

(2013) 07 MAD CK 0099

In the Madras High Court

Case No : Writ Petition No. 18815 of 2013

Thol. Thirumavalavan

APPELLANT

Vs

The Government of Tamil Nadu, The District Magistrate and
District Collector, The Superintendent of Police and The
Tahsildar

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(b), 19(1)a(b), 19(a)(b)(c)(d)
Criminal Procedure Code, 1973 (CrPC) — Section 144, 144(1)
Penal Code, 1860 (IPC) — Section 153A
Tamil Nadu District Police Act, 1859 — Section 42A(2)

Citation : (2013) 6 MLJ 137

Hon'ble Judges : V. Dhanapalan, J;C.T. Selvam, J

Bench : Division Bench

Advocate : S. Prabakaran for Mr. K. Balakrishnan, for the Appellant; A.L. Somayaji, Advocate General Assisted by Mr. S.T.S. Murthi, Special Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

V. Dhanapalan, J.—Challenging the order dated 04.07.2013 passed by the District Magistrate and District Collector/2nd respondent

herein, in ROC No. 28026/2012/C1, and seeking to quash the same with a consequential direction to the respondents to permit him to enter into

Dharmapuri District, the petitioner has filed the present Writ Petition. Facts leading to filing of the Writ Petition, as put forth by the petitioner in his

affidavit, are as follows:

1.1. A Dalit boy, viz., Elavarasan married one Divya, belonging to Vanniar community, on 07.11.2012 and the same was opposed by people of

Vanniyar Community, due to which, three Dalit Villages, namely, Natham,

Kottampatti and Anna Nagar in Dharmapuri District were burnt by anti-social elements, which resulted in ex-communication of Elavarasan and Divya from the village and they lived together in the outskirts of Natham village.

1.2. Pursuant to filing of Habeas Corpus Petition before this Court, Divya appeared before this Court and on 03.07.2013, she expressed her

unwillingness to go with Elavarasan. Thereafter, Elavarasan died in a suspicious manner on 04.07.2013 near Thadangam Railway Track, about

12:30 p.m. Probe is being conducted by the local Police along with the Railway Police Department as to nature of his death.

1.3. The petitioner, being a Member of Parliament and also the President of Viduthalai Chiruthaigal Katchi, is to necessarily attend the funeral

ceremony of Elavarasan scheduled to be held on 09.07.2013. Since the 2nd respondent/District Collector had passed the prohibitory order u/s

144(1) of the Code of Criminal Procedure, 1973, against caste leaders, including the petitioner, he is not in a position to enter into Dharmapuri

District in order to pay homage to the deceased Elavarasan and console his family members. Therefore, the petitioner, besides pleading that the

impugned order is violative of Article 19(1)a(b) of the Constitution of India, seeks to set aside the same on the following grounds:

(a) that the impugned order is illegal, arbitrary and improper exercise of power;

(b) that the 2nd respondent had failed to see that no caste leaders create any law and order problem following the incident dated 07.11.2012, in

which three Dalit Villages were completely burnt and the valuables of Dalit people were looted by anti-social elements;

(c) that the impugned order curtails the very movement of Dalit leaders even to console the family members of Elavarasan;

(d) that the impugned order is violative of Articles 14 and 19(a)(b)(c)(d) of the Constitution of India and no opportunity of hearing was given to the

petitioner before passing the impugned order.

2. The 1st respondent has filed counter affidavit, wherein it is stated as follows:

(i) The body of one Elavarasan was found in the Railway Track near Government Arts College, Dharmapuri on 04.07.2013 and the Police

authorities visited the spot and started investigation. The body was sent for Post-mortem on 05.07.2013 to the Government Medical College

Hospital, Dharmapuri. A team of three Doctors conducted Post-mortem on the body of the said Elavarasan and thereafter, as per the orders of

this Court, the body is kept in the mortuary at Government Medical College, Dharmapuri for further examination.

(ii) After the death of the said Elavarasan, there exists threat to law and order situation in Dharmapuri District and due to a riot conducted by one

set of people on the houses of Natham Colony, Dharmapuri, on 07.11.2012, serious law and order problem spread over the District and other

Northern Districts also. In order to prevent untoward incidents, the 2nd respondent promulgated proceedings u/s 144 Cr.P.C. in Dharmapuri

District, vide ROC No. 2802/2012/C1 dated 04.07.2013 and about 1000 police personnel of various categories have been engaged by the

Government to have control over the law and order situation in that area, besides initiating relief measures.

(iii) On receipt of Intelligence Report from the Superintendent of Police, Dharmapuri stating that law and order problem is likely to arise in the

District, the District Collector immediately passed an order u/s 144 of Cr.P.C., to avert any untoward incident likely to arise in the District.

(iv) The District Collector, Dharmapuri received representations from eight different political parties and Dalit Organizations for relaxation of the

prohibitory order, by allowing them to attend the funeral ceremony. Consequent to the riot, which had taken place on 07.11.2012 in Dharmapuri

District, many untoward incidents took place even in Villupuram District also and the District Collector of Villupuram promulgated proceedings u/s

144 of Cr.P.C.

(v) The marriage of Elavarasan and Divya resulted in arson and damage of public and private properties, which further got escalated after the death

of Elavarasan and the Police authorities have received reliable information that there is every chance of group clash between the said two

communities and that the situation is now under control, because of the presence of police personnel of various ranges. The situation will definitely

deteriorate, if leaders outside the District are allowed inside the District and it is the habit of all these leaders to go in a convoy of vehicles and

some of the followers tend to shout provocative slogans and the same will aggravate the tension.

(vi) If the petitioner is allowed to visit the area and attend the funeral ceremony of the deceased Elavarasan, other party leaders may also take a

chance thereby requesting the authorities to allow them attend the funeral ceremony of the deceased and if permission is granted, huge crowd will

assemble in the area and it would not be possible to have control over the crowd and it may lead to law and order problems.

(vii) A case in Crime No. 14 of 2013 for the offence u/s 153A IPC was registered on 10.01.2013 after getting legal opinion regarding a speech

made by the petitioner herein at Dharmapuri after the Natham Colony incidents, which is under investigation and hence, the request of petitioner

cannot be considered. The petitioner's statement in paragraph 4 of his affidavit that he is the leader of Dalit community and also Member of

Parliament and the President of Viduthalai Chiruthaigal Katchi and that Dalit people of Dharmapuri District expect him to attend the funeral

ceremony of the deceased Elavarasan, clearly shows that the petitioner has no intention to console the family members of the deceased Elavarasan,

but is only trying to attend the funeral ceremony of Elavarasan. If the petitioner is allowed, a mob will assemble in the funeral ceremony of

Elavarasan and there is every chance of law and order problems arising in that area.

For the above reasons, the 1st respondent prays for dismissal of the Writ Petition.

3. Mr. S. Prabakaran, learned counsel for the petitioner would contend that the petitioner, being a Member of Parliament as also the leader of a

party espousing the cause of Dalits, should be allowed to attend the funeral ceremony of Elavarasan, a Dalit boy, who has been done to death.

Otherwise also, his right as a Member of Parliament representing a larger section of the society would definitely get affected. He would further

contend that the prohibitory order is against the fundamental rights guaranteed under Article 19(1)(b) of the Constitution of India.

4. In support of his case, learned counsel for the petitioner has relied on a judgment of this Court, dated 28.08.2008 made in W.P. No. 30554 of

2007 in the case of Thol. Thirumavalavan vs. The Commissioner, HR and CE and others, relevant portion of which reads as under:

30. We are at a loss to understand as to how the third respondent has taken such a stand in his counter.

31. As regards the report sent by the District Collector, Salem District, We find that the decision taken in the peace committee meeting held on

26.04.2008 ended in favour of the dominant caste. In view of the stand taken by the Hindu Religious and Charitable Endowments Department,

that the Draupadi Amman Temple is a public temple and the suits filed by the seventh respondent and their community people are yet to reach any

finality with regard to the declaration of their right to the temple and that as per the Tamil Nadu Temple Entry Authorization Act, 1947, a right has

been conferred upon all Hindus to enter into the said temple and offer worship, the order passed by the second respondent in ordering the closure

of the temple on the face of it, is unsustainable. Regarding the prayer sought by the petitioner to take out the procession to vent their grievances

regarding the denial of permission to the people belong to Scheduled Caste Community to offer worship at the Draupadi Amman Temple, in view

of the foregoing reasons that the order passed by the second respondent in closing down the said temple, is unsustainable, there is no need for

them to take out a procession. The third respondent has also taken a stand that in the event of procession allowed to be taken, it has to pass

through arterial routes and also through the areas in which the people belong to other community are dominant and definitely there will be law and

order problem, We are not inclined to grant the request made by the petitioner to take out a procession, for the present.

32. For the above said reasons, we direct the second respondent to reopen the said Draupadi Amman Temple within a period of four weeks from

the date of receipt of a copy of this order from the Registry and we further direct the respondents 1 to 6 to ensure adequate protection to the

people belong to the Scheduled Caste Community to enter the said temple and offer worship.

33. In the event of the writ petitioner filing appropriate application before the fifth respondent for taking out the procession, the fifth respondent can

deal with the same in accordance with law after providing an opportunity of hearing to the petitioner.

34. In the result, the Writ Petition is disposed of on the above terms. Consequently, the connected Miscellaneous Petitions are closed. But, in the

circumstances, there will be no order as to costs.

5. Mr. A.L. Somayaji, learned Advocate General has strenuously contended that the District Collector had passed the prohibitory order u/s 144 of

Cr.P.C. on receipt of report from the Superintendent of Police to the effect that there is every possibility of untoward incidents occurring in the

area. He would submit that eight other persons belonging to various political parties and Dalit Organizations requested the District Collector by

way of representations to relax Section 144 Cr.P.C. proceedings to enable them attend the funeral ceremony of Elavarasan and if the petitioner's

request is considered, it may result in serious consequences.

6. Learned Advocate General would further submit that the prohibitory order is not intentional or is against any political party and the same was

passed only with the sole intention to control the situation and it is not the right time to allow political leaders to participate in the funeral ceremony.

By producing a copy of the judgment of the Hon''ble Division Bench of this Court in the case of S. Jimraj Milton vs. The Government of Tamil

Nadu and others in W.P. No. 18519 of 2013 decided on 08.07.2013, he would contend that even for the parents of the deceased, the Hon''ble

Division Bench took a view that only on the representations made by them to the District Collector, their request for participation in the funeral

ceremony, would be considered. Therefore, the claim of the petitioner herein cannot be heeded to in the light of the situation prevailing in that area.

Operative portion of the said order reads as under:

5. The District Collector, Dharmapuri District, shall inform the immediate family members of N. Divya and the deceased E. Illavarasan that they

could submit their representations for attending the funeral of the deceased E. Illavarasan. Thereafter, it would be open to N. Divya and her family

members and the family members of the deceased E. Illavarasan to submit appropriate representations to the District Collector, Dharmapuri

District, if they want to attend the funeral of the deceased E. Illavarasan, whenever it is scheduled to be held. On such representations being made,

the District Collector, Dharmapuri District, shall consider the same and pass appropriate orders thereon, taking into account the security, law and

order and other such aspects.

6. We also make it clear that sufficient security should be provided to the parents of the deceased E. Illavarasan, in the meantime.

7. A perusal of the order informs that a Dalit boy, namely, Elavarasan was found dead near Thadangam Railway Track near Government Arts

College, Dharmapuri on 04.07.2013 and on completion of post-mortem by a team of three Doctors in the Government Medical College Hospital,

Dharmapuri, the body of Elavarasan is being preserved at the mortuary of the said Hospital for further examination as per the orders of this Court.

Further, it is seen that in order to keep law and order under control and also based on the report received from the Superintendent of Police, the

District Collector, Dharmapuri promulgated proceedings u/s 144 of Cr.P.C. and abundans cautela non nocet, which means, abundant caution does

no harm.

8. Be that as it may, several political leaders and Dalit Organizations have requested the District Collector to relax the prohibitory order so as to

enable them attend the funeral ceremony of the deceased Elavarasan and no decision has been taken on their representations. The situation still

appears to be tensed in the area after the suspicious death of Elavarasan. While so, the petitioner, in order to console the family members of the

deceased Elavarasan and participate in the funeral ceremony, sought permission from the District Collector, by way of telex message dated

08.07.2013.

9. As per Section 42-A(2) of the Madras District Police Act, 1859, the District Magistrate has to consider such request, taking into account the

situation prevailing in that particular area. The said proviso reads as under:

42-A: Deputation of Police Officers to be present in assembly, meeting or procession in public places:

(2) Nothing in sub-section (1) shall apply to any assembly or meeting of a purely religious character held in a recognized place of worship, any

assembly or meeting gathered together purely for the purpose of taking part in sports, any procession on the occasion of any wedding, funeral or

similar domestic occurrence, or of any religious ceremony, or to any public meeting held under any statutory or other express legal authority, or any

public meeting or class of public meetings exempted for that purpose by the State Government by general or special order.

Explanation--For the purposes of this section--

(a) the words ""assembly"", ""meeting and ""procession"" include any assembly,

meeting or procession which is open to the public or to any class or portion of the public;

(b) a place in which assembly or meeting is held may be a public place notwithstanding that admission thereto may have been restricted by ticket or otherwise.

10. This Court, after considering various situations, particularly when there was a request for re-post mortem of the body of the deceased

Elavarasan and the same was also allowed by this Court to be conducted by the Doctors from All India Institute of Medical Sciences (AIIMS),

New Delhi and thereafter, funeral ceremony will be scheduled to be held on the date fixed by the family members of the deceased Elavarasan, is of

the view that it is for the District Magistrate to take decision on the representations received from several political leaders including the petitioner,

expeditiously, so that *actus curiae neminem gravabit*, which means, an act of law does no wrong.

11. We have considered the submissions made on either side and perused several orders placed before us.

12. The respondent has taken a stand that the petitioner is the leader of Dalit Community and Member of Parliament and the President of

Viduthalai Chiruthaigal Katchi and the Dalit people of Dharmapuri District expect him to attend the funeral of Elavarasan. If the petitioner is

allowed, a mob will assemble in the funeral of Elavarasan and there is every chance of arising law and order problems in the area. Keeping in view

the same, prohibitory order came to be imposed in the area u/s 144 of Cr.P.C.

13. In the meantime, a representation vide telegram dated 08.07.2013 has been sent by the petitioner to the District Collector, requesting to allow

him to attend the funeral ceremony of Elavarasan. Since the petitioner is a Member of Parliament, espousing the cause of Dalit community and

assured of maintaining public tranquility in the District, it would be appropriate to direct the second respondent to consider the request of the

petitioner, taking into account the prevailing situation. Accordingly, the writ petition is disposed of with a direction to the District Collector/2nd

respondent to consider the petitioner's request dated 08.07.2013 and take a decision, after verifying all the factors and situation prevailing in

Dharmapuri District on 13.07.2013. No costs. Consequently, connected

miscellaneous petitions are closed.