
(2005) 07 MAD CK 0001

In the Madras High Court

Case No : Wri Petition No"s. 11700 and 11701 of 2005

Retired Official Association and Others

APPELLANT

Vs

Sports Development Authority of Tamil Nadu and Others

RESPONDENT

Date of Decision : 04-07-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 243(W), 40

Citation : AIR 2005 Mad 365 : (2005) 3 LW 515 : (2005) 3 MLJ 556

Hon'ble Judges : Markandey Katju, C.J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : N.L. Rajah, for the Appellant; V. Raghupathy, Govt. Pleader for Respondent Nos. 1 to 4, for the Respondent

Judgement

Makkandey Katju, C. J.

1. Writ Petition No. 11700 of 2005 has been filed with a prayer for mandamus for bearing the respondents or any person acting through or under

them from putting up a hostel or any other structure in the land of 12 acres comprised in T.S. No. 26, Block No. 24, Ward No. D measuring

7.9600 sq. meters (20 acres) situated in the rear side of the building complex of the Namakkal Kavlingai Ramalingam Government College of Arts

for Women. Namakkal In violation of the resolutions and decisions of the first, third and fifth respondents.

2. Writ Petition No. 11701 of 2005 has been filed with a prayer for mandamus directing the respondents to implement the Resolution passed as

Agenda No. 1 at the meeting of the Namakkal Unit of the Sports Development Authority of Tamil Nadu at the Namakkal Collectorate on 11-1-

1999 and approved by order No. Na.Ka.42730/98/02 dated 21-1-2000 of the third respondent as confirmed by the Resolution No. 55 dated

30-6-2003 passed by the fifth respondent for construction of an outdoor stadium in the land comprised In T.S. No. 26 Block No. 24 Ward No.

D measuring 7.9660 sq. meters (20 acres) and 12 acres which is situated in the rear side of the building complex of the Namakkal Kavingar

Ramalingam Government College of Arts. for Women, Namakkal.

3. We have heard the learned counsel for the petitioners and find no merit In these writ petitions.

4. The first petitioner in both the will petitions is an Association registered under the Societies Registration Act which claims to be working for the

public welfare. It has formed the Namakkal Stadium Steering Committee with several other like minded bodies with the sole object of striving for

the establishment of a stadium at Namakkal. The writ petitions have been filed as a Public Interest Litigation seeking a writ of mandamus directing

the respondents to implement the orders passed by the respondents for establishment of a stadium and sports complex on the aforesaid land.

5. It appears that a resolution was passed as Agenda No. 1 at the meeting of the Namakkal Unit of the Sports Development Authority of Tamil

Nadu at the Narnakkal Collectorate on 11-1-1999 and approved by order dated 21-1-2000 of the District Collector which was confirmed by the

Resolution dated 30-6-2003 passed by the fifth respondent for construction of an outdoor stadium on the aforesaid land.

6. In paragraph 7 of the petitioner's affidavit it is stated that the District Collector, Namakkal wrote a letter dated 1-7-2004 to the Member

Secretary, Spoils Development Authority of Tamil Nadu and requested sanction and approval of the Sports Development Authority for

construction of an outdoor stadium at the aforesaid site in Namakkal. In this communication, the District Collector highlighted the locational

advantages if the stadium were to be constructed at the said site, and also suggested construction of a high rise compound wall to ensure the safety

and privacy of the students of Namakkal Kavingar Ramalingam Government College of Arts for Women. The District Collector also wrote that the

proposed stadium will be beneficial to the general public. The President of Namakkal Stadium Steering Committee by a representation dated 1-2-

2004 had requested the Finance Minister, Tamil Nadu to sanction the proposal for construction of an outdoor stadium in the aforesaid site in

Namakkal.

7. However, it is alleged in paragraph 11 of the petitioner's affidavit that when matters stood thus, it was brought to the notice of the petitioner that

the fourth respondent/ Government of Tamil Nadu was about to construct a hostel for backward classes in a portion of the land immediately

abutting the main road in T.S. No. 28, Block No. 24, Ward No. D, situated at Namakkal which was ear marked and sanctioned by the District

Collector for construction of an outdoor stadium in Namakkal. It is alleged that the proposal to construct the hostel for backward classes by the

Government of Tamil Nadu is contrary to the resolution passed at various meetings which were presided over by the District Collector. The

proposal to construct the hostel is on the land allotted for construction of an outdoor stadium, and is also contrary to the resolution passed by the

Namakkal Municipality. It is alleged that the earlier proposal to construct an outdoor stadium cannot be abandoned in this manner, particularly

when the land was found ideal and suitable for construction of the stadium, and is an unused land situate in the rear side of the college building

complex. It is alleged that if the hostel is constructed, the stadium cannot be constructed as the remaining portion of the land will not be suitable,

and would not meet the requirements for construction of a stadium.

8. It is alleged that the decision to abandon the construction of the stadium at the approved site and construction of a hostel thereon was taken in a

haste, and it is clearly arbitrary, unreasonable and unsustainable and is violative of Articles 40 and 243(W) of the Constitution of India.

9. In our opinion, no writ can be issued as prayed for by the petitioner. A writ is issued when there is error of law apparent on the face of the

record or there is violation of some law. No writ lies merely for enforcement of a resolution or a decision. We have not been shown violation of

any statutory rule or regulation in this case, and hence in our opinion the writ petitions are not maintainable.

10. It must be realised that there are well settled limitations to writ jurisdiction and it is not that a Judge sitting in writ jurisdiction can do anything he

pleases. Judges are also subordinate to law and must act according to the settled legal principles of writ jurisdiction.

11. The petitioner has basically sought for issue of a writ of mandamus for

implementation of certain resolutions and certain decisions. The question, therefore, is whether this Court can issue such a writ?

12. In order to obtain a Writ of Mandamus, the petitioner must satisfy two conditions :-

1. He must show that he has a legal right to the performance of a legal duty (as distinguished from a discretion) by the party against whom the

mandamus is sought vide Union of India (UOI) and Another Vs. S.B. Vohra and Others, (vide paragraph 13); Director of Settlements, Andhra

Pradesh and Others Vs. M.R. Apparao and Another, ; The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and

Others, ; Union of India and Others Vs. M/s. Orient Enterprises and Another, ; Union of India (UOI) and Others Vs. E. Merck (India), ; Mani

Subrat Jain and Others Vs. State of Haryana and Others, ; The State of Haryana Vs. Subash Chander Marwaha and Others, , etc.

2. The duty that may be enjoined by mandamus should be one imposed by the Constitution, a statute, common law or by rules or orders having the

force of law vide Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, ; State of Mysore v. Chandrasekara K.N.

AIR 1965 SC 532 (vide paragraph 10), etc.

13. In G.J. Fernandez Vs. State of Mysore and Others, , the Supreme Court observed that purely administrative instructions which are not made

under a statute do not confer any right on a party to apply to the Court for quashing the orders made in breach of such administrative instructions.

14. In Union of India (UOI) and Another Vs. S.B. Vohra and Others, , the Supreme Court observed (vide paragraphs 12 & 13) :-

Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now

Queen's Bench) directing performance of a public legal duty.

A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has

a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or operation

of law.

15. Similarly in J.R. Raghupathy and Others Vs. State of A.P. and Others, (vide paragraph 18) the Supreme Court observed :-

It is well settled that mandamus does not lie to enforce departmental manuals or instructions not having any statutory force, which do not give rise

to any legal right in favour of the petitioner. The law on the subject is succinctly stated in Durga Das Basu's Administrative Law, 2nd Edn. at p.

144 :

Administrative instructions, rules or manuals, which have no statutory force, are not enforceable in a Court of law. Though for breach of such

instructions, the public servant may be held liable by the State and disciplinary action may be taken against him a member of the public who is

aggrieved by the breach of such instructions cannot seek any remedy in the Courts. The reason is, that not having the force of law, they cannot

confer any legal right upon anybody, and cannot, therefore, be enforced even by writs under Article 226.

The learned author however rightly points out at p. 145 :

Even though a non-statutory rule, byelaw or instructions may be changed by the authority who made it, without any formality and it cannot

ordinarily be enforced it through a Court of law, the party aggrieved by its non-enforcement may, nevertheless, get relief under Article 226 of the

Constitution where the non-observance of the non-statutory rule or practice would result in arbitrariness or absence of fairplay or discrimination,

particularly where the authority making such non-statutory rule or the like comes within the definition of "State" under Article 12.

16. In the present case, the petitioner has not been able to show that any legal right of his has been infringed. Also he has not been able to show

that there is violation of any constitutional or statutory provision or any statutory rule or regulation. Hence, in our opinion, no mandamus can be

issued in this case.

17. No doubt, sometimes an administrative decision can be enforced when it confers a right or imposes a duty vide Union of India (UOI) Vs. K.P.

Joseph and Others, . However, the resolutions and decisions which are sought to be enforced in this case do not confer any right on anybody.

Hence, in our opinion, they cannot be enforced by a mandamus.

18. No doubt Article 226 on its plain language states that a writ can be used by the High Court for enforcing a fundamental right or for "any other

purpose". However, by judicial interpretation the words "any other purpose"

have been interpreted to mean the enforcement of any legal right or performance of any legal duty, vide *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, .

19. In *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, the Supreme Court observed :

There is abundant authority in favour of the proposition 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 a

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. It follows, therefore, that in order that 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

Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others,), *Rai Shivendra Bahadur Vs. The Governing Body of the*

Nalanda College,), and *Dr. Umakant Saran Vs. State of Bihar and Others*, . In the instant case, it has not been shown by respondent No. 1 that

there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be

enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of

the opinion that respondent No. 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High

Court was not competent to issue the same"".

The above view was followed by this Court in *Tamil Nadu Industrial Investment Corporation Ltd. Vs. Millenium Business Solutions Pvt. Limited*

and Another, . The same view has been taken by the Supreme Court in *Union of India (UOI) and Others Vs. C. Krishna Reddy*, .

20. In *National Textile Corpn. Ltd. and Others Vs. Haribox Swalram and Others*, the Supreme Court observed (vide para 17):-

It is well settled that in order that a mandamus be issued 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.

In this case the petitioner has not shown us any statute which requires the respondents to build a sports stadium. Hence, a mandamus cannot be issued.

21. In *G. Basi Reddy Vs. International Crops Research Instt. and Another*, the Supreme Court observed :-

Although it is not easy to define what a public function or public duty is, it can reasonably be said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

22. The question, therefore, which arises is as to what are the functions which are to be performed by the State in its sovereign capacity?

23. Upto the early 20th century, the functions of the State were regarded to be only :-

1. defence of the country.
2. maintaining law and order inside the country.

In other words, the State was regarded only as "Night Watchman Institution". However, subsequently, the concept of the Welfare State arose,

according to which the State has not only to look after defence and law and order, but it has also to look after the welfare of the people.

24. In other words, now the function of the State includes the duty to look after the health, education, old age and sickness benefits etc. of the people. However, in our opinion, these duties cannot be stretched to include providing sports to the public.

25. Part IV of the Constitution provide for the Directive Principles of State Policy, and Part IV A contains the fundamental duties. These

provisions relate to the duties of the State to secure a just socio-economic order and promotion of the welfare of the State. However these

provisions nowhere mention that providing sports to the public is also a function of the State.

26. In our opinion the duties of a Welfare State cannot be stretched beyond certain limits. It is not a part of the public duty of the State to organise

sports for the public. There are financial and other constraints on the State, and it is not proper for this Court to direct that a stadium be

constructed, or a dramatic hall be erected, etc. These are also executive functions, and it is ordinarily not proper for this Court to encroach into the

executive or legislative domain vide Rama Muthuramalingam, State Propaganda Committee Member Vs. The Deputy Superintendent of Police and Others, .

27. As already observed above there are well settled limits to writ jurisdiction, and Judges exercising such jurisdiction should not cross those limits and should maintain judicial restraint.

28. For the reason given above we hold that these writ petitions are not maintainable and they are dismissed. W.P.M.P. No. .12772 of 2005 is dismissed.