
(2015) 12 MAD CK 0100
In the Madras High Court
Case No : W.P.(MD) No. 21423 of 2015

S. Sankar Ganesh

APPELLANT

Vs

The Superintendent of Police, Dindigul District and Others

RESPONDENT

Date of Decision : 04-12-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 162, 19(1)(a), 19(1)(b), 21

Citation : (2015) 12 MAD CK 0100

Hon'ble Judges : S. Vaidyanathan, J.

Bench : Single Bench

Advocate : N. Anantha Padmanabhan for R. Senthilkumar, for the Appellant; D. Muruganandam, Addl. Govt. Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

S. Vaidyanathan, J.—This writ petition has been filed, seeking a direction the respondents to look into the grievance of the petitioner expressed in the representation dated 26.11.2015 and thereby accord permission to conduct the agitation by using sound speakers and to provide police protection on 06.12.2015 around 5.30 p.m.

2. The case of the petitioner is that he is the District Secretary of Hindu Munnani, which is a non political party, fighting for the betterment of the Hindu people of the lower level. Since his Munnani has decided to insist upon the construction of Sri Ramapiran Temple at Ayothi by way of agitation at Manikoundu, Dindigul around 5.30 p.m. on 06.12.2015, the petitioner made a representation to the respondents on 21.11.2015 in that regard. It is submitted by the petitioner that the respondents have not so far responded to the said representation thereby keeping it pending without any decision. The petitioner has stated that his Munnani had, on earlier occasion, conducted several agitations and protests in a peaceful manner without disturbing the public tranquility. It is also assured that they are ready to use the sound speakers within the decimal as prescribed by the City Police. The grievance of the petitioner is that even after receipt of the

representation by the respondent Police, which was sent through registered post with acknowledgment card, they have not passed any order thereupon. Therefore, the petitioner is before this Court, seeking the above relief.

3. The third respondent has filed a detailed counter, wherein it has been inter alia stated as under:

"i) The respondent has stated that the petitioner has filed this petition with an intention to create law and problem in the locality. The representation, filed by the petitioner seeking permission to conduct an agitation on the significant day, namely, 06.12.2015 (Demolition of Babar Mosque at Ayothya) by using loud speakers, has already been forwarded to the Deputy Superintendent of Police for consideration, as the Station House Officer has no power to issue any such order, granting permission to use amplifier and loud speakers in public places.

ii) It is stated in the counter that in the past, whenever Hindu Munnai conducted any agitation, there were severe law and order problems and their functionaries used to attempt in creating disharmony among people. Moreover, the date mentioned in the representation is a crucial day and the Government is taking all possible steps in a most effective manner to prevent the happenings of any untoward incident on that day.

iii) It is further stated that on the relevant date, i.e. 06.12.2015, already two organizations, namely, Popular Friends of India and Indian National League, were already granted permission to conduct demonstration one at Begamboor and Rally at Palani Road, Dindigul, one in the morning at 10.00am and another at 2.00pm in the afternoon, respectively. Therefore, in case the petitioner is allowed to conduct any agitation on the particular date, that will lead to severe law and order problem in the locality, as the petitioner has requested for permission for agitation at 5.30pm on 06.12.2015. and they have. It is also stated in the counter that the State Government has decided to construct a Memorial building for the freedom fighter "Thippu Sulthan Haitharali" in Dindigul, which is highly objected to by the Hindu Organizations by way of agitations, pasting of posters etc. The place, viz., Manikoondur, chosen by the petitioner for conducting agitation is closer to the project of "Thippu Sulthan Haitharali Manimandapam" and when the allied party of the petitioner's organization conducted a demonstration on 25.10.2015, they raised some unwanted provoking slogans.

iv) Therefore, it is finally submitted that if the petitioner is allowed to conduct the agitation at the selected venue, it will collapse the entire peaceful atmosphere as well as the relationship that exists between Muslims and Hindus, not only in that locality, but also in the State and the public in general will be highly affect. Thus, it is prayed that this petition is liable to dismissed in limine."

4. The counsel for the petitioner has submitted that the petitioner's Hindu Munnani wants to conduct agitation in a democratic way, which is solely for the cause of the downtrodden people of Hindu community. He has further submitted that under Article 19(1)(a) of the Constitution of India, every citizen has got

freedom of speech and expression and under Article 19(1)(b) , a citizen has a right to assemble peaceably. Therefore, by the act of the respondents in not granting permission for conduct of the agitation, the rights of the petitioner are highly infringed. He has also submitted that the 1st respondent is the incharge of three Police Stations, namely, Town, North and South Police Stations and the petitioner is ready to conduct agitation in some other place, identified by the Police, so that Police will be able to monitor the entire situation.

5. On the contrary, the Additional Government Pleader has contended that both the rights of freedom of speech and expression and the right to assemble peaceably are subject to reasonable restrictions from the point of view of public order, security of State etc., and they are not absolute rights, which are synonymous expression with the public peace, safety and tranquility. In the event of granting permission to the petitioner for conducting agitation on 06.12.2015, it will create disorderliness in that area as well as in the State. However, the respondents are inclined to heed the request of the petitioner, provided that the petitioner alters the date of agitation to some other day.

6. Heard the counsel on either side and perused the materials available on record.

7. On a close probe into the totality of the circumstances, it is obvious that inciting the need to construct a Temple for Sri Ramapiran at Ayothi, Hindu Munnani of Dindigul District represented to the respondents for permission to conduct an agitation at 5.30p.m. on 06.12.2015 by using loud speakers. Since no order has been passed thereon, the petitioner is before this Court by way of this writ petition.

8. Before going into the merits of the case, it is germane to analyze as to why the particular day (6th of every December) is given so much importance. The destruction of the 16th-century mosque/temple on 6th, December, 1992 in the holy town of Ayodhya in the northern Indian state of Uttar Pradesh was a seminal event in the relationship between Muslims and Hindus in India, who say the site where the mosque stood is the birthplace of Lord Ram. Thereafter, cases were filed on both sides and a Commission was appointed by the Government. Finally, in the year 2010, the tension prevailed over the area has been reduced by the judgment of the Hon'ble Allahabad High Court, which ruled out that the site should be split, with the Muslim community getting control of a third, Hindus another third and the Nirmohi Akhara sect, the remainder. Against the said judgment, the Muslim Community filed an appeal before the Hon'ble Supreme Court, which, by way of interim measure, suspended the ruling of the High Court.

9. The main object of the petitioner's Munnani for agitation is to thrust upon the Government to concentrate on the issue of construction of Temple for Sri Ramapiran. A glimpse of the life of Sri Ramapiran would unearth the truth that Rama's life and journey is one of adherence to dharma despite harsh tests and obstacles and many pains of life and time. For the sake of his father's honour, Rama abandons his claim to Ayodhya's throne to serve an exile of fourteen

years in the forest with consent to his brother Baradhan to adorn the throne. His brother Baradhan also refused to accept kingship due to his bondage with Rama. Rama's wife Sita and brother Lakshmana decide to join him, and all three spent the fourteen years in exile together. While in exile, Sita is kidnapped by Ravana, the Rakshasa monarch of Lanka. After a long and arduous search, Rama fights a colossal war against Ravana's armies. In a war of powerful and magical beings, greatly destructive weaponry and battles, Rama slays Ravana in battle and liberates his wife. Having completed his exile, Rama returns to be crowned king in Ayodhya and eventually becomes emperor, rules with happiness, peace, duty, prosperity and justice, which period is known as Rama Rajya. Thus, it is vividly clear that even Sri Ramapiran had never aspired to adorn kingship or got attracted towards worldly desires, but in the modern work, people have made him a highly debatable figure in the country.

10. This Court, in the case of Rama Muthuramalingam, State Propaganda Committee Member Vs. The Deputy Superintendent of Police and Others, , has observed as under:

"29. It is thus evident that the right to freedom of speech and expression and to assemble peaceably without arms is subject to reasonable restrictions from the point of view of Public Order. The question arises, who is to determine the matter relating to Public Order? The answer is given in Entry 1 to List II (State List) of the 7th Schedule to the Constitution, which states that public order is a matter within the jurisdiction of the State. Article 162 of the Constitution states: Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the legislature of the State has power to make laws: Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof. It is thus evident that public order is a matter within the domain of the State Legislature and the State Executive. That being so, it is not proper for the Judiciary to interfere in matters relating to public order, unless there is violation of some constitutional or statutory provision. There are various considerations for the administration in this matter and the Court should not ordinarily interfere with administrative decisions in this connection.

33. It must never be forgotten that the administrative authorities have wide experience in administrative matters. No Court should therefore strike down an administrative decision solely because it is perceived by it to be unwise. A Judge cannot act on the belief that he knows better than the executive on administrative matters, because he can never be justifiably certain that he is right. Judicial humility should therefore prevail over judicial activism in this respect.

34. Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the State. It accomplishes this

in two ways. First, judicial restraint not only recognizes the equality of the other two branches with the judiciary, it also fosters that equality by minimizing inter-branch interference by the judiciary. In this analysis, judicial restraint may also be called judicial respect, that is, respect by the judiciary for the other coequal branches. In contrast, judicial activism's unpredictable results make the judiciary a moving target and thus decreases the ability to maintain equality with the co-branches. Restraint stabilizes the judiciary so that it may better function in a system of inter-branch equality.

40. The moral of this story is that if the judiciary does not exercise restraint and over-stretches its limits there is bound to be a reaction from politicians and others. The politicians will then step in and curtail the powers, or even the independence, of the judiciary (in fact the mere threat may do, as the above example demonstrates). The judiciary should therefore confine itself to its proper sphere, realizing that in a democracy many matters and controversies are best resolved in a non-judicial setting.

41. We hasten to add that it is not our opinion that judges should never be activist. Sometimes judicial activism is a useful adjunct to democracy such as in the School Segregation and Human Rights decisions of the U.S. Supreme Court, vide *Brown v. Board of Education*, 347 U.S. 483 (1954), *Miranda v. Arizona*, 384 U.S. 436, *Roe v. Wade*, 410 U.S. 113, etc. or the decisions of our own Supreme Court which expanded the scope of Articles 14 and 21 of the Constitution. This, however, should be resorted to in exceptional circumstances when the situation forcefully demands it in the interest of the nation, but always keeping in mind that ordinarily the task of legislation or administrative decisions is for the legislature and the executive and not the judiciary."

11. The Hon"ble Supreme Court in the case of *Tata Cellular Vs. Union of India*, , has held that the Court should not ordinarily interfere in administrative matters, since the administrative authorities are specialists in matters relating to the administration. The Court does not have the expertise in such matters, and ordinarily should leave such matters to the discretion of the administrative authorities. It is only in rare and exception cases, where the *Wednesbury* principle applies, that the Court should interfere.

12. In this case, it is seen that the respondents have granted permission to two other organizations, namely, Popular Friends of India and Indian National League for conducting demonstration and rally and it is not known on what ground such permission was granted to them. Once the State has decided not to give permission to the petitioner, the same rule is applicable to others also, standing on the same footing. Of course, this Court is aware of the fact that under our Constitution, the Legislature, the Executive and the Judiciary have their own broad spheres of operation and ordinarily, it is not proper for one of these three organs of the State to encroach upon the domain of another. If the Court finds that the quasi judicial powers have not been equally and unbiasedly exercised, then the question of interference arises and the principle of *Wednesbury*

(unreasonableness) applies.

13. Lord Greene M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, 1949 (2) ALL ER 680, has observed thus:

"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters, which he is bound to consider. He must exclude from his consideration matters, which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

14. The petitioner also sought a direction to the respondents for giving permission to use amplifiers in the course of their agitations. The petitioner should realize that loud voice of Aarthi in Temple, Namaaz in Masjid, prayer in Church is heard by people not by God and God hears the silent voice, which comes from core of heart. Therefore, there is no justification for the petitioner in asking for usage of loud speakers, as it will be inhumane and unmerciful insofar as students, who are preparing for their examinations and old aged people are concerned and it appears that the petitioner is interested only in publicity.

15. The agitation scheduled to be conducted on 06.12.2015 will not fetch any fruitful result, which will only be aimed at satisfying their own egos, as the demand for construction of Sri Ramapiran Temple by way of protest cannot change anything, except stealing the joy of participants by keeping them busy in doing nothing. To achieve great goal, sacrifice is the good tool to be used so as to preserve brotherhood, especially between Muslims and Hindus. There are several ways and demands in remembrance of a particular day, such as showing protest via electronic media through moderate speech and demand the Government to work even on holidays. In a function, Dr. A.P.J. Abdul Kalam, our Former President, while lighting up a Kuthuvilakku, has emphasized the action as "A Muslim lights up a traditional lamp of Hindus, with a candle known to be holiest for Christians", which is the symbol of our nation's integration.

16. Considering the overall circumstances of the case, this Court is inclined to pass the following orders:

"i) The respondents are directed to consider the representation of the petitioner dated 26.11.2015 on or before 5.30pm of 05.12.2015 keeping in mind all the above factors indicated. In the event of the respondents declining the request of the petitioner, they must record reasons and grounds for such rejection and in the said order, they should also justify their stand for the grant of permission to

two other organizations. In case the petitioner is ready to conduct the agitation in some other date, time and place, it is open to the respondents to consider the same within their limit.

ii) Since the respondents have already granted permission to two other organizations, this Court do not want to express any opinion on that, as they are not parties to this writ petition. However, the respondents are directed to videograph the entire demonstration and rally being conducted by those two organizations so as to keep watch over the control of the area;

iii) It is further directed that the State Government should not accord permission to any organization in future irrespective of religions for conduct of such demonstration, rally, protest etc., particularly on the 6th of December, concerning Babari Masjid from the year 2016 so that wastage of public money, time and deployment of forces could very well be avoided and panic among public be restored to bring harmony.

iv) Both the Chief Secretary and the Home Secretary to Government of Tamil Nadu, Chennai and the Director General of Police, Chennai shall send a circular to all their subordinates, intimating not to grant any permission on the 6th of every December, 2016, onwards within a period of one month from the date of receipt of a copy of this order."

With the above observation and direction, this Writ Petition is disposed of. No costs.