

CDJ 2008 MHC 613

Court : High Court of Judicature at Madras

Case No : W.P.No.13681 of 2007 and M.P.No.1 of 2007

Judges: THE HONOURABLE MR. JUSTICE P.K. MISRA & THE HONOURABLE MR. JUSTICE K. CHANDRU

Parties : C.J. Rajan Versus Deputy Superintendent of Police, Mayiladuthurai Sub-Division, Mayiladuthurai & Another

Appearing Advocates : For the Petitioner : Sudha Ramalingam, Advocate. For the Respondents: R1 & R2, M. Dhandapani, Special Govt. Pleader.

Date of Judgment : 30-01-2008

Head Note :-

Police Act, 1861 Section 30(2)

Constitution of India-Article 19(1)(a) & Article 226-Freedom of Expression-Writ Petitioner NGO functioning as a Human Rights Watch group-Writ Petition to grant Permission for Public Meeting-Rejection by the respondent police on the ground of likelihood of being breach of peace and disturbance to public tranquility-Scope of Rights of citizen and the power of the State to impose reasonable restriction- The fact that the police are vested with power should not make them assume that, that power is available for exercise in any manner that they consider fit. That power is to be exercised strictly within the ambit of the provisions of the Constitution, more particularly, the requirement that any restriction placed on the exercise of fundamental rights should be a reasonable restriction, and the restrictions so placed should be shown to be essential, having regard to the permissible purpose for which restrictions may be imposed- second respondent is hereby directed to permit the petitioner to hold the meeting.

Comparative Citations:

2008 (2) MLJ(CrI) 103, 2008 (3) MLJ 926

Judgment :-

(Petition under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to quash the order passed by the 1st respondent in C.No.14/SDOM-III/2007 dated 22.3.2007 and direct him to grant permission for the same on any other subsequent date.)

K. Chandru, J.

The petitioner is the organiser of the People's Watch, a Non-Governmental Organisation, functioning as a Human Rights Watch Group in the State of Tamil Nadu. The petitioner People's Watch claims that they are also running a Rehabilitation Centre for Torture Victims (RCTV) and also a movement called Citizens for Human Rights Movement (CHRM). They are concerned about the increased encounter killings in the State of Tamil Nadu and they have been conducting programmes with reference to preventing the encounter killing by the State police and also to sensitize all concerned about following the guidelines issued by the National Human Rights Commission (NHRC) on such encounters.

2. As part of their campaign, they wanted to have a public meeting on 01.4.2007 at Mayiladuthurai (Nagapattinam District) and the meeting was to be presided over by the Director of People's Watch. It was stated that in the meeting, apart from the Director of People's Watch, the organisers had intended to invite retired High Court Judges, lawyers, journalists, educationalists, human right activists and political personalities. The place in which the meeting was to be held was either in the playground in front of the Office of the RDO or in the RAJAN Garden.

3. An application was also made to the first respondent on 19.3.2007 by the petitioner. The said request was rejected by the first respondent vide his order dated 22.3.2007. The reasons founding that order was that by stating that in view of the maintenance of law and order and the likelihood of there being a breach of peace and disturbance to public tranquility in Mayiladuthurai Sub-Division in the event of conducting such meetings and also in view of the promulgation of Regulatory order under Section 30(2) of the Police Act, 1861. It is as against the said refusal, the present petition has been filed.

4. The Special Government Pleader, who took notice, filed a counter affidavit on behalf of the first respondent justifying the impugned order. In the counter affidavit, it was stated that the playground was a public thoroughfare and that the RAJAN Garden was under the control of the Sports Authority of India. They have also stated about the death of one Shankar (alias) "Manalmedu Shankar", who was killed in an encounter. According to the Police, he was a known history sheeter and had committed several offences. But, however, in paragraph 9 of the counter affidavit, it was stated by the first respondent as follows:

Para 9: "I submit that the Police Authorities have no objection for the meeting to be conducted at any place other than Mayiladuthurai which is prone sensitive in communal and rivalry clash."

5. A reply affidavit was also filed by the petitioner refuting these allegations and it was stated that the interest of petitioner group was only to sensitise the people and for the need to preserve human right standards. It was averred that a regulatory order under Section 30(2) of the Police Act, 1861 cannot be used to curtail fundamental right to assemble and also the freedom to express one's own opinion. The petitioner had also disputed the objection regarding the venue selected by the petitioner and it was also stated that since the meeting was to be held on a Sunday evening, there will not be any vehicular traffic and the fact that Mayiladuthurai is vulnerable to communal clashes and gang violence have no bearing on the public meeting which was to be addressed by human right activists.

6. Heard the arguments of Ms. Sudha Ramalingam, learned counsel appearing for the petitioner and Mr.M.Dhandapani, learned Special Government Pleader representing the respondents and have perused the records.

7. When the matter was called on 24.01.2008 and after hearing some arguments, it was suggested to the respondents to reconsider their decision in refusing permission. The respondents relied upon paragraph 9 of the counter affidavit extracted above and stated that the petitioners may be advised to choose any other place other than Mayiladuthurai. Learned counsel for the petitioner was advised to consult her client and report to this Court as to whether the organisers are willing to choose any other venue to hold the public meeting and with that view, the matter was adjourned to 30.01.2008.

8. When the matter was called on 30.01.2008, the first respondent was present in the Court and the learned counsel for the petitioner stated that instead of Mayiladuthurai, which is only a Divisional Headquarters, they are willing to hold the meeting at Nagapattinam Town, which is a District Headquarters. They also wanted to have the meeting on 23.3.2008 (Sunday) between 4 PM and 10 PM and they had chosen a place known as Avurithidal (near bus stand) in Nagapattinam Town. The request made by the petitioner after taking note of the respondents' objection is laudable. Though the learned Special Government Pleader filed a bulk typed set showing the criminal activities of one Shankar alias Manalmedu Shankar, this Court is not concerned with the original background of any person in this case as the subject matter posed here is entirely a different issue and does not revolve around any individual.

9. The only question that arises for consideration is whether the petitioners' have a right to hold a public meeting on a sensitive issue which may not be palatable to the respondent Police.

10. In this context, it is necessary to refer to the judgment of the Supreme Court in Himat Lal K. Shah v. Police Commissioner, Ahmedabad (1973 (1) SCC 227) rendered by a Constitution Bench of the Apex Court, wherein, the Court struck down Rule 7 of the Rules framed under the Bombay Police Act on the ground that Rule, which empowered the Commissioner of Police to refuse permission to hold meetings without giving any guidance under the Rule and thereby conferring an arbitrary discretion, was an unreasonable restriction on the freedom of association and freedom of assembly guaranteed under Article 19 of the Constitution. The Court also held that the word "regulating" in Section 33(1)(o) of the Bombay Police Act would include the power to prohibit and impose the condition that permission should be taken a few days before the holding of the meeting on a public street. Mathew, J., dissented from the view of the majority and held that the power to regulate did not include the right to prohibit and the permission sought for holding a meeting ought not be refused. The majority opinion was that regulation is necessary to enable citizens to enjoy the various rights in crowded Public Streets, and that the State can make regulation in aid of the right of the assembly of each citizen and can impose reasonable restrictions in the interest of public order.

11. The Supreme Court also in S. Ranga RAJAN v. P. Jagjivan Ram [1989 (2) SCC 574] held that freedom of speech under Article 19(1)(a) of the Constitution of India 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. Such right, however, was held to be subject to reasonable restrictions in the larger interest of the community and the country as set out in Article 19(2) of the Constitution. Those restrictions are intended to strike a proper balance between the liberty guaranteed, and the social interests specified under Article 19(2). The Court emphasised that the interest of freedom of expression and social interest cannot be regarded as of equal weight and the court's commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or farfetched, but should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interests. It should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg."

12. Therefore, it is too late for the respondents to refuse permission to hold a meeting on a matter of public importance. With respect to the respondents' reliance upon Section 30(2) of the Police Act, 1861, it can only be said that it enables the respondents to direct the control and conduct of all assemblies and processions on public road or in the public streets or thoroughfares and to prescribe the Rules by which and the times by which the processions may pass and Section 30(2) and (3) on which reliance was placed, is extracted below:

Sec 30(2): "He may also, on being satisfied that it is intended by any persons or class of 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.

(3) On such application being made, he may issue a licence, specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place, and otherwise giving effect to this section."

13. Therefore, the said provision is only a regulatory power and not a blanket power to strifle any democratic dissent of the citizens by the Police.

14. While dealing with a similar situation on the powers conferred on the Commissioner of Police under Section 41 of the Madras City Police Act, 1888, this Court (R. Jayasimha Babu, J.) vide judgment in P. Nedumaran v. State of Tamil Nadu and others [1999 (1) L.W. (CRI) 73] defined the scope of the rights of citizen and the power of the State to impose reasonable restriction. The following passages found in paragraphs 15 to 18 may be usefully extracted:

Para 15: "The rights conferred on the citizens by Article 19 of the Constitution are precious rights and are not to be lightly breached or restricted by the State or any functionary of the State. Any regulation of exercise of those rights must be for the purposes specified in Article 19 of the Constitution itself, and that power must be so exercised as to sub serve the larger public good. The power to impose restrictions is not the power which is available for exercise in an arbitrary manner or for the purpose of promoting the interest of those in power, or for suppressing dissent Democracy can be made dynamic and truly alive only when there is free market for ideas and discussion and debate is not only permitted but is encouraged. All expression of opposing view point cannot be regarded as dangerous to the safety or security of the country and all

expressions which do not find the approval of those exercising the power of the State cannot be regarded as harmful to the State and to the public order.

Para 16: The power conferred on the Commissioner under Section 41 of the Madras City Police Act is sweeping, that power is meant to be exercised with great care and caution. The Madras City Police Act is a pre-Constitution enactment, and the powers conferred on the authorities at a time when the country was under the colonial regime, and during the period when suppression of dissent was considered to be a legitimate policy of the State, cannot be exercised after the enactment of the Constitution in the same manner, as it was exercised earlier. The Intelligence Report placed before the Court shows that the police still have the attitude which does not seem to recognise that the country is a democratic nation, where every citizen has a right to full and equal participation in the process of Government. No citizen can be regarded as an enemy of the State merely because he has voiced a view which is not the one favoured by those in authority.

Para 17: The fact that the police are vested with power should not make them assume that, that power is available for exercise in any manner that they consider fit. That power is to be exercised strictly within the ambit of the provisions of the Constitution, more particularly, the requirement that any restriction placed on the exercise of fundamental rights should be a reasonable restriction, and the restrictions so placed should be shown to be essential, having regard to the permissible purpose for which restrictions may be imposed.

Para 18: The fact that the petitioner-Association is voicing a view point which may not be popular cannot be a justification for preventing that point of view being projected."

We are in entire agreement with the views expressed therein.

15. The proposal made on behalf of the petitioner is laudable and it shows their accommodating spirit in relocating the venue of the public meeting to another place after taking note of the objections raised by the respondents. We are of the view that the respondents can have no objection for the present venue, date and time chosen by the petitioner Association for conducting a public meeting. Since the respondents are present in Court and they were also informed about the change of the venue made by the petitioner, it is hereby directed the petitioner need not send any fresh application and the request recorded in this order can be taken as adequate requisition made by the petitioner.

16. In view of the above, the second respondent is hereby directed to permit the petitioner to hold the meeting at Avurithidal (near bus stand) at Nagapattinam Town on 23.3.2008 from 4 PM to 10 PM. It is for the respondents to provide adequate protection for the smooth conduct of the meeting. The writ petition is disposed of accordingly. However, there will be no order as to costs. Connected Miscellaneous Petition is closed.

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