

(2014) 03 MAD CK 0174

In the Madras High Court

Case No : Writ Petition No's. 6451 to 6456, 6523 to 6527, 6530 to 6534, 6566 to 6572 and 6710 to 6718 of 2014

Periyasamy

APPELLANT

Vs

State by The Sub-Inspector of Police

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Indecent Representation of Women (Prohibition) Act, 1986 — Section 2 3 4

Citation : (2014) 4 MLJ 73

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : S. Lakshmanasamy in W.P. No. 6451 of 2014, for the Appellant; R. Vijayakumar, Additional Government Pleader in W.P. No. 6451 of 2014, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—In all these cases, the petitioners seek for a direction to the respective respondent (s) to permit them to conduct the cultural/dance programme by considering their respective representations. The case of the petitioners in all these writ petitions is almost the same. According to the petitioners, the people of the villages, in which the petitioners are residing, have decided to conduct the annual temple festival on different dates during February/March 2014 and that during the said festival, they want to conduct cultural dance programs. The petitioners claim that they sent representations to the Inspectors of Police of the local Police Stations. Since their representations were not considered, they have filed these writ petitions, seeking a Mandamus to direct the respondent (s) to permit them to conduct cultural dance programs during such festival.

2. I heard the learned counsel for the respective petitioners and the learned Additional Government Pleader appearing for the respondents and perused the materials placed on record.

3. A perusal of the affidavits filed in support of the writ petition as well as the typed set of papers would indicate that the petitioners have sent their respective representations to the respondent (s) from the post office situate within the premises of this Court or from the General Post Office, Madras, whereas, most of the petitioners are residing at Salem, Namakkal and Erode Districts. Therefore, it is highly doubtful as to whether the representations would have been sent by the petitioners themselves. Further, immediately after sending the representations, on the same day or within a day or two, the writ petitions have been filed before this Court seeking for a direction to the respective respondent (s) to permit them to conduct dance/cultural festival, even before such representations could have been received by the respective respondent (s). In any event, for the temple festival to be conducted in a day or two, the petitioners have filed this writ petition one or two days prior to the date on which the programme has to be conducted. Thus, under the guise of sending representation to the respective respondent (s), seeking permission to conduct the temple festival inter alia to give police protection for conducting such festival, and alleging that those representations having not been considered by the respondents, the petitioners are seeking for issuance of a Mandamus by this Court. Such a practice has to be deprecated.

4. In this context, I wish to follow the decision of the Division Bench of this Court reported in (M. Ingaci Vs. The Commissioner, Devekottai Municipality and Others, , in which I am also a party, wherein the Division Bench held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on para Nos. 18 to 210 of the decision of the Honourable Supreme Court reported in the case of A.P.S.R.T.C. and Others Vs. G. Srinivas Reddy and Others, , wherein in Para Nos. 18 to 20, it was held as under:-

18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to "consider" the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to "consider" the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to

"consider", the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider" may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction "to consider" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where there has been large-scale misuse of the orders "to consider".

20. Therefore, while disposing of the writ petition with a direction "to consider", there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter.

5. Thus, it is evident from the decision of the Honourable Supreme Court that mere direction to consider one's representation will result in adverse consequences and it will give rise to renewing a stale, untenable or dead claim.

6. In identical case, Justice V. Ramasubramanian has passed an order dated 28.02.2014 in batch of cases in W.P. Nos. 4204 of 2014 etc., batch. In the said order, after referring to various decisions of this Court, it was held in Para Nos. 9 to 18 as follows:-

9. But, a careful look at those orders will reveal that they were passed by this Court in most of the cases, on the basis of a consent given by the concerned Authorities or by the learned Additional Government Pleaders appearing in those cases. Consequently, this Court did not have an occasion, in any one of those cases, either to deal with the question as to whether a Writ of Mandamus would lie in such cases or to deal with the question as to whether the order of the Division Bench constituted a binding precedent on any question of law.

10. In contrast to the orders relied upon by the learned counsel for the petitioners, another learned Judge of this Court considered the legal issues arising in such cases, in great detail in M. Palanisamy Vs. The Inspector of Police . After pointing out that in many cases of this nature, private citizens try to

use public places of worship for conducting vulgar and obscene forms of dances, mostly with ill-clad women, leading to public protest, the learned Judge considered the most fundamental question as to whether such persons have a right to seek the issue of the Writ of Mandamus.

11. Citing the decision of the Supreme Court in *Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another*, , the learned Judge pointed out that the powers of the High Court under Article 226, though discretionary and though without serious limits, must be exercised along the recognised lines and subject to certain self-imposed limitations. For the issue of a Writ of Mandamus, the Court has to first come to the conclusion that the aggrieved person has a legal right, which entitles him to seek its enforcement through a Writ of Mandamus. The existence of a legal right and the infringement of the same by a Public Authority, is a *sine non qua* for the exercise of the jurisdiction to issue a Writ of Mandamus. As the Supreme Court pointed out, Mandamus is a command issued to a Public Authority to perform a duty imposed by the Statute or by the common law.

12. The petitioners have not cited any enactment that confers a right upon them to hold dance programmes in public places near temples. The petitioners have not cited any Statute, which imposes an obligation or a public duty upon the respondents to permit the petitioners to conduct such programmes in open spaces by erecting shamianas and pandals.

13. In *Union of India (UOI) and Others Vs. C. Krishna Reddy*, , which was also cited by K. Chandru, J, in his decision in *M. Palanisamy*, the Supreme Court indicated that the power to issue 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 such Officer to discharge the statutory obligation. The learned Judge cited the decision of the Supreme Court in *State of U.P. and Another Vs. U.P. Rajya Khanij Vikas Nigam S.S. and Others*, , wherein the Supreme Court reiterated that there must be a subsisting right enforceable in a Court of Law and there must be a corresponding legal duty. Sans any legal right for the petitioners and sans a legal duty for the respondent, I do not know how the petitioners can seek a Mandamus in such cases.

14. Therefore, it is clear that the decision in *M. Palanisamy*, considered the issue arising in such writ petitions in the proper legal perspective with reference to the parameters on which the prayer for a Writ of Mandamus has to be tested. In most of the writ petitions, the petitioners have not even disclosed who they are. It is not as though the Temple Authorities had made applications before the concerned Authorities for the grant of permission to conduct such programmes. None of the writ petitioners has anything to do with the management and administration of the temples in question. The writ petitioners are private individuals who seek to make use of the temple festivals, certainly not for propitiating the presiding deities of those temples, but for arousing basic instincts of those who assemble under the garb of devotees. The conditions to which the

writ petitioners agree to submit themselves to, are as cosmetic as the make-up provided to the artists who are engaged to perform. There is no way the adherence to such conditions could be verified. It is unfortunate that at no point of time any of the respondents ever came up after the conclusion of the festivals, giving a report of what actually happened. But reports do appear in the Press, demonstrating clearly that under cover of Court orders, people who organise such programs get away.

15. India is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted by the United Nations General Assembly in 1979. It entered into force as an International Treaty on September 3, 1981, after its ratification by the 20th country. In the introduction to the Convention, it is pointed out that the general thrust of the Convention aims at enlarging our understanding of the concept of human rights. It says that cultural patterns, which defined the public realm as men's world and the domestic sphere as women's domain, are strongly targeted in all the provisions of the Convention. Article 6 of the Convention mandates States Parties to take appropriate measures including legislation to suppress all forms of trafficking and exploitation of women. A careful look at Article 6 would show that legislation is not the only method required to be adopted by States Parties to curtail the menace of trafficking. Therefore, the contention of learned Counsel for the petitioner that so long as there is no legal prohibition, the petitioner's fundamental right cannot be curtailed, goes contrary to Article 6 of the Convention.

16. It is well settled that International Instruments, ratified by India, can be looked into and followed by courts, so long as the municipal law is not in conflict with the mandate contained therein. There is no municipal law in India, which is in conflict with the object and purpose of Article 6 of the CEDAW. Therefore, the Convention has a binding force, in view of the law laid down in various decisions. A useful reference can be made to Ms. Githa Hariharan and Another Vs. Reserve Bank of India and Another, .

17. The provisions of Indecent Representation of Women (Prohibition) Act, 1986 were also not noted in any of the decisions where mandamus was issued by this court for such programmes. Section 2 of the said Act defines "indecent representation of women" to mean depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or derogatory to or denigrating women or is likely to deprave, corrupt or injure the public morality or morals. It is interesting to note that the definition includes even "a likelihood of depravation or injury to the public morality or morals". Therefore, the contention of all the learned Counsel for the petitioner that even before the grant of a licence, there cannot be a presumption of any illegality, does not hold water. Section 3 of the said Act prohibits even the publication of any advertisement, which contains indecent representation of women in any form. Section 4 prohibits the production, sale and distribution or

circulation of any book, pamphlet, etc., which contains indecent representation of women in any form. Therefore, even if there is a likelihood of a person making an indecent representation, the same is prohibited by the said Act. It is needless to point out that the likelihood of depravation, corruption or injury to public morality stands on a different footing than the actual depravation, corruption or injury.

18. While all offences under the Indian Penal Code become offences after commission of an act, one offence, namely an attempt to commit suicide, which when actually committed successfully, cannot be prosecuted. But, the very attempt to commit it is prosecutable. What the petitioners want in these cases is similar to the same and this Court cannot issue a Writ of Mandamus to permit the petitioners to do something when there is a likelihood of violation of the law.

7. As mentioned in the decision *supra*, in the present case, the petitioners do not have semblance of right to seek for issuance of a Mandamus to the respondents herein. The petitioners have not cited any Statute, which imposes an obligation or a public duty upon the respondents to permit them to conduct such festivals.

8. In fact, while sitting in the Vacation Court, I passed an order on 23.05.2013 in Writ Petition Nos. 14469 of 2013 etc., batch wherein identical prayer sought for by the petitioners therein was rejected by me. Even in the said case, I found out that the representations have been sent either from the post office situate within the premises of this Court or from the General Post Office at Madras, whereas the petitioners therein are residents or natives of other Districts. As mentioned above, in the present case also, the representations said to have been sent by the petitioners cannot be relied on inasmuch as they were either posted in the post office within the premises of this Court or the General Post Office, Madras, whereas the petitioners are residents of Erode, Salem and Namakkal Districts. Further a perusal of the representations annexed along with the typed set would indicate that the petitioners have not stated as to what is the requirement to have such a dance programme in the temple festival. Such a requirement to conduct dance festival in the temple is a recent creation and not borne out by any tradition or culture. In many cases, it is brought to the notice of this Court that a particular organised group is utilised for performance of the so-called dance festival. Such dance programmes are conducted only to lure the young minds and to take them to wrong path. It is also brought to the notice of this Court that such dance festivals are conducted late in the night which results in lots of chaos and problems in the area. Further, the audience of these dance programmes are mostly intoxicated besides they use the area where the dance programme is being conducted for unlawful activities. Such a practice has to be curbed.

9. Above all, in certain cases, it is brought to the notices of this Court that the respondent police denied permission by citing law and order problem to permit such dance festivals. The police authorities alone are competent to ensure whether permission can be granted or denied. While so, when the police denies

permission for conducting dance programme, as sought for by the petitioners, then, normally, this Court cannot interfere with the same and issue a Mandamus to the police to permit the petitioners to have their dance programme. For all the above said reasons, these writ petitions are dismissed. No costs.