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CDJ 2011 MHC 1549

Court : High Court of Judicature at Madras

Case No : W.P.NO.23467 of 2010

Judges: THE HONOURABLE MR. JUSTICE K. CHANDRU

Parties : Pugazendhi Thangaraj Versus The Commissioner of Police, Chennai City Police, Chennai & Another

Appearing Advocates : For the Petitioner: S. Doraisamy for K. Surendar, Advocates. For the Respondents: M. Dhandapani, Spl. G.P.

Date of Judgment : 14-03-2011

Head Note :-

Constitution of India – Articles 14, 19, 21 & 226 – Unlawful Activities (Prevention) Act, 1967 - Section 10 & 13(1)(a) – Chennai City Police Act - Section 41 – writ of certiorarified mandamus filed - petitioner gave representation seeking permission to conduct the campaign - by impugned order, petitioner's request was denied mainly on two reasons - first was that under Sec 41, an application will have to be made before five days of the programme for which permission was sought for - petitioner's request was made only four days before, application was not in order - respondents also stated that any meeting, demonstration or signature campaign in support of the banned organization is an offence under law - permission refused - Challenging the said order, writ petition filed - impugned order has to be necessarily set aside on both grounds, i.e., not giving an opportunity to the petitioner before issuing the rejection order as well as the reasons adduced for rejecting his request was not valid - writ petition allowed.

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Cases Referred:

1. P.Nedumaran Vs. State of Tamil Nadu and others 1999 (1) LW (Crl.) 7
2. C.J.Rajan Vs. Deputy Superintendent of Police (2008) 3 MLJ 926.
3. Himat Lal K.Shah V. Police Commissioner, Ahmedabad AIR 1973 SC 87: 1973 (1) SCC 227
4. S.Rangarajan V. Jagjivan Ram (1989) 2 SCC 574: (1990) 1 MLJ 17 = 1989-2-L.W. 162
5. State of Kerala Vs. Raneef (2011) 1 SCC 784
6. Arup Bhuyan Vs. State of Assam 2011 (2) Scale 210
7. United States Vs. Eugene Frank Robel, 389 U.S. 258
8. Keyishian vs. Board of Regents of the University of the State of New York, 385 US 589, 606 (1967)
9. Yates vs. U.S., 354 US 298 (1957)

Judgment :-

(Prayer: This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records and to quash the order dated 18th October, 2010 passed by the second respondent in 2314/Tha.Pi.2/2010 and to direct the respondents to grant permission to conduct the 'signature campaign' on 19th October, 2010 at 4.00 p.m. Near Panagal Maligai, Saidapet, Chennai and to provide sufficient bandobust for conducting the event.)

1. The short question that arises for consideration in the present writ petition is whether the order of the respondent Commissioner of Police, Chennai City in denying the request made by the petitioner for conducting a "signature campaign" with reference to an appeal to the Government of India to remove the ban on "Liberation Tigers of Tamil Eelam" (LTTE) in a public place, by the exercise of his power under Section 41 of the Chennai City Police Act is justified?

2. The petitioner is a freelance journalist and a film director. He had started an organization called "Karuthurimaikkalam", a forum for right of expression in the year 2008. According to the petitioner, "Liberation Tigers of Tamil Eelam" (for short LTTE)

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was prohibited under the Unlawful Activities (Prevention) Act, 1967 (for short UAPA). The petitioner finds the said ban was repugnant to democracy and wanted to send a join representation to the Governor of Tamil Nadu expressing the opinion of general public. Therefore, in order to mobilise opinion of the public on the said issue, he organized a signature campaign on 19.10.2010 from 4.00 p.m. to 7.00 p.m. By the said campaign, an appeal will be made to the people who are passers by to express their opinion by signing a joint memorandum. The venue was fixed near Panagal Maligai at Saidapet.

3. The petitioner gave a representation on 15.10.2010 seeking permission to conduct the campaign. However, by the impugned order, the petitioner's request was denied mainly on two reasons. The first was that under Section 41, an application will have to be made before five days of the programme for which permission was sought for. Since the petitioner's request was made only four days before, the application was not in order. Not stopping with that, the respondents had also stated that any meeting, demonstration or signature campaign in support of the banned organization is an offence under law. Therefore, permission was refused. Challenging the said order, the present writ petition came to be filed.

4. When the matter came up on 19.10.2010, notice was directed to be given to the learned Government Pleader. Subsequently, the matter was adjourned from time to time. Finally, the respondents have filed a counter affidavit, dated 10.1.2011. They have also produced a copy of the ban order notified by the State Government vide G.O.Ms.No.446, Public (SC) Department, dated 17.05.2010 containing the Government of India's notification, dated 14.5.2010 banning the LTTE under the provisions of the Unlawful Activities (Prevention) Act, 1967.

5. Since earlier the programme was scheduled to take place on 19.10.2010 and that date has also expired on account of various adjournments made in the writ petition, the counsel for the petitioner filed a memo stating that should this court grant permission, they are willing to have the campaign on 30.03.2011 at 4.00 p.m. in the same venue.

6. Mr.S.Doraisamy, learned counsel appearing for the petitioner submitted that the impugned order passed by the respondent police was illegal and violative of Articles 14, 19(1)(a), 19(1)(c) and 21 of the Constitution of India. The programme organized by

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the petitioner is only to make a joint appeal to the Governor and that the denial order stultify the democracy. The signature campaign was intended to reflect the voice of public at large and by no stretch of imagination, by the signature campaign any disturbance to the public peace will arise. The impugned order is also contrary to various judgments of this court.

7. Reference was made to a judgment of this court in P.Nedumaran Vs. State of Tamil Nadu and others reported in 1999 (1) LW (Crl.) 7 and also a division bench judgment of this court in C.J.Rajan Vs. Deputy Superintendent of Police reported in (2008) 3 MLJ 926. He also referred to a division bench judgment of this court made in H.C.P.No.260 of 2009, dated 17.04.2009 in S.James Peter Vs. The Government of Tamil Nadu, The Secretary to Government, Public (Law and Order-F) Department and another, wherein it was held that a mere support or participation in public meeting by itself will not attract the provisions of Unlawful Activities (Prevention) Act, 1967 (for short UAPA Act). He referred to the following passages found in paragraphs 29 and 30, which reads as follows:

29....Therefore, if there is any consequential unlawful activity in pursuance of the speech delivered by the detenu, the provisions of Section 13(1)(b) and 13(2) are attracted.

30.....Further, it is not at all the case of the respondents that except delivering the alleged speech, the detenu, has in any manner acted in a manner prejudicial to the sovereignty of the country. In the absence of any proof that any such law and order problem has arisen pursuant to the speech delivered by the detenu and in the absence of any material to show that the detenu has taken part in any unlawful activities or committed any unlawful activity, so as to fall within the ambit of Section 13(1)(a) of the Unlawful Activities (Prevention) Act, 1967 and further in the absence of any material to show that the detenu has assisted any unlawful association, so as to say that he has committed the offence under Section 13(2) of the Unlawful Activities (Prevention) Act, 1967, the ingredients of Section 13(1)(a) and 13(2) are not attracted."

8. Per contra, Mr.M.Dhandapani, learned Special Government Pleader referred to the counter affidavit, dated 10.1.2011 filed by the second respondent, wherein a reference was made to Section 13(2) of the UAP Act. He further contended that any

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assistance to unlawful activities of the association is an offence under the Act. Taking signature in support of the banned organization will also amount to an offence. It is a reasonable restriction imposed on the petitioner. Hence the question of any violation of fundamental right of the petitioner will not arise. It is also stated that restriction imposed is lawful.

9. In view of the above, two questions arises in the present case. One was that the petitioner being an Indian Citizen whether the right guaranteed by Part III will enure to his benefit. Secondly, whether he is entitled to express his opinion is governed by the provisions of the Constitution? If that is so, whether in exercise of power under the Madras City Police Act, the respondents can prohibit the campaign organized by the petitioner?

10. On the context of a public protest and the invocation of the City Police Act, it is necessary to refer the judgment of the Supreme Court in Himat Lal K.Shah V. Police Commissioner, Ahmedabad AIR 1973 SC 87: 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 assembly guaranteed under Article 19 of the Constitution. The Court also held that the work "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 assemble of each citizen and can impose reasonable restrictions in the interest of Public order.

11. On the question of freedom of speech, the Supreme Court also in S.Rangarajan V. Jagjivan Ram (1989) 2 SCC 574: (1990) 1 MLJ 17 = 1989-2-L.W. 162 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 is any one manner of ideas made through any and the

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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 ragarded 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 community interest is endangered. The anticipated danger should not be remote, conjectural or far fetched, 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. On the question of support to a banned organization, the Supreme Court very recently in State of Kerala Vs. Raneef reported in (2011) 1 SCC 784 referred to several judgments of the US Supreme Court with approval. In paragraphs 11 to 14, it was stated as follows:

"11. In Scales v. United States3, 367 U.S. 203, Harlan, J. of the US Supreme Court while dealing with the membership clause in the McCarran Act, 1950 distinguished between active “knowing” membership and passive, merely nominal membership in a subversive organisation, and observed:

“The clause does not make criminal all association with an organization which has been shown to engage in illegal activity. A person may be foolish, deluded, or perhaps mere optimistic, but he is not by this statute made a criminal. There must be clear proof that the defendant specifically intends to accomplish the aims of the organization by resort to violence.”

12. In Elfbrandt v. Russell4, 384 US 17-19 (1966), Douglas, J. of the US Supreme Court speaking for the majority observed: (L Ed pp.325-26)

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“Those who join an organization but do not share its unlawful purpose and who do not participate in its unlawful activities surely pose no threat, either as citizens or as public employees. - A law which applies to membership without the “specific intent” to further the illegal aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of “guilt by association” which has no place here.”

13. In Joint Anti-Fascist Refugee Committee v. McGrath5, 341 US 123 at 174 (1951) Mr.Douglas, J. of the US Supreme Court observed: (L Ed p.855)

“In days of great tension when feelings run high, it is a temptation to take shortcuts by borrowing from the totalitarian techniques of our opponents. But when we do, we set in motion a subversive influence of our own design that destroys us from within.”

14. We respectfully agree with the above decisions of the US Supreme Court, and are of the opinion that they apply in our country too. We are living in a democracy, and the above observations apply to all democracies."

13. Subsequently, the Supreme Court in Arup Bhuyan Vs. State of Assam reported in 2011 (2) Scale 210, once again referred to several other US Supreme Court judgments and quoted with approval in interpreting Section 3(5) of the Terrorist and Disruptive Activities (Prevention) Act, 1987. The following passages found in paragraphs 13 to 16 may be usefully extracted below:

"13. In Clarence Brandenburg Vs. State of Ohio, 395 U.S. 444 (1969) the U.S. Supreme Court went further and held that mere "advocacy or teaching the duty, necessity, or propriety" of violence as a means of accomplishing political or industrial reform, or publishing or circulating or displaying any book or paper containing such advocacy, or justifying the commission of violent acts with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism, or to voluntarily assemble with a group formed "to teach or advocate the doctrines of criminal syndicalism" is not per se illegal. It will become illegal only if it incites to imminent lawless action. The statute under challenge was hence held to be unconstitutional being violative of the First

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and Fourteenth Amendments to the U.S. Constitution.

14. In United States Vs. Eugene Frank Robel, 389 U.S. 258, the U.S. Supreme Court held that a member of a communist organisation could not be regarded as doing an unlawful act by merely obtaining employment in a defence facility.

15. We respectfully agree with the above decisions, and are of the opinion that they apply to India too, as our fundamental rights are similar to the Bill of Rights in the U.S. Constitution.

16. In our opinion, Section 3(5) cannot be read literally otherwise it will violate Articles 19 and 21 of the Constitution. It has to be read in the light of our observations made above. Hence, mere membership of a banned organisation will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence."

14. Once again the Supreme Court in Sri Indra Das Vs. State of Assam reported in 2011 (2) Supreme 67 quoted with approval the case of Arup Bhuyan's case (cited supra) and made a further reference to certain other decisions of the Us Supreme Court. The following passages found in paragraphs 13 to 18 and 20 to 26 may be usefully extracted below:

13. In Noto vs. U.S. 367 US 290(297-298) Mr. Justice Harlan of the U.S. Supreme Court observed:

".....The mere teaching of Communist theory, including the teaching of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action. There must be some substantial direct or circumstantial evidence of a call to violence now or in the future which is both sufficiently strong and sufficiently pervasive to lend colour to the otherwise ambiguous theoretical material regarding Communist Party teaching."

14. In Noto's case (supra) Mr. Justice Hugo Black in a concurring judgment wrote:

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"In 1799, the English Parliament passed a law outlawing certain named societies on the ground that they were engaged in `a traitorous Conspiracy ..... in conjunction with the Persons from Time to Time exercising the Powers of Government in France .....' One of the many strong arguments made by those who opposed the enactment of this law was stated by a member of that body, Mr. Tierney:

`The remedy proposed goes to the putting an end to all these societies together. I object to the system, of which this is only a branch; for the Right Hon. gentleman has told us he intends to propose laws from time to time upon this subject, as cases may arise to require them. I say these attempts lead to consequences of the most horrible kind. I see that government are acting thus. Those whom they cannot prove to be guilty, they will punish for their suspicion. To support this system, we must have a swarm of spies and informers. They are the very pillars of such a system of government.' The decision in this case, in my judgment, dramatically illustrates the continuing vitality of this observation. The conviction of the petitioner here is being reversed because the Government has failed to produce evidence the Court believes sufficient to prove that the Communist Party presently advocates the overthrow of the Government by force." (emphasis supplied)

15. In Communist Party vs. Subversive Activities Control Board, 367 US 1 (1961) Mr. Justice Hugo Black in his dissenting judgment observed:

"The first banning of an association because it advocates hated ideas - whether that association be called a political party or not -- marks a fateful moment in the history of a free country. That moment seems to have arrived for this country..... This whole Act, with its pains and penalties, embarks this country, for the first time, on the dangerous adventure of outlawing groups that preach doctrines nearly all Americans detest. When the practice of outlawing parties and various public groups begins, no one can say where it will end. In most countries such a practice once begun ends with a one party government."

16. In Joint Anti-Fascist Refugee Committee vs. McGrath, 341 US 123, 174 (1951) Mr. Justice Douglas in his concurring

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judgment observed:

"In days of great tension when feelings run high, it is a temptation to take short cuts by borrowing from the totalitarian techniques of our opponents. But when we do, we set in motion a subversive influence of our own design that destroys us from within." (emphasis supplied)

17. In Keyishian vs. Board of Regents of the University of the State of New York, 385 US 589, 606 (1967) the U.S. Supreme Court struck down a law which authorized the board of regents to prepare a list of subversive organizations and to deny jobs to teachers belonging to those organizations. The law made membership in the Communist Party prima facie evidence for disqualification from employment. Mr. Justice Brennan, speaking for the Court held that the law was too sweeping, penalizing "mere knowing membership without a specific intent to further the unlawful aims."

18. In Yates vs. U.S., 354 US 298 (1957), Mr. Justice Harlan of the U.S. Supreme Court observed:

"In failing to distinguish between advocacy of forcible overthrow as an abstract doctrine and advocacy of action to that end, the District Court appears to have been led astray by the holding in Dennis that advocacy of violent action to be taken at some future time was enough. The District Court apparently thought that Dennis obliterated the traditional dividing line between advocacy of abstract doctrine and advocacy of action."

20. In Whitney vs. California (supra) Mr. Justice Brandeis, the celebrated Judge of the U.S. Supreme Court in his concurring judgment (which really reads like a dissent) observed:

"Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burned women. It is the function of free speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe

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that the danger apprehended is imminent... ..... The wide difference between advocacy and incitement, between preparation and attempt, between assembling and conspiracy, must be borne in mind." (emphasis supplied)

21. Mr. Justice Brandeis in the same judgment went on to observe:

"Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the process of education, the remedy to be applied is more speech, not enforced silence."

22. In Gitlow vs. New York, 268 US 652 (1925) Mr. Justice Holmes of the U.S. Supreme Court (with whom Justice Brandeis joined) in his dissenting judgment observed:

....."If what I think the correct test is applied, it is manifest that there was no present danger of an attempt to overthrow the government by force on the part of the admittedly small minority who shared the defendant's views. It is said that this Manifesto was more than a theory, that it was an incitement. Every idea is an incitement. It offers itself for belief, and, if believed, it is acted on unless some other belief outweighs it, or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the result. Eloquence my set fire to reason. But whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration. If, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way.

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If the publication of this document had been laid as an attempt to induce an uprising against government at once, and not at some indefinite time in the future, it would have presented a different question. The object would have been one with which the law might deal, subject to the doubt whether there was any danger that the publication could produce any result; or, in other words, whether it was not futile and too remote from possible consequences. But the indictment alleges the publication and nothing more."

23. In Terminiello vs. Chicago, 337 US 1 (1949) Mr. Justice Douglas of the U.S. Supreme Court speaking for the majority observed:

"....[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute,...is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest....There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups."

24. In DeJonge vs. Oregon, 299 US 353 (1937) Chief Justice Hughes of the U.S. Supreme Court wrote that the State could not punish a person making a lawful speech simply because the speech was sponsored by a subversive organization.

25. In Abrams vs. U.S., 250 US 616 (1919) Mr. Justice Holmes of the U.S. Supreme Court in his dissenting judgment wrote:

"Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle,

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or that you do not care whole-heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more then they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas, -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. I wholly disagree with the argument of the government that the 1st Amendment left the common law as to seditious libel in force. History seems to me against the notion."

(emphasis supplied)

26. It has been submitted by the learned counsel for the Government before the TADA Court that under many laws mere membership of an organization is illegal e.g. Section 3(5) of Terrorists and Disruptive Activities, 1989, Section 10 of the Unlawful Activities (Prevention) Act 1967, etc. In our opinion these statutory provisions cannot be read in isolation, but have to be read in consonance with the Fundamental Rights guaranteed by our Constitution."

15. After agreeing with all those opinions of the US Supreme Court in Sri Indra Das case (cited supra), the Supreme Court held that the constitution being Supreme no statute can be violated. In paragraphs 27 to 31 it was observed as follows:

"27. The Constitution is the highest law of the land and no statute can violate it. If there is a statute which appears to violate it we can either declare it unconstitutional or we can read it down to make it constitutional. The first attempt of the Court should be try to sustain the validity of the statute by reading it down. This aspect has been discussed in great detail by this Court in

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Government of Andhra Pradesh vs. P. Laxmi Devi 2008(4) SCC 720.

28. In this connection, we may refer to the Constitution Bench decision in Kedar Nath Singh vs. State of Bihar AIR 1962 SC 955 where the Supreme Court was dealing with the challenge made to the Constitutional validity of Section 124A IPC (the law against sedition).

29. In Kedar Nath Singh's case this Court observed(vide para 26):

....."If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoken which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in view of Article 19(1)(a) read with clause (2). It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of thesections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence."....

30. Section 124A which was enacted in 1870 was subsequently amended on several occasions. This Court observed in Kedar Nath's case (supra) observed that now that we have a Constitution having Fundamental Rights all statutory provisions including Section 124A IPC have to be read in a manner so as to make them in conformity with the Fundamental Rights. Although according to the literal rule of interpretation we have to go by the plain and simple language of a provision while construing it, we may have to depart from the plain meaning if such plain meaning makes the provision unconstitutional.

31. Similarly, we are of the opinion that the provisions in various statutes i.e. 3 (5) of TADA or Section 10 of the Unlawful Activities (Prevention) which on their plain language make mere membership of a banned organization criminal have to be read

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down and we have to depart from the literal rule of interpretation in such cases, otherwise these provisions will become unconstitutional as violative of Articles 19 and 21 of the Constitution. It is true that ordinarily we should follow the literal rule of interpretation while construing a statutory provision, but if the literal interpretation makes the provision unconstitutional we can depart from it so that the provision becomes constitutional."

16. As seen from the above, the Supreme Court also dealt with Section 10 of the Unlawful Activities (Prevention) Act and held that mere support to a banned organization will not by itself can become an offence.

17. In the present case, the petitioner had expressed his intention very clear. He wants to send a petition to the Governor of Tamil Nadu. For this purpose, he wants signatures from public collected from a public place. The entire exercise was to express to the Government of India through the office of the Governor of Tamil Nadu that the people in the State are opposing the ban order imposed by the Government of India under the UAP Act. It is not clear as to how the said activity can be either illegal or unlawful, especially in the context of the constitution guarantee given to the citizens of India. In the counter affidavit, the stand taken by the respondents did not justify the impugned order.

18. In the light of the above factual matrix and the legal precedents set out above, the impugned order has to be necessarily set aside on both grounds, i.e., not giving an opportunity to the petitioner herein before issuing the rejection order as well as the reasons adduced for rejecting his request was not valid.

19. Since the petitioner himself has filed a memo seeking permission to conduct the signature campaign if permitted by this court on 30.3.2011 between 4.00 p.m and 7.00 p.m near Panagal Maligai, Saidapet, the respondents are directed to permit the petitioner to conduct his Signature Campaign near Panagal Maligai, Saidapet on 30.03.2011 between 4.00 p.m. and 7.00 p.m. and also to provide sufficient protection to carry out his legitimate constitutional guarantee.

20. The writ petition will stand allowed. However, there will be no order as to costs.

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