

(2005) 07 KL CK 0019
In the High Court Of Kerala
Case No : WP (C) No. 16614 of 2005

Suresh Chandran

APPELLANT

Vs

The Dist. Collector and Others

RESPONDENT

Date of Decision : 08-07-2005

Acts Referred:

Constitution of India, 1950 — Article 25, 26
Penal Code, 1860 (IPC) — Section 153A, 295A
Religious Institutions (Prevention of Misuse) Act, 1988 — Section 3(g)

Citation : (2005) 3 ILR (Ker) 539 : (2005) 2 KLJ 530 : (2005) 3 KLT 538

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : R.T. Pradeep and V. Vijulal, for the Appellant; N. Nagaresh and Viju Abraham (GP), for the Respondent

Judgement

K. Balakrishnan Nair

1. The petitioner, who is the Pastor of a Christian Religious denomination called Assemblies of God, has approached this Court, alleging that his fundamental rights guaranteed under Articles 25 and 26 of the Constitution of India, have been infringed by the official respondents, by prohibiting the holding of prayers of that religious denomination at Panthavila Church. The brief facts of the case are the following: The above said congregation purchased 8 cents of land as per Ext.P2 deed. A prayer hall was constructed there, roofed with sheets, in the year 2004. The prayer is held on three days in a week, in the hall with the following time schedule: On Fridays from 10 a.m. to 12 a.m., on Saturdays from 6.30 p.m. to 8 p.m. and on Sundays from 8 a.m. to 11.30 a.m. It is submitted that no loud speakers or other instruments for amplifying sound are used. There are no residential buildings in the neighbourhood of the hall, it is pointed out. It is also submitted of the hall, it is pointed out. It is also submitted that respondents 4 to 8 are activists of R.S.S., who are not residing anywhere near the prayer hall. They filed representations before the authorities, alleging that the prayer is causing sound pollution and nuisance. They also alleged that the petitioner is

also trying to convert persons to Christianity.

2. Apparently, on the basis of the above said representations, the 3rd respondent Dy. S.P. directed the petitioner to move the District Collector for permission, for running the prayer hall under the G.O. dated 16-01-2002. The said order is produced as Ext.P3 in the Writ Petition. So the petitioner submitted an application on 01-01-2005 and sought permission to run the prayer hall. The same was rejected by Ext.P4 order dated 05-03-2005. The District Collector, further issued Ext.P5 order dated 04-05-2005, based on the petition filed by the party respondents and the reports obtained on that representation from the R.D.O. and the Deputy Superintendent of Police, staying the functioning of the prayer hall. The petitioner challenges Exts.P3, P4 and P5 on several grounds. It is submitted that the impugned orders Exts.P4 and P5 have been passed without hearing him. According to him, clause 23 of Ext.P3, which requires permission for establishing places of religious worship, is ultra vires of Articles 25 and 26 of the Constitution of India. It is also his case that Ext.P3 guidelines have been issued without the authority of law. The allegations of causing nuisance and trying for religious conversion etc., are denied by him. So, according to the petitioner, on the facts also, the impugned orders are unsustainable.

3. This Court directed the 1st respondent District Collector to file an affidavit dealing with the source of power enabling him to insist for permission for establishing the prayer hall or for prohibiting prayers there. Pursuant to the said direction, a counter affidavit has been filed on behalf of the 1st respondent, stating that action has been taken based on Ext.P3 G.O. It is pointed out that the prayer to quash Ext.P3 is not maintainable, in the absence of impleading the Government as a party to the Writ Petition, as the author of that order is the Government. It is also submitted that reports were received from the R.D.O. and the Deputy Superintendent of Police that if the unauthorised prayer hall is allowed to function, there is possibility of outbreak of communal violence.

4. Respondents 4 to 8 have filed a counter affidavit, in which it is alleged that persons are residing very close to the prayer hall. Occasionally loud speakers are used for holding the prayers. Always noisy drums are used. Sometimes, the prayers extend beyond midnight. The noise emanating from the Church is a nuisance to the persons residing in the neighbourhood and also to the students. They deny the allegation that they belong to R.S.S. It is also alleged that the petitioner, during his speech, has made the following statements:

Hindu Gods are demons.

Hindus are children of demon.

Idol worship is prostitution.

"Om Namasivaya" means let everything get destroyed.

Don't light lamp.

The petitioner is making communally provocative speeches and he is sowing the seeds of communal disharmony in an otherwise peaceful area, it is alleged. The petitioner has not filed any reply affidavit.

5. I heard the learned counsel on both sides. They reiterated their respective stands. The learned counsel for the party respondents relied on the decision of this Court in P.A. Jacob Vs. The Superintendent of Police, Kottayam and Another, , to contend that the right of the petitioner to conduct prayers will not enable him to cause nuisance to others in the neighbourhood. Since, the petitioner has not impleaded the Government in this Writ Petition, I do not propose to go into the validity of Ext.P3. As rightly pointed out by respondents 4 to 8, Ext.P3 does not prohibit establishment of places of religious worship, but only regulates it.

6. Subject to public order, morality and health and subject to other fundamental rights, all persons are entitled to freedom of conscience and the right to freely profess, practise and propagate religion. Every religious denomination has a right to establish places of worship, subject to public order, morality and health. Going by Articles 25 and 26 of the Constitution of India, the petitioner has got a fundamental right to establish, manage and run places of religious worship, subject to the limitations contained in those two Articles. Article 25 of the Constitution of India reads as follows:

Freedom to manage religious affairs: Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -

- a) to establish and maintain institutions for religious and charitable purposes;
- b) to manage its own affairs in matters of religion;
- c) to own and acquire movable and immovable property, and
- d) to administer such property in accordance with law.

Clause 23 of Ext.P3 reads as follows:

Any construction of religious place should be made only with prior approval of the District Authorities and at the earmarked place. Cases of construction of unauthorised religious places should be dealt with severely under existing laws. Negligence on the part of the District Administration in implementing this direction should be seriously viewed and the guilty dealt with.

The above clause can only regulate the fundamental rights of the petitioner. In other words, normally, an application for permission to establish a prayer hall should be allowed. The objection of persons belonging to other religious should not normally be a ground to decline permission. In this context, it is apposite to quote the following oft quoted words of John Stuart Mill:

If all mankind minus one were of one opinion and if one person was of contrary opinion, mankind would be no more justified in; silencing that one person, that

he, if he had the power, would be justified in silencing mankind.

7. Freedom of speech and expression protects the freedom to propagate ideas, we detest. Popular faiths need not require any constitutional protection. Heretics and heresies need it. Justice Oliver Wendell Holmes, in; his separate opinion in *United States v. Schwimmer* (279 US 644), said,

If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought-not free thought for those who agree with us, but freedom for the thought that we hate.

The success of a democracy depends on the degree of protection enjoyed by minorities, especially of unpopular minorities. It is always in the interest of the majority to have a happy and contended minority. If unpopular minorities are driven to the wall and are compelled to fight back, the greatest sufferers will be the majority. The religious rivalry and intolerance will knell the death bell of democracy. Tagore, in his *Gitanjali* sang:

Where the mind is without fear and the head is held high;

Where knowledge is free;

Where the world has not been broken up into fragments by narrow domestic walls;

Where words come out from the depth of truth;

Where tireless striving stretches its arms towards perfection;

Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit;

Where the mind is led forward by thee into ever-widening thought and action -

Into that heaven of freedom, my Father, let my country awake.

Tagore's dream of India will come true, if only we nurture the spirit of liberty. The concept of liberty has been explained by Judge Learned Hand, in a famous speech delivered in 1944. The relevant portion of his speech reads as follows:

What do we mean when we say that first of all we seek liberty? I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men. When it dies there, no constitution, no law, no court can save it. No constitution, no law, no court can even do much to help it. While it lies there, it needs no constitution, no law, no court to save it. And what is this liberty which must lie in the hearts of men and women? It is not the ruthless, the unbridled will. It is not freedom to do as one likes. That is the denial of liberty and leads straight to its overthrow. A society in which men recognize no check upon their freedom, soon becomes a society where freedom is the possession of only a savage few; as we have learned to our sorrow. What then is the spirit of

liberty? I cannot define it; I can only tell you my own faith. The spirit of liberty is the spirit which is not too sure that it is right. The spirit of liberty is the spirit which seeks to understand the minds of spirit which weighs their interests alongside its own without bias. The spirit of liberty remembers that not even a sparrow falls to earth unheeded.

So, if we are too sure that we are right, there the end of liberty begins. Extremists, whether they are in the field of religion or policies, are Judges of their own cause. Religious bigots consider that their religion is the only good religion in the world. They look down with contempt upon other religious. The same is the way, the bigots, who have born into other religious also think. Normally, no one embraces a particular religion, after studying about all religions and selecting one as the best. Our religion is normally the religion of our parents. So, we get a religion not by choice, but, by accident. Therefore, it is irrational and foolish to think that ours is the best religion and all other religions are bad. So, all should practise tolerance and abstain from making provocative speeches. If any body crosses the limits, he should be disciplined by the arm of law.

8. Even if the petitioner has got a fundamental right to establish and run a prayer hall, prayers shall not be conducted, causing nuisance to the persons in the neighbourhood. No loud speakers or drums shall be permitted to be used. If the allegations against the speeches made by the petitioner raised by the party respondents are correct, then he is liable to be dealt with stringently. By uttering the words quoted above, he will be committing the offences under Sections 153A and 295A of the Indian Penal Code. Further, it will be an offence u/s 3(g) of the Religious Institutions Prevention of Mis-use Act. All these offences are cognizable offences, enabling the Police to register and investigate cases, upon the relevant information being lodged with them. The prayer to run the prayer hall, can only be allowed, subject to conditions, to ensure that the sound of the prayer emanating from the hall shall not reach the nearest residential buildings. Further, if any offence like those mentioned above, is committed, the offenders shall be dealt with stringently in accordance with law. It is common case that Exts.P4 and P5 were passed without hearing the petitioner. Therefore, they are void ab initio. So, those orders are quashed. The 1st respondent shall reconsider the application of the petitioner for permission to run the prayer hall in accordance with law, after affording an opportunity of being heard to him and also those who object to the functioning of the prayer hall or their representatives including respondents 4 to 8. If permission is granted, the same shall be done, subject to appropriate conditions, to safe-guard the rights of those in the neighbourhood.

The Writ Petition is disposed of as above.