
(2008) 08 MAD CK 0121

In the Madras High Court

Case No : Writ Petition (MD) No. 7361 of 2008

K.T. Patchaimal, District Secretary

APPELLANT

Vs

The Superintendent of Police and Others

RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(2)
Police Act, 1861 — Section 30(2), 30(3)

Citation : (2008) 08 MAD CK 0121

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P.H. Manoj Pandian, for the Appellant; R Janakiramulu, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard Mr. P.H. Manoj Pandian, learned Counsel for the Petitioner and Mr. R. Jahakira-mulu, learned Special Government Pleader and perused the records.

2. In this writ petition, notice was ordered on 12.08.2008 to the Respondents and they were privately served. Notice was taken and a counter affidavit has been filed by the fifth Respondent/Inspector of Police on 18.08.2008.

3. The Petitioner is the District Secretary of All India Anna Dravida Munnetra Kazha-gam (AIADMK), Kanyakumari District. On 05,08.2008, he sought for conducting a demonstration in front of the District Collector's Office, Nagercoil for certain demands. The second Respondent herein, by an order dated 02.08.2008 had refused to grant permission on law and order grounds. This was based upon the promulgation of a regulatory order u/s 30(2) of the Police Act 1861. By a notification dated 29.07.2008, the regulatory order was brought into force for a period of 15 days starting from 29.07.2008. On the strength of this notification, the second Respondent refused to grant permission.

4. Subsequently, the Petitioner sent another representation seeking for permission, to conduct the demonstration in front of the Collectorate on 05.08.2008 for the removal of the Minister from the Council of Ministers. Once again the second Respondent by another order dated 03.08.2008 had refused to grant permission. This time the reason assigned was in the demonstration, caste groups are planning to participate and create problems. They have also reliable information regarding the same. Further VIPs and VVIPs are coming to the Kanyakumari District and police from Kanyakumari District has to provide bandobust and some forces were also sent to other Districts for security duties. By taking into account the law and order situation, the permission for holding the demonstration on 06.08.2008 was refused.

5. The Petitioner once again sent another representation denying the allegation made against the Petitioner's demonstration. It was also categorically stated by the Petitioner that no caste groups are participating and it is not clear as to which caste groups are to take part in such demonstration. This bogey has created only with a view to discard the request made by the Petitioner from conducting a peaceful demonstration that too in a democratic manner. It was also asserted that on 06.08.2008, no VIP was visiting Kanyakumari District.

6. In this context, the Petitioner filed the present writ petition. When the writ petition came for hearing on 12.08.2008, the date for which the original permission to conduct the demonstration sought for was already over. Therefore, the Petitioner sent a further representation dated 13.08.2008 seeking permission to conduct a demonstration in front of the District Collectorate on 25.08.2008 at 10.00A.M. It is also stated in the writ petition that this Court may also grant permission to hold a peaceful demonstration in front of the Collector's Office, Nagercoil on any day, as it may deem fit by this Court.

7. In the present case, a counter affidavit has been filed by the fifth Respondent/ Inspector of Police, Nesamony Nagar Police Station, Nagercoil. In paragraph 6 of the affidavit, the fifth Respondent has stated as follows:

6. ...Moreover, most of the Police strength from the district was taken for VVIP and VIP bandobust duty within the district and in the neighboring district. So taking into consideration, the prevailing law and order situation within Nagercoil Sub Division, once again with the good intention maintaining peace and normalcy within the Sub division, permission was not granted to the Petitioner for conducting demonstration before the Collectorate on 06.08.2008.

8. In Paragraph 9, he has further stated as follows:

9. ...Demonstrations and agitations in this regard will only spread hatred and enmity among the public in large.

9. However, in Paragraph 10, a reference is made to the fresh request by the Petitioner to hold the demonstration on 13.08.2008 and it is stated that the said request is under consideration.

10. However the learned Counsel for the Petitioner raised an apprehension that if the matter is left to them, they may again come with the same reason for the third time and therefore, this Court itself may decide the issue one way or other.

11. Mr. R. Janakiramulu, learned Special Government Pleader stated the request of the Petitioner will be considered properly. In any event, taking into consideration in the circumstances under which the earlier request was denied and also referring to the averments made in the counter affidavit it must be stated that the Respondents have not considered the request of the Petitioner in accordance with law.

12. The right of the citizen to conduct a demonstration is completely guaranteed in terms of Article 19(1)(a) and 19(1)(b) of the Constitution. Though such a right is only subject to the reasonable restriction, which may be made by the State in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence.

13. The reasons given by the authorities in the present case do not show even a remote connection with the reasonable restrictions set out under Article 19(2) of the Constitution. The fact that VTPs and VVIPs are coming to the Kanyakumari District (though the said fact is denied) cannot be a ground to deny a claim for conducting demonstration for certain demands. The other reason that some other groups are likely to take advantage duly such demonstration does not borne out by any records. In any event, the notification u/s 30(2), which has been issued for the Nagercoil Division dated 29.07.2008 is only valid upto 12th August 2008. Nothing is mentioned in the counter affidavit about the extension of the said order by a fresh notification.

14. In this context, it is necessary to refer 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 assembly guaranteed under Article 19 of the Constitution. The Court also held that the work "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 assemble of each citizen and can impose reasonable restrictions in the interest of Public order.

15. Further, 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 community interest is endangered. The anticipated danger should not be remote, conjectural or far fetched, 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."

16. Therefore, it is too late for the Respondents to refuse permission to hold a meeting on a matter of public importance. With respect to the Respondents' reliance upon Section 30(2) of the Police Act, 1861, 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 and Section 30(2) and (3) on which reliance was placed, is extracted below:

Section 30(2): He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the district, or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice, that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a licence.

(3) On such application being made, he may issue a licence, specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place, and otherwise giving effect to this section.

17. Therefore, the said provision is only a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

18. Therefore, in the light of the above binding legal precedents set out by the Hon'ble Supreme Court, this Court has no hesitation to set aside the order passed by the Second Respondent, dated 03.08.2008 and consequently, taking into account the fresh request made by the Petitioner vide his application dated 13.08.2008, the second Respondent is directed to accord the permission to

conduct the demonstration on 25.08.2008 at 10.a.m. before the District Collectorate at Nagercoil. If the second Respondent is of the view that necessary bandobust is to be made, he may also accord the same.

19. In the light of the above, the Writ Petition stands allowed. No costs.