

(2011) 02 MAD CK 0267

In the Madras High Court

Case No : Writ Petition No. 3411 of 2011 and M.P. No. 1 of 2011

Mrs. Sharadha Shankar

APPELLANT

Vs

The Commissioner of Police

RESPONDENT

Date of Decision : 17-02-2011

Acts Referred:

Constitution of India, 1950 — Article 19
Madras City Police Act, 1888 — Section 78

Citation : (2011) 02 MAD CK 0267

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : N.L. Rajah, for the Appellant; K. Ramasamy, AAG - I, assisted by, K. Balasubramanian, Spl. G.P., for the Respondent

Judgement

P. Jyothimani, J.—The Petitioner has applied for permission to hold a day-long fast on 20th February, 2011 in front of the police booth of Elliots Beach to show their concern about the Coastal Regulation Zone Notification 2011 and to raise awareness about the proposed elevated expressway connecting Nochikuppam to ECR near Kottivakkam and highlight the benefit and problems of the project. The proposed fast was between 9.00 a.m. and 5.00 p.m. That proposal came to be rejected under the impugned order by the Respondent - Commissioner of Police dated 02.02.2011 stating that the venue is not an approved venue for holding fast. However, the impugned order states that she may be permitted to hold a day long fast in an approved venue, for which, she has to apply afresh.

2. In the counter affidavit filed by the Respondent, it is stated that apart from any other things, the place which has been chosen by the Petitioner as a venue for public gathering may not only litter the place and may be injurious to health. It is also stated that as per the Madras City Police Act, 1888, by virtue of the powers conferred under the said Act, Notification has been issued notifying certain areas for conducting meeting in the Beach and inasmuch as the present place which has been asked for by the Petitioner is not a notified place, the

Petitioner has no right to claim by virtue of the rights conferred under Article 19 of the Constitution of India.

3. Mr. N.L. Rajah, learned Counsel appearing for the Petitioner would submit that the Madras City Police Act, 1888, being a pre-constitutional Act, the reliance placed on the same may not be of any much use in the democratic country, especially after the Constitution of India come into existence. Only Article 19 of the Constitution of India is applicable, in which, except when there is a reasonable restriction, there is a fundamental right. He would also rely upon a judgment of this Court in the case of Shanmugaraj v. The Deputy Superintendent of Police, Tenkasi, Tirunelveli District and another made in W.P. No. 35985 of 2003 dated 19.12.2003 wherein in similar circumstances, this Court held that the while placing reliance on the Madras City Police Act, 1888, much care and caution has to be taken especially when Article 19 of the Constitution of India confers a valuable right.

4. On the other hand, it is the contention of the learned Additional Advocate General, that the Petitioner cannot as a matter of right claim any place to be permitted for the purpose of having a day-long fast. While it is not the case of the Respondent that there is a likelihood of law and order problem, since the Respondent is not disputing the bona fide of the Petitioner in having a fast in a peaceful manner, nevertheless, when the Executive Authorities, who are empowered to earmark a particular place for the purpose of conducting agitation etc., it is not fair on the part of the Petitioner to come forward as if her valuable right has been affected. The demarcation of the place is only reasonable for the purpose of maintenance of the atmosphere of the beach. What is stated in the counter affidavit that there is a likelihood of polluting the beach atmosphere in the Elliots Beach is only an additional fact. It is also his submission that the Petitioner has made a claim for having a day-long fast in front of the police booth, which will be certainly affecting the public interest, since the approach to the police station by the common people will be affected. He would also submitted that even under the impugned order, it is not as if the Respondent has put an embargo on the right of the Petitioner to have a fast, which is certainly permissible, but only a reasonable restriction has been imposed for the purpose of choosing a place and for maintenance of law and order and other important activities.

5. I have considered the rival submissions of the learned Counsel appearing for the Petitioner as well as the learned Additional Advocate General appearing for the Respondent.

6. As submitted by the learned Additional Advocate General, it is no doubt true that u/s 78 of the Madras City Police Act, 1888, which reads as follows:

78. Power to make bye-laws - State Government may make bye-laws consistent with this Act for more effectually carrying out the objects thereof and for the preservation of order, and may from time to time repeal, alter or amend any

such bye-law.

the Government is empowered to make bye-laws for carrying out effectively the object of the Act, which is intended for the purpose of maintenance of observation of the law and order in the City. It is based on which, such bye-law, has in fact, has been framed stating that no meeting shall be held on the foreshore within the city limit. The said bye-law reads as follows:

1. No meeting shall be held on the foreshore within the limits of the City of Chennai except at such places and as such times as the Commissioner of Police may, from time to time, notify.

2. No meeting shall be held at any place notified by the Commissioner under bye-law 1 above, at which another meeting is to be held of which not less than 24 hours previous notice has been given to the Commissioner or at any place within 500 yards thereof.

7 Apart from the fact that bye-law has been made under the pre-constitutional Act, bye-law 2 itself enables the Commissioner that he should be given 24 hours prior notice for the purpose of exercising his discretion and within the extent of 500 yards, an alternate place can be chosen.

8. P. Sathasivam, J, as His Lordship as he then was, while considering the similar circumstance about the effect of the Madras Police City Act, 1888 in the case of Shanmugaraj v. The Deputy Superintendent of Police, Tenkasi, Tirunelveli District and Anr. made in W.P. No. 35985 of 2003 dated 19.12.2003 has placed reliance on the earlier judgment of R. Jayasimha Babu, J. in Nedumaran P. v. State of Tamil Nadu and Ors. reported in 1999 1 L.W.73 wherein it was a proposal to have an agitation in support of the banned organisation. That was rejected on the ground that there was a likelihood of breach of public tranquility and public safety and the apprehension was considered to be rival and direct. In that case, it was held that the rights conferred under Article 19 of the Constitution of India is a basis of preservation of the democratic system, which includes the rights of citizens to ventilate any opposition against any proposals. The expression of such opposing view itself cannot be stated to be dangerous or opposed to the security of the country. While holding so, by referring to one of the provisions of the Madras City Police Act, which gives certain powers to the Commissioner of Police, this Court observed that, that being a pre-constitutional enactment, such power having been given when the country was under the colonial power cannot continue to be treated so even after the advent of the Constitution. It was held in that case that after the advent of the Constitution, the rights conferred under Article 19 of the Constitution of India is subject to reasonable restrictions and such reasonable restrictions must be shown to be essential. In that case, it was also held as follows:

17. The fact that the police are vested with power should not make them assume that, that power is available for exercise in any manner that they consider fit. That power is to be exercised strictly within the ambit of the provisions of the

Constitution, more particularly, the requirement that any restriction placed on the exercise of fundamental rights should be a reasonable restriction, and the restrictions so placed should be shown to be essential, having regard to the permissible purpose for which restrictions may be imposed.

9. By following that judgment, the learned Judge in W.P. No. 35985 of 2003 has directed the authority to grant permission to hold an All Party Hunger Strike in the Quaid-e-Millath Thidal at Kadayanallu, Tirunelveli District for one day, of course subject to various conditions.

10. On a perusal of the impugned order passed by the Respondent, as correctly submitted by the learned Additional Advocate General, it is clear that it is not as if the claim of the Petitioner to have a day-long fast on Elliots Beach Road has been rejected altogether. But it is only with a direction to choose some other place. The claim of the Petitioner to have the place for fast in front of the police booth in Elliots Beach Road cannot be a conducive one and in that regard, it cannot be said that the rejection order is arbitrary. In any event, by considering the object of the Petitioner for the purpose of ventilating the views opposing a proposal against the Coastal Regulation Zone Notification 2011 and that cannot be restricted by merely saying that the place of fast should be far away from the place, in respect of which, the Notification has been issued.

11. On the categoric stand of both the parties that there is no apprehension of law and order situation, I am of the considered view that if not in front of the police booth in the Elliots Beach Road, the Respondent can consider the issuance of permission in some other alternate place in the Elliots Beach Road subject to various conditions.

12. In such view of the matter, in order to give an opportunity to the citizens to raise their objections regarding the proposal in a peaceful manner, which is enshrined as a fundamental right under the Constitution of India and of course subject to reasonable restriction, I direct the Commissioner of Police - Respondent herein to pass appropriate orders forthwith in consultation with the Petitioner in choosing some other alternate place in the Elliots Beach Road for conducting a day-long fast on 20th February, 2011 between 9.00 hours and 17.00 hours, which shall be subject to various conditions as may be imposed by the Commissioner of Police.

13. Accordingly, the impugned order stands set aside with a direction to the Respondent - Commissioner of Police to pass orders granting an alternate place in the Elliots Beach Road but subject to various conditions. Taking note of the fair suggestion made by the learned Additional Advocate General appearing for the Respondent, the Respondent is directed to pass such order on or before 18.02.2011. The Writ Petition is disposed of. No costs. Consequently, M.P. No. 1 of 2011 is closed.