
(2014) 07 MAD CK 0226
In the Madras High Court
Case No : W.P.(MD) No. 11638 of 2014

Thalith Kumar

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 18-07-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a), 19(1)(b), 19(2)
Police Act, 1861 — Section 30(2), 30(3)

Citation : (2014) 07 MAD CK 0226

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—In this writ petition the petitioner seeks for issuance of Writ of Certiorarified Mandamus to quash the proceedings of the third respondent dated 16.07.2014.

2. By the said proceedings the third respondent refused to grant permission to the petitioner and group of people for conducting a demonstration on 18.07.2014 at 05.00 p.m to 08.00 p.m near the Arupukottai New Bus stand to protest against the atrocities meted out to the Dalits in Thirumalaipuram Village, Arupukottai Taluk, Virudhunagar District, on 02.07.2014, when 30 houses of the Dalits were set fire. The petitioner belongs to an organization and they proposed to conduct a demonstration on 18.07.2014 (today) 05.00 p.m to 08.00 p.m opposite to Arupukottai New Bus stand. The Inspector of Police rejecting permission by stating that an order has been passed under Section 30(2) of the Police Act, and therefore, no such demonstration can be granted. Challenging the same, the present writ petition has been filed.

3. The learned Counsel appearing for the petitioner submitted that the impugned order passed by the third respondent is without jurisdiction, since the third respondent is not a competent authority to pass an order under Section 30(2) of the Police Act. Further, by relying upon the decision of this Court in M.Jayaraj - vs- The Superintendent of Police, Villupuram and others in W.P.No.15425 of 2012

dated 22.06.2012, it is submitted by the petitioner that the petitioner is entitled to conduct the demonstration in a peaceful manner and the order under Section 30(2) of the Police Act, 1861, is not an absolute bar.

4. The learned Government Advocate on instructions submitted by the third respondent stated that the time and venue chosen by the petitioner is not acceptable to the respondent police as during that time there will be a large scale movements of the general public, daily labourers, persons employed in Government Office, School going children etc and the place of proposed demonstration is situated in a very busy area where there is heavy vehicular and pedestrian traffic. It is submitted that an order under Section 30(2) of the Police Act, has been passed on 04.07.2014 upto 18.07.2014 and the authorities proposed to extend the order from 18.07.2014 to 02.08.2014, since there are sufficient reasons to pass such order as there is likelihood of breach of peace. Further, the learned Counsel submitted that an order of Section 30(2) of the Act, has not been passed by the Inspector of Police and has been passed by the Deputy Superintendent of Police and he is a competent person to pass such order. Further, the learned Additional Government Pleader stated about the immediately measures taken by the Government to rehabilitate the affected and due care has been taken apart from registering criminal cases against the assailants.

5. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials pleaded on records.

6. In terms of order under Section 30(2) of the Police Act, the respondents police are empowered to direct the control and conduct of all assemblies and processions on public road or in the public street or thoroughfares and to prescribe the Rules by which and the times by which the processions may pass. Further, in terms of Section 30(2) of the Police Act, the authorities on being satisfied that it is intended by any persons or class or persons to convene or collect an assembly in any such road, street, or thoroughfare or to form a procession which would, in the judgment of the Magistrate of the District or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice, that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a licence. In terms of Section 30(2) of the Police Act, on such application being made, the authority may issue a licence, specifying the names of the licensees and defining the conditions on which along such assembly or such procession is to be permitted to take place and otherwise giving effect to this Section.

7. Thus, the provisions under Sections 30(2) and 30(3) of the Police Act, are regulatory in nature. In this regard, useful reference to be made to the decision of this Court cited supra. In the said decision of this Court, after taking note of the rights guaranteed under Article 19(1)(a) and Article 19(1)(b) of the

Constitution of India and the decision of the Honourable Supreme Court in *Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad and Another*, and the decision in this case of *S. Rangarajan Vs. P. Jagjevan Ram and Others*, and the decision of this Court in the case of *K.T. Patchaimal, District Secretary Vs. The Superintendent of Police and Others*, held that the provisions namely under Sections 30(2) and 30(3) of the Police Act, are only regulatory and not a blanket power to trifle any democratic dissent of the citizens by the police. Therefore, merely by referring to under Section 30(2) of the Police Act, the respondent cannot say that no permission could be granted since the power under Section 30(2) of the Act, has been held to be a regulatory power.

8. As pointed out by the Honourable Supreme Court the rights guaranteed under Article 19(1)(a) and 19(1)(b) of the Constitution of India is subject to the reasonable restrictions, which may be made by the State in the interest of sovereignty and integrity of India, public order, decency, or morality etc., and while interpreting the said right under Article 19(1)(a) of the Constitution of India, the Honourable Supreme Court, observed that it means the right to express one's own opinion by word of mouth, printing, picture or in any one manner of ideas made through any and the communication of ideas made through any medium and such right was subject to reasonable restrictions in the larger interest of the community. Those are intended to strike a proper balance between the liberty guaranteed and the social interests specified under Article 19(2).

9. In the light of the above decision, it has to be held that the petitioner cannot as a matter of right insist that they should be permitted to carry on the demonstration in the time fixed by them and place chosen by them. Likewise, the respondent police are also not empowered to straightaway reject the petitioner's request merely by referring to Section 30(2) of the Police Act, which power has been held to be regulated. Therefore, the request made by the petitioner has to be considered in the light of the observations of the Honourable Supreme Court in the decisions referred supra.

10. The learned Counsel for the petitioner on instruction would submit that the petitioner has no rigid timings to be fixed and they are also agreeable for any location which in the opinion of the respondent would be conducive and would not cause any disturbance to the normal activities of the public, they are willing to abide any condition.

11. Hence, for all the above reasons the impugned order passed referring to Section 30(2) of the Act, requires to be set aside and accordingly, the writ petition is allowed and the impugned order is set aside and the respondents 1 and 2 are directed to reconsider the petitioner's application for permission to conduct the demonstration for the said purpose by taking note of the observations made by the Honourable Supreme Court with regard to the power under Section 30(2) of the Act, which has been held to be regulatory. Such consideration shall be made by the respondents 1 and 2 after affording an

opportunity of personal hearing to the petitioner and orders shall pass by the respondents 1 and 2 as expeditiously as possible preferably within a period of one week from the date of receipt of a copy of this order. It is made clear that the petitioner shall abide all the conditions that may be imposed and they shall assure the respondent police that they shall not indulge in defamatory or hate speech while conducting the demonstration. The petitioner shall submit another representation along with a copy of this order. No costs.