

(2016) 04 KL CK 0060

In the High Court Of Kerala

Case No : W. P. (C) Nos. 14978, 14993, 15004, 15008 of 2016, D. B. A. Nos. 1,2, 3,4,5, 6, 7, 8, 9 of 2012, D. B. P. No. 26 of 2016

In Re

Date of Decision : 14-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Explosives Rules, 2008 — Rule 4(3)

Citation : (2016) 2 KHC 584

Hon'ble Judges : Mr. Thottathil B. Radhakrishnan and Mrs. Anu Sivaraman, JJ.

Bench : Division Bench

Advocate : N. Nagaresh (Assistant Solicitor General). P. Parameswaran Nair (Assistant Solicitor General), K. P. Dandapani (Advocate General), M.R. Rajendran Nair (Senior Advocate), K. Ramakumar (Senior Advocate), Krishnakumar Mangot (Amicus Curiae), C.S. Dias (Amicu

Final Decision : Disposed Off

Judgement

Thottathil B. Radhakrishnan, J. - These matters are listed today following the order dated 12/04/2016.

2. Two issues are focused for consideration on the basis of the submissions made by the learned Advocate General. The first issue relates to a particular statement in the afore noted order; imminently relevant to the ensuing Thrissur Pooram. The second issue relates to the ongoing proceedings as regards the incident at Paravoor in Kollam District.

3. We first proceed to state our decision and reasons therefor, as regards the first issue. According to the learned Advocate General, the problem that is faced in the conduct of the Thrissur pooram which, apart from being a religious event, is an indispensable, social and cultural event of Thrissur, is the contents of the second sentence of paragraph no. 6 of the order minuted by us on 12/04/2016. Through that sentence, we had stated that the use of explosives in accordance with the laws relating to explosives, inter alia, includes complete exclusion of sound producing explosives between sunset and sunrise. The submissions of the

learned Advocate General in this regard are supported by Senior Advocate Sri. K. Ramakumar who stated that he is instructed by the advocate engaged to appear for the Thiruvambady and Paramakkavu Devaswoms in the matter. Those Devaswoms are involved in the conduct of Thrissur Pooram.

4. We have heard the learned Assistant Solicitor General of India Sri. N. Nagaresh and the learned amicus curiae Sri. C. S. Dias on the legal issues on the matter, as of now.

5. While rendering the order dated 12/04/2016 we had understood the report of the Deputy Chief Controller of Explosives as also including a statement that bursting of sound-emitting fire works is restricted to be between 6 p.m. and 6 a.m. in terms of the Explosives Act and the Explosives Rules. But, what has been stated in that report is that bursting of sound-emitting fireworks shall not be between 10 p.m. and 6 a.m. as per the Supreme Court direction. The decision of the Hon'ble Supreme Court referred to therein is not in dispute. That was rendered by the Hon'ble Supreme Court on 18th July, 2005 in WP (C) No. 72 of 1998 reported as (2005) 5 SCC 733 [Forum, Prevention of Environmental and Sound Pollution v. Union of India and Another. Clause 4 among the directions contained in paragraph 174 of that judgment is that there shall be a complete ban on bursting sound-emitting Firecrackers between 10 p.m. and 6 a.m. and it is not necessary to impose restrictions as to time on bursting of colour/light-emitting firecrackers. That direction was issued by the Apex Court in exercise of authority under Article 141 and the Supreme Court's plenary power under Article 142 of the Constitution and was ordered to remain in force until modified by that Court or superseded by an appropriate Legislation. While the Explosives Rules, 2008 was made thereafter and also while those Rules were amended in 2011, the Central Government has not placed any restriction on the time limit or time frame within which there ought to be a complete ban on the bursting of sound-emitting firecrackers. Therefore, the restriction imposed by the Hon'ble Supreme Court of India as declaration of law through the afore noted judgment (2005) 5 SCC 733 [Forum, Prevention of Environmental and Sound Pollution v. Union of India and Another 2005 KHC 1158 : 2005 (3) KLT SN 66 : ILR 2005 (3) Ker. 675 : AIR 2005 SC 3136. will continue to operate in that regard. This means that there shall be a complete ban on bursting of sound-emitting firecrackers between 10 p.m. and 6 a.m. This is the law of this land, as it now stands. Therefore, the complete ban on bursting of sound-emitting firecrackers is from 10 p.m. to 6 a.m. We clarify this legal issue and modify the order dated 12/04/2016 accordingly.

6. Through paragraph 177 of the aforesaid judgment, the Apex Court had reserved to themselves the power to modify the directions issued through that judgment. It is, obviously, in exercise of that power that an order dated 26/03/2007 was issued in different interlocutory applications in WP (C) No. 72 of 1998 wherein the Apex Court clarified that festivals and ceremonies wherein fireworks and crackers are customarily burst could be regulated by the provisions

of paragraph 168 of the judgment rendered in Noise Pollution (v). in RE, Forum, Prevention of Environmental & Sound Pollution v. Union of India and Another 2005 KHC 1158 : 2005 (3) KLT SN 66 : ILR 2005 (3) Ker. 675 : AIR 2005 SC 3136. which is quoted in the afore noted clarificatory order of the Supreme Court as follows:

"168..... Festivals and ceremonies wherein fireworks and crackers are customarily burst can be accompanied by earmarking a place and time wherein and when all the people can come together and witness or view a show of fireworks dispensing with the need of crackers being burst in residential areas, and that too which is done without any regard to timings. Manufacturers can be encouraged to make such fireworks as would displace more the colours rather than make noise."

7. In the light of the aforesaid which has been rendered, statedly in relation to the activities of Thrissur pooram; festivals and ceremonies can be carried with fireworks and crackers as are customarily burst by earmarking a place and time and other details as are stated in the afore-quoted portion of the order of the Supreme Court, as regards that festival. This is the law in terms of Articles 141 and 142 of the Constitution, in the absence of any statutory regulations. Therefore, the order dated 12/04/2016, insofar as the Thrissur pooram is concerned, is further clarified and modified to the effect that use of explosives for that festival maybe carried out in strict conformity with the order of the Hon^{ble} Supreme Court of India issued on 26/03/2007 on IA Nos. 44-49, IA No. 50 in IA No. 38 and IA No. 51 in IA 39 in WP (C) No. 72 of 1998.

8. With the aforesaid, some of the private respondents have raised an issue as to what would be the quality of the sound level that could be maintained for the sound producing fireworks. The learned amicus curiae points out Rule 4(3) of the Explosives Rules which prescribes the sound level for sound-emitting fireworks, among other things. He has also referred to Environment protection Rules Schedule 89 which also is to the same effect. Under these circumstances, it is ordered that the noise standards for fireworks for Thrissur pooram shall be maintained in accordance with the said provisions.

9. The Animal Welfare Board of India has made a submission intervening in the matter and has stated that the noise of the fireworks is likely to adversely affect the pachyderms which are paraded in the festival. It is not as if this Court is oblivious of the problems faced by the presence of elephants in festivals and ceremonies etc. We, therefore, ask the learned counsel representing the Animal Welfare Board of India as to how many prosecutions have been taken up at their instance. The reply is that the Animal Welfare Board is an advising agency and is instructing and educating people and it does not have the power to initiate any proceedings. We think that at this point of time, it may not be proper to issue any order on that basis as against the conduct of the Thrissur Pooram, more particularly because the learned Advocate General has mentioned that the elephants paraded for the festival will be kept sufficiently away from the display

site. We are told that the Forest Department and other authorities involved in the care of the welfare of animals will have their watchful gaze over the utilisation of animals in the festival. No elephant which is found unfit to participate in the ceremonial parade shall be utilised and the District Magistrate will ensure that use of any such animal is clearly excluded. It is so ordered.

10. The stand of the Government in respect of Thrissur Pooram is placed on record; apart from the counter-affidavit, through a statement submitted during the course of hearing, under the signature of the learned Senior Government Pleader assisting the learned Advocate General. That is taken on record. A copy of that statement will stand appended to this order and would be of guidance to the District Magistrate to ensure that the activities are appropriately controlled. It shall also be ensured that there is no damage to any structure in the vicinity, including the Vadakkumnatha Temple which is stated to be one of archeological importance as certified by the Archaeological Survey of India.

11. The Chief Controller of Explosives is directed to make adequate arrangements to collect due and requisite samples of the explosives intended to be used in relation to Thrissur Pooram and requisite due samples of the remains of the burst fireworks, crackers and other explosives, to ensure that those samples are examined to ascertain whether any prohibited substance in terms of the law relating to explosives is utilised in the pooram festival.

12. As regards the second issue, which relates to Paravoor incident, we take on record the submission on behalf of the State Government on the basis of the counter-affidavit sworn to by the Chief Secretary on 13/04/2016. We dissuade ourselves from expressing anything on the different matters stated therein since many of those issues, including compensation etc. are still awaiting the decision at the hands of the Government and it will be too premature for us to speak on different other aspects of the matters stated in that counter-affidavit. Suffice to say, we record the fact that the State Government appear to have abundant confidence in the Special Team constituted to carry forward the investigation and that team is headed by the Additional Director General of Police (Crimes). We record the statement in paragraph 17(4) of that counter-affidavit that the CBCID will continue with the investigation through the Special Team that is constituted. We also record the offer that the investigation can be directly monitored by this Court.

13. We accordingly direct that the progress of the investigation be placed on record in this case by the 18th of May, 2016.

Post these matters on 18th of May, 2016.

Hand over to all sides.