
(1986) 11 KL CK 0006
In the High Court Of Kerala
Case No : M.F.A. No. 758 of 1986

P.M. Antony

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 11-11-1986

Acts Referred:

Kerala Dramatic Performances Act, 1961 — Section 2, 3, 4, 4(2)
Kerala Police Act, 1960 — Section 23

Citation : (1986) 11 KL CK 0006

Hon'ble Judges : T. Kochu Thommen, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : A.X. Varghese, K.S. Madhusoodanan and T.P. Manilal, for the Appellant;

Final Decision : Dismissed

Judgement

Kochu Thommen, J.—The order of the first Respondent, the District Collector/ District Magistrate, Ernakulam, dated 8th November 1986 is under challenge in this appeal. It is a composite order made u/s 23 of the Kerala Police Act as well as u/s 4(2) of the Kerala Dramatic Performance Act, 1961 (Act 41 of 1961). The order is challenged only in so far as it is made under Act 41 of 1961. We shall read the whole order:

Proceedings of the District Magistrate, Ernakulam

Sub.-Breach of peace in Chengamanad Police Station limits due to the presentation of a drama

Read.- 1. Letter, dated 8th November 1986 from the Council Convener of Moozhikulam Parish Council.

2. Report dated 8th November 1986 from the Deputy Superintendent of Police, Alwaye.

As per the reference first cited I am informed that it is proposed to stage a

drama called

on 8th November 1986 at 8 p.m. in Kurumasserry Government U.P. School within Chengamanad Police Station limits. The Petitioner states that the drama will wound the religious sentiments of the entire Christian Community and that the proposal to stage this drama has greatly excited the community in the locality. According to the Petitioner, the possibility of a serious breach of the peace occurring if the drama is staged cannot be ruled out. He therefore requested that to avoid conflict necessary steps may be taken.

As per reference second cited the Deputy Superintendent of Police, Alwaye has brought to my notice that it is proposed to stage a drama under the name

at the Kurumasserry Government U.P. School on 8th November 1986 at 8 p.m. On making enquiries regarding this the police has come to know that Christian Community of the locality is making vast preparations to ensure that this drama is not staged. Large numbers of people belonging to this Community have already assembled in the Little Flower Church, Kurumasserry, St. Antony's Church, Chengamanad and Christuraj Church, Kuttipuzha. In the surcharged atmosphere prevailing in the locality it is reported that there is every possibility of grave breach of peace occurring.

It is also reported by the Deputy Superintendent of Police that there is possibility of this drama being staged in other parts of Ernakulam District. The Sub Collector, Muvattupuzha has telephonically informed me at 1 p.m. that he has reliable information that the drama is about to be staged in Muvattupuzha also at any time.

From the foregoing it appears that a drama by the name

is about to be staged at 8 p.m. today at the Kurumasserry Government U.P. School. As the staging of this drama is likely to cause a serious breach of the peace. I hereby u/s 23 of the Police Act prohibit any procession or public assembling in Chengamanad Police Station limits for a period of 15 days from the date of this order.

The staging of this drama anywhere in the district is liable to inflame communal passions and lead to a serious breach of the peace.

In the instant case the drama is to be staged at 8 p.m. today. Under the circumstances, I, V. Rajagopalan, District Magistrate, Ernakulam, u/s 4(2) of the Kerala Dramatic Performance Act, 1961 hereby prohibit the staging of the drama by the name

in any part of Ernakulam District.

The District Superintendent of Police, Alwaye and Commissioner of Police, Ernakulam City shall ensure that the orders are carried out and report compliance.

Given under my hand and seal at 3.30 p.m. on the 8th day of November 1986.

(Sd.) V. RAJAGOPALAN, District Magistrate, Ernakulam.

2. Section 4 of Act 41 of 1961 provides:

4. Power to prohibit performances temporarily. (1) Whenever the District Collector is satisfied that a play, pantomime or other drama performed or about to be performed is an objectionable performance or that its performance is likely to lead to a breach of the peace, he may by order stating the grounds on which he considers the performance objectionable or likely to lead to a breach of the peace, prohibit its performances,

(2) Before making an order under Sub-section (1), the District Collector shall give a reasonable opportunity to the organiser or other principal person responsible for the conduct of the performance or to the owner or occupier of the public place in which such performance is intended to take place, to show cause why the performance should not be prohibited:

Provided that in case where the circumstances require immediate action to be taken and do not admit of a reasonable opportunity being given, the District Collector may by order, prohibit the performance without giving such opportunity in which case he may review the order on the application of any person effected by it.

(3) No order made under this section shall remain in force for more than two months from the making thereof unless the Government, by notification in the Gazette, otherwise direct.

An objectionable performance is defined u/s 2 as follows:

2. (1) "Objectionable performance means any play, pantomime or other drama which-

(i) is grossly indecent, scurrilous or obscene; or

(ii) is likely to endanger the security of India or public order in the State; or

(iii) incites any person to commit an offence involving violence; or

(iv) is likely to seduce any member of any of the armed forces of the Union of India or of any police force from his allegiance or his duty, or prejudice the recruiting of persons to serve in any such force or

(v) is deliberately intended to outrage the religious feelings of any class of the citizens of India by insulting or blaspheming or pro-planing the religion or the religious beliefs of that class.

3. It is stated by counsel for Appellant that the drama in question is an adaptation in Malayalam of the English, translation of the work "The Last Temptation of Christ" by Nikos Kazantzakis. He further states that the drama has

been already staged in a number of places. The staging of the drama has been prohibited by the concerned authorities in no less than four districts. The Malayalam version has not been shown to us. We do not know to what extent it is true to the original or the English text. According to the Appellant himself, it has only a "distant relation" to the original (see Ground D). It is, however, common knowledge that there has been strong resentment amongst large sections of people in different parts of the State against the staging of this drama. The authorities have acted in response to strong and potentially dangerous public reaction.

4. The order of the first Respondent discloses that he received representation from a certain section of the people protesting against the staging of the drama in Ernakulam District. He also received reports from official sources about the public reaction. The Act gives the District Collector, who is also the District Magistrate, the right to exercise power u/s 4 whenever he is satisfied that the staging of the play would be an objectionable performance which is likely to lead to serious breach of peace. An objectionable performance is one which is either grossly indecent, scurrilous or obscene or is likely to endanger the public or incite persons to commit an offence involving violence or deliberately intended to outrage the religious feelings of any class of the citizens of India by insulting or blaspheming or prophaning the religion or the religious beliefs of that class or is likely to seduce any member of the armed forces, etc.

5. The order shows that the first Respondent acted on material which he received in the form of representation and the reports of the concerned officers. The question is whether he was "satisfied" before he made the impugned order. His satisfaction must be reasonable in the sense that it is based on material which a reasonable man, placed in the same position as the repository of power, would have considered to be sufficient basis for making the order. Has the District Collector taken into account matters which are relevant or has he acted on irrelevant material? Is there reasonable nexus between the material available to him and the order which he made? Has the order a rational nexus with the object sought to be achieved by the statute? The question is not whether this Court would have come to the same conclusion on the material relied on by the District Collector, but whether he acted rationally in the sense that his order is reasonably based on relevant material.

6. No man in the position of the District Collector, aware of the happenings and sentiments of large sections of people within his jurisdiction, as disclosed to him by the reports of the Deputy Superintendent of Police, Always, the Sub Collector, Muvattupuzha and other sources, would be justified in ignoring the probable and natural consequences of actions, which in the minds of many persons partake of the character of sacrilege or blasphemy. Such are the actions constituting the objectionable performance leading to law and order problems. The question is not whether the drama is based on a true translation of the original work; the question is not even whether the work represents art which should be

encouraged; but the sole question in making the order u/s 4 or u/s 3, as the case may be, is one of consideration of public order, tranquility and harmony in society.

7. The prohibition contained in the order is not one of prior restraint, but of subsequent restraint. The English translation of the original work has been under circulation. The adaptation in Malayalam as a play has been staged in several parts of the State, as a result of which, it is common knowledge, tension has been mounting on account of the strong resentment felt by large sections of the public. If, as we hold, the District Collector who is the repository of power under the statute acted in exercise of that power in the reasonable belief that the prohibition of the performance of the objectionable matter was imperative to prevent breach of peace, we can see no manifest error or illegality in his order. We are not satisfied that the officer acted on irrelevant material or that he has not taken into account relevant matters. The Appellant has not made out a case to the contrary.

8. The Appellant's counsel submits that no reasonable opportunity was afforded to him. Section 4(2) which provides for reasonable opportunity also contains a provision which allows the District Collector to dispense with that requirement in urgent situations, subject to the right of the person aggrieved to seek a review of the District Collector's order. No review had been sought in the present case. The Appellant has chosen to appeal against the order on the merits. We see no manifest illegality or irregularity in the order. The appeal is accordingly dismissed.