondent. It was stated by the respondents that they are willing to permit for procession, but not on the route suggested

by them. It was also stated that a show cause notice dated 8.6.2012 has been issued to them asking the organizers to appear on 11.6.2012 to

show cause as to why the route sought for by them cannot be denied. It was stated that the route for the procession sought for is not the approved

route and it may cause inconvenience to the public. Normally, the route permitted is only from Rajarathinam Stadium to Langs Garden Road and

Pantheon Road Junction through South Coovam Road, West Coovam Road and Langs Garden road. In the previous occasion for the last two

years, several processions have been permitted only in the said route.

3. It is not clear as to how the route suggested by the respondents are any way less congested. On the other hand, there is nothing like approved

route to be designed by the police in this regard. The issue raised by the Organizers is of general importance. The organizers have right to ventilate

their grievance through a public rally, so that their demand can be heard and met by appropriate quarters.

4. It must be noted that under the City Police Act, more particularly u/s 41, the police have right to regulate processions and demonstrations, etc.

But nowhere in the affidavit filed it was stated that the police have imposed a regulatory order u/s 41 of the Act on the route sought for by the

petitioner. On the other hand, it is not as if the present route sought for by the petitioner was never granted in the past for taking over procession.

Further time by which procession is to start, already the offices will be functioning and it is long after the colleges and schools to start their work.

Further half the distance in the route has hardly there is any human activity as both sides are abutted by the island grounds.

5. In this context, it is necessary to refer to the judgment of the Supreme Court in *Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad*

and *Another*, rendered by a Constitution Bench of the Apex Court, wherein, the Court struck down Rule 7 of the Rules framed under the Bombay

Police Act on the ground that Rule, which empowered the Commissioner of Police to refuse permission to hold meetings without giving any

guidance under the Rule and thereby conferring an arbitrary discretion, was an unreasonable restriction on the freedom of association and freedom

of assembly guaranteed under Article 19 of the Constitution. The Court also held that the word "regulating" in Section 33(1)(o) of the Bombay

Police Act would include the power to prohibit and impose the condition that permission should be taken a few days before the holding of the

meeting on a public street. Mathew, J., dissented from the view of the majority and held that the power to regulate did not include the right to

prohibit and the permission sought for holding a meeting ought not be refused. The majority opinion was that regulation is necessary to enable

citizens to enjoy the various rights in crowded Public Streets, and that the State can make regulation in aid of the right of the assembly of each

citizen and can impose reasonable restrictions in the interest of public order.

6. The Supreme Court also in *S. Rangarajan Vs. P. Jagjevan Ram and Others*, held that freedom of speech under Article 19(1)(a) of the

Constitution of India means the right to express one's own opinion by word of mouth, printing, picture or in any one manner of ideas made through

any and the communication of ideas made through any medium. Such right, however, was held to be subject to reasonable restrictions in the larger

interest of the community and the country as set out in Article 19(2) of the Constitution. Those restrictions are intended to strike a proper balance

between the liberty guaranteed, and the social interests specified under Article 19(2). The Court emphasised that the interest of freedom of

expression and social interest cannot be regarded as of equal weight and the court's commitment to freedom of expression demands that it cannot

be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger

should not be remote, conjectural or farfetched, but should have proximate and direct nexus with the expression. The expression of thought should

be intrinsically dangerous to the public interests. It should be inseparably locked up with the action contemplated like the equivalent of a "spark in a

powder keg." Further it is not the intention of respondents to prohibit the rally itself. The only question is the route by which the rally can proceed.

7. Therefore, it is too late for the respondents to refuse permission to hold a rally on a matter of public importance. Even if an order u/s 41 of the

City Police Act is in force, it can only be said that it enables the respondents to direct the control and conduct of all assemblies and processions on

public road or in the public streets or thoroughfares and to prescribe the Rules by which and the times by which the processions may pass.

8. The said provision is only a regulatory power and not a blanket power to strifle any democratic dissent of the citizens by the Police.

9. While dealing with a similar situation on the powers conferred on the Commissioner of Police u/s 41 of the Madras City Police Act, 1888, this

Court (R. Jayasimha Babu, J.) vide judgment in P. Nedumaran v. State of Tamil Nadu and others reported in 1999 (1) L.W. (Cri) 73 defined the

scope of the rights of citizen and the power of the State to impose reasonable restriction. The following passages found in paragraphs 15 to 18

may be usefully extracted:

Para 15: The rights conferred on the citizens by Article 19 of the Constitution are precious rights and are not to be lightly breached or restricted by

the State or any functionary of the State. Any regulation of exercise of those rights must be for the purposes specified in Article 19 of the

Constitution itself, and that power must be so exercised as to subserve the larger public good. The power to impose restrictions is not the power

which is available for exercise in an arbitrary manner or for the purpose of promoting the interest of those in power, or for suppressing dissent

Democracy can be made dynamic and truly alive only when there is free market for ideas and discussion and debate is not only permitted but is

encouraged. All expression of opposing view point cannot be regarded as dangerous to the safety or security of the country and all expressions

which do not find the approval of those exercising the power of the State cannot be regarded as harmful to the State and to the public order.

Para 16: The power conferred on the Commissioner u/s 41 of the Madras City Police Act is sweeping, that power is meant to be exercised with great care and caution. The Madras City Police Act is a pre-Constitution enactment, and the powers conferred on the authorities at a time when the country was under the colonial regime, and during the period when suppression of dissent was considered to be a legitimate policy of the State, cannot be exercised after the enactment of the Constitution in the same manner, as it was exercised earlier. The Intelligence Report placed before the Court shows that the police still have the attitude which does not seem to recognise that the country is a democratic nation, where every citizen has a right to full and equal participation in the process of Government. No citizen can be regarded as an enemy of the State merely because he has voiced a view which is not the one favoured by those in authority.

Para 17: The fact that the police are vested with power should not make them assume that, that power is available for exercise in any manner that they consider fit. That power is to be exercised strictly within the ambit of the provisions of the Constitution, more particularly, the requirement that any restriction placed on the exercise of fundamental rights should be a reasonable restriction, and the restrictions so placed should be shown to be essential, having regard to the permissible purpose for which restrictions may be imposed.

Para 18: The fact that the petitioner-Association is voicing a view point which may not be popular cannot be a justification for preventing that point of view being projected.

This Court is in entire agreement with the views expressed therein.

In the light of the above, it is unnecessary to wait for the second respondent to pass any order as they have already made up their mind not to give permission on the requested route. Considering the fact that the procession has been announced for 13.6.2012 starting from 11.00 A.M., this court is inclined to issue an appropriate direction to the respondents to grant permission to the petitioner to take out the protest rally starting from Monroe Statue in Anna Salai to the Chepauk State Guest House, via Anna Salai Wallajah Road without any way causing any disruption to the public peace and tranquility. It is open to the respondents police to give appropriate police protection and also regulate the procession in the route

permitted. Accordingly, this writ petition will stand allowed. No costs. Consequently connected miscellaneous petition stands closed.