
(2012) 04 MAD CK 0073

In the Madras High Court

Case No : Writ Petition No's. 8258, 8568, 8599, 8600, 8601, 8602, 8604, 8632, 8646, 8647, 8650, 8651, 8652, 8736, 8776, 8807 and 8808 of 2012 and W.P. No. 8258 of 2012

M. Palanisamy

APPELLANT

Vs

The Inspector of Police

RESPONDENT

Date of Decision : 02-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 25, 26

Citation : (2012) 04 MAD CK 0073

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T. Ganesan in W.P. No. 8258/2012, Mr. R. Jayaprakash in W.P. No. 8568/2012, Mr. S. Sivakumar in W.P. No. 8599 to 8602, 8646, 8647/2012, Mr. T. Dhanasekaran in W.P. No. 8604/2012, Mr. C. Prakasam in W.P. No. 8632/2012, Mr. R. Vijayakumar in W.P. No. 8650/2012, Mr. T.M. Ramalingam in W.P. No. 8651 and 8652/2012, Mr. R. Nalliyappan in W.P. No. 8776/2012 and Mr. G. Vijayakumar in W.P. No. 8807 and 8808/2012, for the Appellant;

Final Decision : Dismissed

Judgement

K. Chandru

1. In all these Writ Petitions, the petitioners claiming to have arranged a cultural programme in connection with Mariamman Temple festival

conducted in respective VillageS. In some cases, the petitioners seek for a direction from this Court to conduct a cultural programme, which

included Indian dances. In some cases, the petitioners want the police not to prevent them from conducting the programme. In one case, they want

police protection to conduct the programme. In none of the Writ Petitions, the petitioners have elaborated as to what was meant by the term Indian

Dance Programme. The Indian dance comprises of different forms. Of late, there

were increasing reports in the Press that such dances performed at these functions bordered on vulgar and obscene forms. In most places ill-clad women gyrating their private parts to the tunes of obscene film

songs. In many places there were public protests for such dances being performed in the place vicinity of the local Mariamman Temple.

2. It is rather unfortunate that such cases are being filed before this Court day in and day out without there being any legal or enforceable right on

the part of the petitioners to conduct such forms of dances that too in public places. If the petitioners arrange any such programme in a private hall,

there will be scope to decide legal right of such petitioners.

3. As it was pointed out that there is no right for any private citizens to use public spaces for such performances. Even in cases where a religious

right is claimed, such as procession taking the idol of Ganesha for immersing in the Waterways, this Court has held that the immersion ceremony is

a part of a religious right or recognized religious right but the route in which the procession has to be taken, cannot be dictated by the Organisers.

In this connection, the Supreme Court has emphasized the content of Articles 25 and 26 of the Constitution so as to mean that what was protected

by these Articles is only the integral part of a religion or an essential religious practice. Certainly conducting a dance programme in connection with

the Mariamman Temple Festival is not an essential part of Hindu religion.

4. In the present cases, the petitioners are not claiming that they have been prevented either from conducting the Mariamman Temple festival during

the Tamil month of "Panguni" or they were prevented from participating in the said Festival. It is during the festival, the petitioners wanted to

organize dance programmes for reasons best known to them. The petitioners do not have any religious right guaranteed by the State or a public

right from Municipal laws to exhibit such dances in public places.

5. First of all the Writ Petitions are filed only on an apprehension that they may be prevented from organizing such dances in the Village. But on a

mere apprehension, no Writ Petition will lie. Assuming that the respondents issues specific orders prohibiting them from their organizing what was

lawfully available to them, there is time enough for this Court to consider reviewing such orders. Even if any criminal cases are launched against

them under obscenity in the penal code, the trial Courts will take care of such

prosecution, if they were otherwise legal.

6. The circumstances under which a writ in the nature of mandamus can be issued came to be considered by the Supreme Court in several

decisions. It is relevant to cite a few decisions which will have a bearing on the present case. In *Director of Settlements, Andhra Pradesh and*

Others Vs. M.R. Apparao and Another, , the Supreme Court set out the scope and the manner of exercise of power under Article 226 of the

Constitution and in paragraph 17, it was observed as follows:-

17. Coming to the third question, which is more important from the point of consideration of the High Court's power for issuance of mandamus, it

appears that the Constitution empowers the High Court to issue writs, directions or orders in the nature of habeas corpus, mandamus, prohibition,

quo warranto and certiorari for the enforcement of any of the rights conferred by Part III and for any other purpose under Article 226 of the

Constitution of India. It is, therefore essentially, a power upon the High Court for issuance of high prerogative writs for enforcement of fundamental

rights as well as non-fundamental or ordinary legal rights, which may come within the expression for any other purpose. The powers of the High

Courts under Article 226 though are discretionary and no limits can be placed upon their discretion, they must be exercised along the recognised

lines and subject to certain self-imposed limitations. The expression for any other purpose in Article 226, makes the jurisdiction of the High Courts

more extensive but yet the Courts must exercise the same with certain restraints and within some parameters. One of the conditions for exercising

power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right,

which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance

of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. Mandamus means a

command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is

addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some

particular thing therein specified which appertains to his or their office and is in

the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singh v. State of U.P.). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.

7. Subsequently, in Union of India (UOI) and Others Vs. C. Krishna Reddy, , the Supreme Court held that it is only in case of failure on the part of an Officer to discharge his statutory obligation, a direction will issue and there must be a legal duty imposed on the officer and the aggrieved party must have a legal right under the statute to enforce performance and in paragraph 13, it was observed as follows:-

13. It is well settled by a catena of decisions of this Court that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of the writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. Therefore, in order that a mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. [See Bihar

Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh, AIR para 15, Lekhraj Sathramdas Lalvani v. N.M. Shah, Dy. Custodian cum

Managing Officer and Umakant Saran (Dr.) v. State of Bihar.]

8. The Supreme Court held that unless there is subsisting right and enforceable in a court of law and corresponding legal duty on the part of the Government, no writ will lie and any direction can be issued only in consonance with law and not in violation of statutory provisions, vide its judgment in State of U.P. and Another Vs. U.P. Rajya Khanij Vikas Nigam S.S. and Others, and in paragraphs 45 and 46, it was observed as

follows:

...The petitioners had prayed for a writ of mandamus which presupposes a legal right in favour of the applicant. Such right must be a subsisting right

and enforceable in a court of law. There must be corresponding legal duty on the part of the respondent Corporation or the Government which

required the Corporation or the Government to do that which a statute required it to do. No such right of absorption has been shown by the

petitioners. Nor could any such corresponding duty of the respondents be shown to the High Court by the employees.

46. It is well settled that a court of law can direct the Government or an instrumentality of State by mandamus to act in consonance with law and

not in violation of statutory provisions.

9. However, the petitioners brought to the notice of this Court one such order passed by this Court in W.P.No. 5463 of 2012. In paragraph No.

7, this Court observed as follows:

7. Following the above said orders, the 2nd respondent is hereby directed to grant permission to the petitioner by imposing specific condition that

obscene dances and double meaning conversations will not be permitted. It is also made clear that if any condition is violated by performing dance

or song in an obscene manner and with double meaning conversations, it is open to the 2nd respondent to proceed against the persons responsible

for conducting the dance programme in accordance with law. The 2nd respondent is directed to pass orders permitting the petitioner to conduct

dance programme within permissible time, forthwith. (emphasis supplied)

10. A perusal of the said order does not show that the directions were given on any legal principles. It was only a direction that the police should

permit them with conditions that the Organisers shall not allow any obscene dances or songs, which will have double meaning. Such a direction can

never be given to the police. The police cannot act like censor Officials. Even assuming that such conditions are imposed, there is no guarantee that

the conditions will be obeyed by the organisers. In place where there will be large gathering of the people, if the police stops such dances, there

will be likelihood of public commotion. Unless the petitioners spell out their design in organising such festival, this Court is not inclined to grant any

such order including following one order produced before this Court. None of the

petitioners have claimed that they were greet patrons of Indian Art forms.

11. Even in cases of staging a drama in a public place, the scripts will have to be approved by the appropriate authorities. In other cases of using public places the Public Resort Act, 1888 will have to be followed. Therefore, de hors legislations, whether local or central, the petitioners by getting directions from this Court cannot achieve something which cannot be given directly, by indirect manner.

12. It must be noted that deity Mariamman is worshipped in a female form. During the celebration of the festival during Tamil Month of ""Panguni"", the petitioners cannot be allowed to have indecent portrayal of women through such dances which are the popular lingo called Record dances or otherwise known as Cabaret dance. Portrayal of women in an indecent fashion itself is an offence under the provisions of the Indecent

Representation of Women (Prohibition) Act, 1981. this Court cannot be a party for indulging in such illegal acts by the petitioners. The long arm of

the Court cannot be extended to denigrate the culture during the festival. this Court is not inclined to entertain the Writ Petitions. Hence, all the Writ

Petitions stand dismissed. No costs.