

(1984) 01 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No. 9977 of 1983 and W.M.P. No's. 16519 and 18173 of 1983

Madurai Adheena Peadathipathi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 13-01-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1984 Mad 241

Hon'ble Judges : Ratnavel Pandian, J;K.M. Natarajan, J

Bench : Division Bench

Advocate : B. Kalyansundaram, S.S. Velayudham and Sam, S. Doraiswami, G. Sampath and Veerasekharan, for the Appellant; P. Rajamanikam, Public Prosecutor, for the Respondent

Judgement

Ratnavel Pandian, J.—A telegram purported to have been sent by the Sri Madurai Adheena Peedathiapathi, addressed to the Honourable the

Chief Justice of this High Court was admitted as a writ petition and Rule Nisi was issued by the First Bench of this Court consisting of the

Honourable the Chief Justice and Venkataswami, J. on 27-10-1983. Notice was issued to the learned Public Prosecutor and a counter was

directed to be filed within two weeks and this petition was ordered to be posted before this Bench. Accordingly it came before us on 8-11-1983

on which date we directed notice to be sent to the Maduraj Adheena Peedathipathi, m\Madurai, informing the Adheenam that the matter stood

posted to 17-11-83 for further proceedings and that if the Adheenam desired the Adheenam could appear either in person or through lawyer.

During the pendency of this writ petition. Mr.s.n Amarnath an advocate of this bar has filed W.M.P 18175 of 1983 requesting this Court to

implead him as a party respondent in the writ petition. Similarly done N.R.Ramakrishnan has filed W.M.P No.16519 of 1983 requesting the court to implead him as a respondent in the writ petition

2. The telegram admittedly sent by the Madurai Adheenam reads thus:

Honourable Chief Justice High Court, Madras. The Genocide in Sri Lanka continues unendurably and Madurai Adheenam warns the Tamils to

stand guard against it despite the Sinhalese violence. Our Government at instigation of R.M. Veerappan has started giving troubles to us instead of

offering co-operation for the sake of Tamils for the second time again. A false charge is attempted at Trichi, obtaining order from Trich First class

magistrate deliberately while we address a public meeting. Two Airguns and an Air Pistol and with office files were removed after a search

conducted by police in our room on 23rd October under (section) 505 I.P.C Section Arms Act. Tamil Nadu has grown very tired of Veerappan's

misrule. His harmful and ruthless manners should be brought to the notice of the public so that everyone could recognize his vices thereby

dismissing him from the Ministry.

Madurai Adheenam Peedathipathi, Madurai;

3. In compliance with the directions of the First Bench, the Inspector of Police Crime Bench, C.I.D., on behalf of the respondent herein, has filed a

counter-affidavit stating that a case came to be registered on 19-10-1983 against Sri la Sri Arunagirinathar Sri Gnansambanda Desika Paramchary

Swamigal Adheenam Madurai as first accused and against his security man, as the second accused by the Sub-Inspector of Police

District Crime Branch, Trichirapalli, in Crime No.10/83, of his station, based on a perusal of the short hand report of the speech of the

Madathipathi made on 17-10-1983 under S. 505(b) I.P.C since the Madathipathi, during the course of his speech had brandished a revolver of

German make, for the possession of which he was as found on verification, not possessed of any license. On the strength of a search warrant

obtained from the learned judicial First Class Magistrate, No I, Trichirapalli his Madam and his ancestral house and the house of one Rajomani

Ammal were searched after observing all the statutory formalities and the search resulted in the recovery of three weapons and some documents

from the Madam where the Madathipathi was residing. These weapons and the documents were seized under a search list, copy of which was

served on the Madathipathi. It is further stated that the seized weapons have been sent to the Ballistic Expert for opinion and that the Inspector.

Crime Branch, C.I. D. is investigating this case. Further, the Inspector in his counter has submitted that it is not correct to say that the Minister for

Hindu Religious and Charitable Endowments was camping at Tiruchi and instigating the police to foist a case against the Madathipathithat the

allegations that the Honourable Minister for Hindu Religious and Charitable Endowments had instigated the police to foist a case against the

Madathipathi is totally unfounded and unwarranted"" (vide paras 5 and 6 of the counter). It is further submitted that this writ petition is not

maintainable in law.

4. The learned Public Prosecutor Mr. P. Rajamanickam, appearing on behalf of the respondent, has strenuously contended that the prayer of the

petitioner is baseless and quite mischievous and the petition itself is quite unsustainable in law.

5. Mr. Sam, learned counsel appearing on behalf of Ramakrishnan, and Messrs B. Kalyanasundaram and S. S. Velayudham, learned counsel

appearing on behalf of Mr. Amarnath. submitted that these two persons are necessary parties to these proceedings as both of them are very much

interested in the issue which has assumed some public importance. They also support the view taken by the learned Public Prosecutor and submit

that the contents of the telegram are totally devoid of any merit as there is no specific Prayer in the telegram, except making some unwarranted and

malicious allegation against the Minister.

6. Messrs S. Doraiswami, G. Sampath and Veerasekharan, counsel appearing on behalf of the Adheenam, have filed written arguments which we

shall presently refer to. According to Mr. Doraiswami, it was not the intention of the Adheenam to have the telegram sent by him treated as a writ

petition, but only to bring to the notice of the Court certain information contained in the telegram, However, according to him. This Court, which is

clothed with abundant power and authority to treat even a Post-card" or a telegram as a writ petition and to enforce the constitutional right of such

a person aggrieved, in case the Court is satisfied that there is a legal, personal

injury caused to that person, could issue an appropriate writ or direction to the authority concerned. Further, he would submit that the question of maintainability of the writ petition would not arise in this case when once this Court has issued Rule Nisi and ordered notice to the learned Public Prosecutor obviously on being satisfied that the Adheenam is entitled to a judicial redress for the personal injury sustained by the Adheenam to his mind, reputation and property arising from violation, both actual and threatened, of his legal right or legally protected interest. Therefore, he submits that this Court may be pleased to issue suitable directions in order to redress the grievance of the Adheenam, and if the Court feels that the prayer is not in a suitable form, the Adheenam may be permitted to amend the prayer suitable a suitable direction to remove the Honourable Minister Veerappan.

7. According to Mr. Doraiswami, the Adheenam gave a telegram to the Prime Minister of India on 24-10-1983 and a copy thereof has been

marked to this Court. The submission of Mr. DoraiWafni has been countered by Mr. P. Rajamanickam, the learned Public Prosecutor, and Mr.

Sam, by stating that if the intention of the petitioner was not to seek the telegram to be treated as a writ petition, this Court can straightway dismiss

the same on that ground alone.

8. It is not necessary to place undue emphasis on the Principle of law enunciated by the various authoritative judicial pronouncements of the

Supreme Court and the High Courts, consistently showing great anxiety for the enforcement of the personal liberty or legal right of a citizen of this

country and refusing to throw away a petition, postcard or telegram merely on the ground of procedural technicalities. and laying down; that when

a person moves the Court for judicial redress by sending a letter, telegram petition etc., containing genuine complaints or grievances, by post, the

Court, as a matter of prudence, though not as a rule of law,¹ can, in its discretion, taking into consideration the nature of relief and the vindication

of justice in the matter, entertain such a plea and treat it as a writ petition and render justice in the exercise of -its jurisdiction. This principle is well

settled by the of decisions given by the Supreme Court. In Smt. Icchu Devi Choraria Vs. Union of India (UOI) and Others, , it has been observed

thus (at p. 19871): -

Even a postcard written by a delenu from jail has been sufficient to actives this Court into examining the legality of detention"".

A Constitution Bench of the Supreme Court, in S.P. Gupta Vs. President of India and Others, has made the following observation on this aspect: -

The Court will readily respond even to a letter addressed by such individual acting pro bone public. It is true, that there are rule, made by this

Court prescribing the procedure for moving this Court for relief under Article 32, and they require various formalities to be gone though by a

person seeking to approach this Court. But it must net be forgotten that procedure is but a hand maiden of justice and the cause of justice can

never be allowed to be thwarted by any procedural technicalities. The Court would therefore unhesitatingly and without, the slightest qualms of

conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the letter of the public minded individual as a

writ petition and act upon it.

But, in the same judgment, the Supreme Court has also limited the scope. of the discretionary exercise of the Court of such powers, in the

following words :

But we must hasten to make it clear that the individual who moves the Court for judicial redress in cases of this kind must be acting bona fide with

a view to vindicating the cause of justice and if be is" acting for personal gain or private profit or cut of political motivation or other oblique

consideration, the Court should not allow itself to be activised at the instance of such person and must reject his application at the tbresheld,

whether it be in the form of, a letter addressed to the Court or even in. the term of a regular writ petition tiled in Court. We may also point out that

as a matter of prudence and net as a rule of law, the Court may confine this strategic exercise of jurisdiction to cases where legal wrong or legal

injury is caused "to a determinate class or group of persons or the Constitutional or legal right of such determinate class or group of persons or the

constitutional or possible, not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal, aid

organisation which can take core of such cases :

9. Only on the above principles, the telegram has been treated by the First Bench of this Court consisting of the Honourable the Chief Justice and

Venkataswami J. as al writ petition and the rule nisi has been issued. Thereupon the First Bench directed notice to be issued to the learned Public

Prosecutor and directed him to file his counter. Accordingly, a counter was filed by the Inspector of Police, wherein the circumstances which

necessitated the obtaining of The search warrant from the Court and also the subsequent search made in the premises of the Adheenam, has been

explained in detail. The Inspector has thus sought to justify the action taken by him.

10. As it is now brought to the notice of this Court through the counter-affidavit that a, case in CrimeNo. 10/83 of the District Crime Branch,

TiruchiTapalli has been registred against the Adheenam and another and investigation in the matter is pending and feel that this Court will not be

justified in interfering with and hampering the investigation by issuing any direction at this stage in this writ petition. It i always open to the aggrieved

patty to seek the necessary relief in the appropriate forum at the appropriate stage in accordance with law, if so advised. The contention of Mr.

Doraiswami- that the question of maintainability will not arise at this stage when the rule nisi has already been issued by this Court, can bet be

accepted in view of the fact that there is an alternative and efficacious remedy available to the petitioner to redress his grievances, if any, suffered,

by him on account of the criminal action taken against him. (See Titaghur Paper Mills Co. Ltd. and Another Vs. State of Orissa and Others, . It is

to be noted that the telegram sent by the petitioner, besides stating about the police action, raters to the ethnical violence in Sri Lanka, perpetrated

against the Tamills there and reads that the Government of TamilNadu, at the instigation of the Honourable Minister Veerappan is living trouble to

him in read of extending co-operation to the effort of the Adbeenain in redressing the grievancies of the Tamils in Sri Lanka, and that TamilNadu

has grown very tired of Mr. Veerappan's, misrule. His harmful and ruthless manners should be brought to the notice of the public so that every one

could recognize his vices and thereby dismissing him from the Ministry.

11. According -to Mr. Doraiswami, this writ petition is in the nature of a quowarranto, seeking suitable directions to remove the Minister from the

office he occupies and therefore, be prays that the petitioner may be permitted to amend the prayer suitably, if the Court feels that it is Dot in the

proper form. This submission is stoutly opposed by the learned Public Prosecutor as well as the other counsel, stating that this Court will not be justified in converting this telegram into a writ of quo "Warrant at the instance of The Adbeenam Or be justified in granting permission to amend the prayer at The whirrs and fancies of the petitioner, especially when it has been submitted before this Court That it was not the intention of The petitioner to have this telegram treated as a writ petition and secondly when there have been absolutely no material in the telegram for making out a case for a writ of quo warranto. As pointed out by the Calcutta High Court in Nirmal Kumar v. B. K. Basu, (1984) 88 CWN 10, to have a writ of quowarranto issued it must be proved that the respondent concerned has asserted his claim to the office and is not legally qualified to hold the same or to remain in the office because of the contravention of some constitutional or statutory provisions. The quo warranto proceeding is a judicial remedy, by which any person who occupies or usurps an independent substantive public office, or infringes or liberty, is asked to show cause by what right he claims it, so that, the title to the office" franchise or liberty, may be settled and unauthorized Occupants ousted by judicial order.

12. In a every recent decision rendered by a Division Bench of the Patna High Court in Dineshwar Prasad Vs. State of Bihar and Others, , the nature, scope and ambit of a writ of quo warranto, are explained in the following words (at page 17):

A writ of quo warranto poses a question to the holder of a public office, in plain English language. The question is, where is your warrant of

appointment by which (you) are holding this office Quo warranto is a concept of English Jurisprudence, which has been adopted in our

Constitution under Articles 32 and 226 its essential condition and scope has been modified from time to time and the basic conditions

are that the office must be public. It must have been created by statute or Constitution itself, it must be of a substantive character and that the

holder of the office must not be legally qualified to hold -the office or to - remain in the office or be, has not -been appointed in accordance with

law;

13. If we examine the case on hand in the light of the observations made in the

above cited two the petitioner Adheenam has not made out any case that the Honourable Minister Veerappan is not legally qualified to hold his office or to remain in the same or that he has not been appointed in accordance with law. The reason alleged by the petitioner is "mis-rule With judicial restraint, we would like to state that this kind of allegation against a Minister of a State is not a matter which would fall within the jurisdiction of a Court of law, and is not a justifiable issue. Needless to say that every person, who approaches the Court for the redresser of his grievance, should be diligent enough to make his application in the proper form in accordance with law and it could be entertained only if it falls within the pale of the jurisdiction "of The Court, and it is not for the Court to advise the party as to the nature of relief to be sought for or about the procedure to be adopted by him or as to the form which he has to approach. Under these circumstances, the request made by the learned counsel to amend the prayer cannot be acceded to.

14. The prayer of the petitioner that his honorable Minister Veerappan's) harmful and ruthless manners should be brought to the notice of The public, so that every one could recognize his vices, thereby dismissing him from the Ministry", in our view, is a political issue not justifiable in a Court of law, and we have to reject summarily this prayer, as falling outside the orbit of judicial Control and wandering into the Para political "Sector. We would like to conclude this judgment by extracting the observation made by the Supreme Court in Bhut Nath Mete Vs. The State of West Bengal, : -

The traditional view, sanctioned largely by some American decisions, that political questions fall outside the area of judicial review, is not a constitutional taboo but pragmatic response of the Court to the reality of its inadequacy, to decide such issues and to the scheme of the Constitution which has assigned to each branch of Government in the larger sense and certain jurisdiction. Of course, when a problem -which is essential and basically constitutional although dressed up as a political question, is appropriately raised before Court, it is within the power of the Judges to adjudicate. The rule is one, of self-restraint and of subject matter, practical sense and respect for other branches of Government like the Legislature and the Executive.

15. In view of the discussions made above, we hold that this writ petition is not maintainable in law and accordingly it will stand dismissed. No

costs.

16. In view of the dismissal of the Writ petition. W. M. P. Nos. 16519 and 18173 of 1983 are also dismissed.

17. Petition dismissed.