

(2004) 05 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No's. 35906 of 2002 and 6706 and 16573 of 2003

K. Sivakumar, State President, Tamil Nadu Police
Constabulary Association

APPELLANT

Vs

The Director General of Police, Office of the Director General
of Police
M. Panneerselvam and Dr. Subramanian
Swamy Vs The State of Tamil Nadu

RESPONDENT

Date of Decision : 11-05-2004

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226, 33

Citation : (2004) 05 MAD CK 0010

Hon'ble Judges : B. Subhashan Reddy, C.J;S. Sardar Zackria Hussain, J

Bench : Division Bench

Advocate : K. Chandru, S.C. for R. Srinivasan in W.P. Nos. 35906 of 2002 and 6706 of 2003 and Party in Person in W.P. No. 16573 of 2003, for the Appellant; N.R. Chandran, Advocate General, assisted by V. Raghupathy, Government Pleader, for the Respondent

Judgement

B. Subhashan Reddy, C.J.—In all these writ petitions, claim is for according necessary Government approval for the formation of an

Association for the subordinate police of State of Tamil Nadu.

2. While W.P. No. 16573 of 2003 has been filed by Dr. Subramanian Swamy as a pro bono publico, the other writ petitions have been filed by

one K. Sivakumar, State President of Tamil Nadu Police Constabulary Association (W.P. No. 35906 of 2002) and by M. Panneer-selvam, a

former Police Constable (W.P. No. 6706 of 2003).

3. The common complaint in all the petitions is against the order in Ref.Rc.No. 153/S&C.I/2000, dated 20.7.2002 passed by the Director General

of Police (DGP), Tamil Nadu, refusing to grant recognition to the Tamil Nadu

Police Constabulary Association.

4. Previously, W.P. No.21328 of 2001 by Sivakumar, W.P. No.11279 of 2000 by one A. Manivannan and W.P. No. 18817 of 2001 by Dr.

Subramanian Swamy were filed. They were all disposed by a common order dated 6.6.2002, which reads thus:-

These three writ petitions raise a common point i.e., regarding the approval for the formation of an association for the subordinate police officers

in the State of Tamil Nadu.

2. While W.P. No. 18817 of 2001 is pro bono publico petition filed by Dr. Subramanian Swamy, W.P. No. 11279 of 2000 is filed by an

individual and W.P. No. 21238 of 2001 is filed by the Association.

3. The grievance is that even though approval was given for formation of associations with regard to other cadre of police officers, only with regard

to Constables and subordinate police officers, the approval to form the association has not been given. May be the petitioners are invoking their

fundamental right traceable under Article 19(1)(c) of the Constitution of India i.e., to form an association.

4. Counters have been filed in these cases. The stand taken by the Government is that the Police Force (Restriction of Rights) Act 1966 deals with

formation of association by police personnel and Section 3 of the above Act allows members of the said police personnel to form an association

with the permission of the Government with certain restrictions and that the Government is always prepared to permit formation of such an

association if they are within the parameters of the stipulation contained in law. From the counters filed, it cannot be said that a definite decision has

been taken by the Government and in fact, what is culled out from the counters is that the Government is prepared to consider the plea of the

petitioners in accordance with law and in that view of the matter, there is no cause of action in these cases for judicial adjudication as the plea of

the petitioners has not been rejected by the Government. It is only pending at the stage of consideration before the Government. As the

Government has expressed its willingness to consider the pleas and representation of the petitioners to form an association, a direction is given to

the Government to consider and dispose of the plea of the petitioners for formation of the association as sought for. This exercise shall be done

within a period of one month from the date of receipt of a copy of this order

Pursuant to the same, the matter was considered by the DGP and by the impugned order, he has rejected the plea for recognition of the

Association.

5. Association may be formed and that matter is governed by Article 19(1)(c) of the Constitution. But grant of recognition is a different thing,

which is to be done under the relevant Act. For all other Associations, excepting the Associations by the defence and the police, Article 19(1)(c)

may be relevant. But coming to the defence and police personnel, Article 33 has been specifically enacted in the Constitution keeping in view the

special duties and responsibilities attached to the said services. When the makers of the Constitution themselves have made a distinction and

enacted Article 33 differently for the purpose of forming Associations by defence and police personnel, Article 19(1)(c) cannot be resorted to.

Then, there are several Acts like Army Act, Navy Act, etc. including the Police Forces (Restriction of Rights) Act, 1966, enacted conforming to

Article 33 of the Constitution. Under the Police Forces (Restriction of Rights) Act, no member of police force shall, without express sanction of the

Central Government or of the prescribed Authority, be a member of or be associated in any way with any other society, institution, association or

organization that is not recognised as part of the force, of which he is a member or is not of a purely social, recreational or religious nature.

Admittedly, the Association which the petitioners want to be formed and recognised, is not for social, recreational or religious purpose and is only

for the purpose of ventilating their grievances in so far as their service conditions are concerned. The question is whether such an Association can

be allowed to be formed as of right.

6. There are two authoritative decisions on this subject rendered by the Supreme Court; one is in Delhi Police Non-gazetted Karmachari Sangh

and Others Vs. Union of India (UOI) and Others, and the other one is INTELLIGENCE BUREAU EMPLOYEES ASSOCIATION AND

ORS. v. UNION OF INDIA AND ORS., (1997) 11 SCC 348 .

7. In DELHI POLICE NON-GAZETTED KARMCHARI SANGH (supra), the recognition for Non-Gazetted officers of police force, which

was given previously, was withdrawn after the enactment of Police Forces

(Restriction of Rights) Amendment Rules, 1970, conforming to Article 33 of the Constitution. It was held by the Supreme Court that Rules of 1970 are protected by Articles 33 and 19(4) of the Constitution. It was also held that a right to form an Association under Article 19(1)(c) does not involve a guaranteed right to recognition. Question of locus standi also came up for discussion as the appellants 2 to 7 therein were no longer in service. It was held by the Supreme Court in paragraph 5 of the judgment that they had no locus standi to plead for the recognition of the Association.

8. The other judgments on Public Interest Litigations, cited by Dr.Subramanian Swamy, are not relevant to the case on hand as only a member of a police force can plead for his cause to form an Association and not aliens to police service. Though Dr. Subramanian Swamy is a known political personality and has fought several Public Interest Litigations, this Public Interest Litigation is not maintainable at his instance. In fact, this Public Interest Litigation has got no place so far as the plea for either formation or recognition of an Association is concerned. It is only the persons who are in police service who can plead for it and not others. Panneerselvam, the petitioner in W.P. No. 6706 of 2003 also falls in the same category as he is a dismissed police employee and his dismissal had become final and as such, he has got no locus standi to maintain his Writ Petition.

9. Applying the test laid down in DELHI POLICE NON-GAZETTED KARMCHARI SANGH (supra), we hold that the petitioners in W.P.

No.6706 and 16573 of 2003 have got no locus standi to maintain those writ petitions and the arguments of Mr. N.R. Chandran, learned Advocate General, have to be upheld.

10. Then coming to W.P. No.35906 of 2002 filed by Sivakumar, the ratio laid down by the Supreme Court in DELHI POLICE NON-

GAZETTED KARMCHARI SANGH (supra) is squarely applicable to the same, as it cannot be asked as of right to grant recognition to form an

Association for the reasons stated by the Director General of Police in his order dated 20.7.2002.

11. To the same effect is the later judgment of the Supreme Court in INTELLIGENCE BUREAU EMPLOYEES" case (supra). Even though the

said judgment was rendered under Intelligence Organisations (Restriction of Rights) Act, 1985, the provisions placing restrictions u/s 3 are in pari

materia with the provisions of Police Forces (Restriction of Rights) Act, 1966 and the ratio laid down therein is squarely applicable to this case. In

fact the validity of 50th Constitutional Amendment enlarging the scope of Article 33, was questioned on the ground of violation of "basic structure"

theory. But the Supreme Court repelled the said argument holding that Article 33, either before Amendment or thereafter, does not violate the

"basic structure" theory even if the members of the services enumerated in Article 33 are deprived of their rights to form Associations under Article

19(1)(c) of the Constitution.

12. In both the above judgments of the Supreme Court, stress is laid on the discipline of the defence and police personnel and the Supreme Court

made a distinction between the associations by the police forces and other services and upheld the action of the Government in not recognizing the

associations by police personnel.

13. The arguments of Mr. K. Chandru, learned senior counsel that when such police associations are allowed in States like Andhra Pradesh and

Kerala, there is no reason why State of Tamil Nadu should not accept it, cannot have any relevance as each DGP has his own perspective and

unless the reasons given are perverse or illegal or unconstitutional, we cannot interfere with the decision of the D.G.P. On a perusal of the reasons

given by D.G.P. in his order dated 20.7.2002, we are unable to come to conclusion that they are either perverse, illegal or unconstitutional.

14. In the instant case also, it is stated by the Director General of Police in his counter that since Grievance Cells have been set up and they are

monitoring the situation at all levels and at all stages and by periodical meetings, the DGP does not find any ground to have a separate Association

for Police Constabulary alone. However, a room is created to claim for a common Association for all the staff, right from Police Constables to

Inspectors of Police, and if the petitioner in W.P. No.35906 of 2002 wants to avail of the same, he can file such application before the DGP and

this judgment shall not stand in his way.

15. The W.P. Nos. 6706 and 16573 of 2003 are dismissed for not having locus standi and W.P. No.35906 of 2002 is dismissed subject to the

observations stated above. No costs.