

(2015) 03 MAD CK 0050

In the Madras High Court

Case No : Writ Petition (MD) Nos. 885, 3990 of 2015 and M.P. (MD) No. 1 of 2015

T. Nellaikumar

APPELLANT

Vs

The State of Tamilnadu and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Constitution of India, 1950 — Article 142, 19(5), 21, 25, 300

Citation : (2015) 5 LW 420

Hon'ble Judges : S. Tamilvanan and V.S. Ravi, JJ.

Bench : Division Bench

Advocate : A. Sivaji, for the Appellant; K. Chellapandian, Addl. Advocate General assisted by Selvaraj, Spl. Govt. Pleader, for the Respondent

Judgement

S. Tamilvanan, J.—Writ petition in W.P.(MD) No. 3990 of 2015 has been filed, in the nature of public interest litigation, seeking an order of mandamus or any other order, directing the respondents to consider and pass appropriate orders on the petitioner's representation, dated 16.03.2015, for providing basic amenities and facilities to the pilgrims, worshippers and devotees of Sri Sundara Mahalingam Temple at Sathuragiri Hills from Watrap to Thaniparai and from there to Sathuragiri Hills. The relief sought for is to provide bathroom, toilet, accommodation and other basic amenities, such as electricity and medical facility within a time frame that may be fixed by this Court, by constituting suitable high level committee by the respondents, comprising of Philanthropist, Charitable Religious Institutions, Voluntary, Donors, Industrialists, Devotees, etc, apart from senior officers of the Government as ex-officio members. The petitioner has specifically stated that as a worshipper and devotee of Lord Sundara Mahalingam Temple at Sathuragiri Hills, he used to have Dharshan of the temple along with other worshippers, on Aadi Amavasai, monthly full moon days and other auspicious days. However, no basic amenity has been provided for the pilgrims and worshippers by the respondents. Mr. A. Sivaji, learned counsel appearing for the petitioner submits that Sri Sundaramahalingam Temple at Sathuragiri Hills is

one of the most important temples of Lord Siva and which is similar to that of Sri Venkatesaperumal Temple of Tirupathi in Andhra Pradesh and Lord Iyyappa Temple at Sabarimala, Kerala State. During Amavasai, Pournami (full moon day), Mahasivarathiri, Prathosam and other auspicious Days, worshippers lakhs together, both men and women with children proceed to Sundara Mahalaingam Temple at Sathuragiri Hills, which is situated 7 km. from the adivaram (plains). It is a very tough rocky hillock and mountain area and further, in certain places, at a time only one person can proceed, on account of the available narrow passage. Aged people, women and children are suffering a lot without the basic amenities. As they could not return on the same day, the pilgrims have to stay at the top of the Hill, nearby the Temple premises, without proper shelter, water, toilet facilities and electricity service, which is against human rights.

2. The learned counsel for the petitioner in W.P. No. 3990 of 2015 further submits that the eighteen famous saints (sidhas) and other saints had worshipped and performed meditation at the ancient temple premises and people have belief that even today, the great saints and eighteen sidhas are performing meditation and bless the devotees, who worship there, especially at Sri Sundaramahalingam Temple and Santhana Mahalingam in invisible form, Irattai Lingam (Twin Lingams), Goddess Anandavalli and other Deities, apart from the idols of Pilavadi Karuppasamy, Petchiamman and Karuppusamy have also been installed long back. Learned Additional Advocate-General has not disputed the fact that people have belief and faith that great saints do meditation in the temple premises and the nearby caves in their invisible form and in this regard, learned counsel for the petitioner produced various books written by different reputed authors, who expressed their personal experiences. The land available for Sundaramahalingam Temple is approximately 63 acres and another 10 acres of land (approximately) is available for Santhanamahalingam temple in the hill area, which is not in dispute.

3. Mr. K. Chellapandian, learned Additional Advocate-General appearing for the Government and the official respondents admitted the fact that Sri Sundaramahalingam Temple is one of the important ancient siva temples of the country, being worshipped by people, since time immemorial. It is not disputed that people have faith, believe that even today great saints are worshipping Sri Lord Siva at Sathuragiri Hills in their invisible form. According to the learned Additional Advocate-General, the Government, in order to provide basic amenities has allotted Rs. 4 crores and also ready to do the needful for the formation of roads, considering the need of the people. In the counter filed on behalf of the respondents, it has been admitted that during Amavasai festival in the month of July every year, about two lakhs pilgrims used to have their holy visit to Sri Sundaramahalingam temple of Sathuragiri. It is not in dispute that the administration of the temple has been taken-over by the Tamil Nadu Hindu Religious and Charitable Endowment Department (HR & CE) and Grizzled Squirrel Wildlife Sanctuary is also located in the other part of Sathuragiri Hills and as per G.O. Ms. No. 32, Environment & Forest (FR-5 Department, dated 27.01.2015,

after considering the proposal submitted by the Forest Department during December, 2014, towards mitigating the impact of unregulated pilgrims in Grizzled Squirrel Wildlife Sanctuary, various measures were taken up by the Government from the funds allotted by the Government. Therefore, we are of the considered view that the relief sought for in the writ petition is not adversarial in nature. Mr. K. Chellapandian, learned Additional Advocate-General appearing for the respondents has not disputed the fact that devotees and pilgrims, including aged people, women and children, while proceeding to have Darshan suffering a lot without basic proper amenities and facilities. However, learned Additional Advocate-General submitted that the Government is taking steps and also ready to do the needful for the convenience of pilgrims, by forming proper roads, facilities such as drinking water, toilets and other convenience, step by step, within a short span of time.

4. It is an admitted fact that being a secular country that Government money should not be spent for the worshipping places of a particular religion, however, human rights warrants that basic amenities should be provided for the people, who are pilgrims to the Temple, for which the Government shall spent money subject to the availability of funds from HR & CE Department or by way of voluntary contributions from the public. However, roads could be formed by the Government through Public Works Department or Highways Department, after consulting the Forest Department, as the roads would be used by all common people. It is also a paramount duty to protect wildlife and the Forest, in view of the mandate of Article 48-A of the Constitution of India, whereby, it has been made clear that the State shall endeavour to protect and improve the environment and safeguard forest and wildlife of the country. In order to safeguard and protect the rare species of Grizzled Squirrel, wild life Sanctuary in the Hill area, the State Government has passed the aforesaid G.O.Ms. No. 32, dated 27.01.2015, which shall also be taken into consideration, while providing the basic amenities and facilities to the pilgrims of the Temple.

5. It is well settled that as contemplated under Article 25 of the Constitution of India, subject to public order, morality and health, all persons in the country are equally entitled to freedom of conscience and also to enjoy the right to freely profess, practice and propagate any religion. Right to freedom of religion is recognized as a fundamental right, as per our Constitution, hence, it is the duty of the Government to provide all basic amenities to the pilgrims, who visit Sri Sundaramahalingam Temple at Sathuragiri Hills, irrespective of the pilgrims, financial or official status, considering the noble ideals of safeguarding the Fundamental rights guaranteed under the Constitution and for maintaining human rights.

6. After the filing of the writ petition in W.P.(MD) No. 885 of 2015, in order to find out the ground reality to safeguard and protect the rare species of Grizzled Squirrel and to improve the Wildlife Sanctuary, one of us (Dr. Justice S. Tamilvanan) had opportunity to have a surprise, personal visit of the Grizzled

Squirrel Sanctuary available at the top of the Hills in person on a holiday, along with Forest and Police Officials, in their civil dress, just prior to the date of filing of the writ petition W.P.(MD) No. 3990 of 2015 being filed seeking an order for basic amenities of the pilgrims. During the said visit, it could be seen that number of men and women with children and also aged people proceeding to the Sundaramahalingam temple by walk, many of them were climbing the hills, even without any footwear. In fact, it was very difficult, especially for the aged people, women and children to climb the rocky hills and proceeding through the available steep narrow pathways. There were no proper public convenience or other basic amenities on the way, till they reach the top of the hills, nearby by the temple, where few water taps could be seen. Normally people used to start at the surface land around at 6.00 a.m. in the early morning, so as to reach the temple at the top of the hill between 11.00 a.m. and 12.30 p.m. The arguments advanced by the learned counsel for the petitioner would also reveal the said factum and the pathetic conditions of the pilgrims proceeding to Sri Sundaramahalingam Temple.

7. It is an undisputed fact that the pilgrims and devotees, who reach the top of the hills have to stay there during the night hours at the temple premises, without any basic amenities, as it is not possible for them to return on the same day. There is no electricity service available in the famous temple premises, which could not be disputed by the learned Additional Advocate-General. It is also relevant to note that the pilgrims visiting the temple would say that recently there is some improvements such as providing food and drinking water have been made by the Government, though other basic amenities are not properly available there. It was horrible to see that even ladies with children and aged people, sleeping without any protection or safety in the Temple premises at the top of the Hills and some of the old people had been taken to the temple by dolly, which is not similar to that of the dolly being used towards proceeding to Sabarimala Temple in Kerala or at Ellora Hills in Maharashtra State, as the passage to reach the Sundaramahalingam temple is very narrow. Hence, the aged and ailing persons, who desire to worship the Temple, but could not proceed are taken by small dolly carried by only two persons. Simply rolling such person in a blanket, leaving the face alone open, for breathing, tying the legs and other part of the body in a bamboo stick or wooden log and only two person used to carry such devotee in the dolly to the top of the hills to worship the deity on account of the narrow passage and there is no safety for them. It was also brought to the notice of the Court, number of persons used die every during their pilgrimage. The same shall be prevented by taking appropriate steps immediately by the State.

8. We are of the view to take Judicial notice that subsequently another Judge of this Court, Hon"ble Mr. Justice P.N. Prakash also had a personal visit of the Temple for the purpose of having Darshan at Sri Sundaramahalingam Temple, Sathuragiri and the learned Judge also noticed the inconvenience and the sufferings of the old people, women and children, on account of lack of proper roads and basic amenities to the pilgrims.

9. Therefore, we are of the considered view that there is an immediate need for taking appropriate steps to redress the ordeals of the pilgrims by way of remedial measures so as to mitigate the difficulties and sufferings faced by the pilgrims. Similarly it is also necessary to protect the environment and the rare variety of grizzled squirrel living in the hillock. It is seen that pilgrims are not doing any harm to the wildlife, especially to the grizzled squirrel. In fact they used to provide bananas to monkeys and nuts to squirrels, that could be seen during the personal surprise visit stated in the earlier part of the Judgment. It could also be seen that some of them had thrown plastic bags and bottles, which has to be prevented at least by keeping separate dust bins at various places on the way to the Temple.

10. Having considered the facts and circumstances and also the fare submission made by Mr. K. Chellapandian, learned Additional Advocate-General, this Court finds it reasonable to issue certain guidelines in the form of an order, in this writ petition, considering the public interest involved in this matter, in the light of the decisions rendered by the Hon"ble Supreme Court.

11. All four sides of the Sundaramahalingam temple is surrounded by Hills, hence, it is called Sathuragiri. It is not in dispute that the pilgrims and worshippers, having Darshan at Sundara Mahalingam Temple, put to suffer untold sufferings due to lack of basic amenities and other facilities. Every year, some of them are also facing death.

12. In order to enlighten the legal aspect, learned counsel for the petitioner as well as the Respondents, have cited various decisions of the Hon"ble Apex Court. In Amarnath Shrine In Re v. Union of India, reported in (2013) 3 SCC 247, the Hon"ble Supreme Court has laid down proper guidelines to be followed and implemented by the Government, referring the various earlier decisions.

13. In Consumer Education and Research center and others Vs. Union of India and others, , a Three Judge Bench, while interpreting the scope of Articles 21 , 38 , 39(e) , 41 , 43 , 48-A , 300 , 32 and 142 of the Constitution of India, referring various decisions of the Apex Court, has held as follows:

"Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc., from handicaps, penury to ward off distress and to make their life livable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity; the State should provide facilities and opportunities to enable them to reach at least minimum standard of health, economic security and civilized living

while sharing according to their capacity, social and cultural heritage."

14. It has been made clear that social justice is a primary need and also a dynamic device to mitigate the sufferings of the people of various cadres in the Human society. Social justice is not a single or simple idea of any society, but is an essential part for a complex social change to relieve the poor, weak and the needy from their handicaps and make the life of all people meaningful with proper comfort. People having faith, proceed to any temple or other religious place of worship should be given minimum comforts, that is required in a civilized society.

15. In Vishaka and others Vs. State of Rajasthan and Others, , a Three Judge Bench of the Hon"ble Apex Court, in order to maintain gender equality including protection of women from sexual harassment and also for right to work with dignity, has given various guidelines, which were not adversarial in nature, as per the decision. The Hon"ble Apex Court in the decision ruled as follows:

"11. The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995, as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

"Objectives of the Judiciary:

10. The objectives and functions of the Judiciary include the following:

(a) to ensure that all persons are able to live securely under the rule of law;

(b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

(c) to administer the law impartially among persons and between persons and the State."

16. It was made clear that the guidelines given by the Hon"ble Apex Court would not prejudice any Fundamental rights, guaranteed under the Constitution or the rights available under the Protection of Human Rights Act, 1993 and accordingly, it was directed that the guidelines and norms given by the Apex Court would be strictly adhered in all work-places towards the enforcement of the right to gender equality for all the working women in the country and it was further ruled that the direction given is binding and enforceable in law, until suitable legislation is enacted to occupy the field.

17. The landmark Judgment categorically emphasized that in a Public Interest Litigation, there is no handicap for the Court in rendering justice, even in the absence of any specific or appropriate enacted law, being in force.,

18. In *Amarnath Shrine, In Re*, reported in (2013) 3 SCC 247, the Hon'ble Supreme Court has held as follows:

"The right of life under Article 21 is a right to live with dignity, safety and in a clean environment. The ambit of Article 21 of the Constitution has been expanded by judicial pronouncements consistently. The judgments have accepted such right and placed a clear obligation on the part of the State to ensure meaningful fulfillment of such right. Socio-economic justice for people is the very spirit of the Preamble of our Constitution. "Interest of the general public" in Article 19(5) is a comprehensive expression comprising several issues which affect public welfare, public convenience, public order, health, morality, safety, etc., all intended to achieve the socio-economic justice for people. The expression "life" enshrined in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning, which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which make life worth living. The expanded connotation of life would mean the traditional and cultural heritage of the persons concerned."

19. In the said decision, it was further held by the Apex Court that there is a clear mandate of law for the Supreme Court to protect the fundamental rights of the people. It is the duty of the executive to secure the vacuum in law, if any, by making executive orders because its field is coterminous with that of the legislature and where, there is inaction even by the executive in passing orders, on account of whatever reason, the judiciary must step in, in pursuance of its constitutional obligation to provide solution in any case till the time, the legislature addresses the issue, to meet the ends of justice.

20. It is well settled that the instant case filed by way of Public Interest Litigation would not be adversarial in nature and therefore, learned Additional Advocate General fairly contended that the Government is ready and willing to do the needful for the pilgrims and raised no objection in issuing any guidelines to safeguard the life of the people and to mitigate the sufferings and difficulties met out by them.

21. Having gone through the facts and circumstances, we are of the considered view that the writ petition is not at all in the nature of adversarial litigation. Learned Additional Advocate-General appearing for the respondents has not disputed the fact that there should be immediate redressal for the grievance of the pilgrims, especially women, children and the aged, seeking Darshan at Sri Sundaramahalingam Temple, Sathuragiri, considering their fundamental rights as well as human rights declaration to be protected.

22. It cannot be disputed that the legislative power of enacting law is primarily with the Parliament and the State Legislatures. When there is no specific law or rules to protect the rights of the people, it is open to the Hon'ble Supreme Court

and this Court to issue guidelines to protect human rights till proper enactment is being made by the Parliament or State legislature and Rules being framed thereunder. Even in *Vishaka v. State of Rajasthan*, a Three Judge Bench of the Hon''ble Apex Court has categorically held that the directions given by way of guidelines would be binding and enforceable in law, until suitable legislature is enacted to occupy the field.

23. In the light of the decisions rendered by the Hon''ble Supreme Court, we find it just and reasonable to direct the first respondent to constitute a High Level Committee, with a Chairperson, apart from 4 to 6 other members (approximately) to be decided by the Government.

(1) The Chairman and members shall be non-political, having Public interest and also faith in the system of worship of the particular religious sect, relating to Siva Temple, interested only in rendering service, without expecting any monetary or other benefits. However, for attending the Board meetings, relating to the development and administration of the Temple, especially towards providing proper basic amenities and facilities to pilgrims, reasonable amount may be fixed by the Government as allowance. The High level Committee shall be formed by the Government, within three months from the date of receipt of a copy of this order for doing all necessary developments, including formation of roads and other developments relating to infrastructure of the Temple and its premises.

(2) The High level Committee with the help of the Government, shall take immediate steps to form proper roads, from Watrap to Thaniparai and from Thaniparai to Sathuragiri Hills. Towards forming roads or extending any facilities to the public, if any additional land is needed, the same shall be made available, as per procedure known to law, that is being done by the Government, in similar matters.

(3) If any further construction is needed for the temple, the same shall be done as per the Agama Sasthra of Siva Temple, for which the HR & CE Department has to incur the expenditure, however, voluntary donations may also be accepted and for which, the High level Committee shall maintain proper accounts, and submit the same to Government. If need be necessary, Rules be framed by the Government in this regard. The amount collected from the public as voluntary contribution shall be spent only for the specific purpose of developing the Temple or for providing amenities to the people, for which income and expenditure account should be maintained properly, subject to audit by the authority concerned.

(4) In case of development or construction of the temple only the funds from the HR & CE Department and voluntary contributions shall be utilized, keeping in mind that there should be no deviation from the constitutional mandate of secularism. However, for forming roads and providing other facilities to the General public, the related Departments, may meet the expenses, as decided by the Government.

(5) It is also made clear that forest and wildlife should be protected, in the letter and spirit of the Constitutional Mandate.

24. The writ petition in W.P.(MD) No. 3990 of 2015 is disposed of with the directions given to the respondents to take appropriate steps on the guidelines given, in the light of various decisions of the Hon''ble Supreme Court, within a period of three months by constituting the High level Committee and commence the work for providing basic amenities and facilities such as formation of roads, as per the guidelines given in the order, similar to that of the work being done by Thirupathi Devasthanam, Andhra Pradesh State. The relief sought for in W.P.(MD) No. 885 of 2015 shall be considered by the Government in the light of the guidelines given in W.P.(MD) No. 3990 of 2015 and accordingly, W.P.(MD) No. 885/2015 is also disposed of. No order as to costs. Connected M.P.(MD) No. 1 of 2015 is closed.