

This Product is Licensed to **Mr. Bhavani Mohan, Advcoate, Bhavani**



CDJ 2010 MHC 7228

Court : High Court of Judicature at Madras

Case No : Writ Petition No.23904 of 2010 & W.P.No.26073 of 2010

Judges: THE HONOURABLE MR. JUSTICE M. JAICHANDREN

Parties : Va. Naa. Thanmaanan Organiser Thamilina Kootamaipu, Chennai & Another Versus The State of Tamil Nadu rep by the Commissioner of Police

Appearing Advocates : For the Petitioners: P. Amarnath, R. Sankarasubbu, Advocates. For the Respondent: S. Gopinathan, Additional Government Pleader.

Date of Judgment : 13-12-2010

Head Note :-

Constitution of India - Article 19(1)(a) & 226 – Police Act 1861 - Section 30(2) – Unlawful Activities (Prevention) Act, 1967 - Section 13 – writ petitions filed challenging the impugned orders of the respondent in the writ petitions, rejecting the request of the petitioners, to hold a demonstration, on the specified dates, against the detention of the Tamil Activist Seeman, the convenor of "Naam Tamilar Katchi", which is a political party - requesting for permission to hold demonstrations in a peaceful way, within the limits prescribed by law and the respondent shall consider the same and pass appropriate orders - writ petitions are disposed of.

Cases Referred:

This Product is Licensed to **Mr. Bhavani Mohan, Advcoate, Bhavani**

1. P.NEDUMARAN Vs. STATE OF TAMIL NADU AND OTHERS (1991-1-L.W.(CRL) 73
2. C.J.RAJAN Vs. DY. SUPERINTENDENT OF POLICE (2008) 3 MLJ 926
3. V.MANIMARAN Vs. INSPECTOR OF POLICE, ((2010) 7 MLJ 330)
4. C.SAKTHIVEL Vs. THE COMMISSIONER OF POLICE ((2010 (5) CTC 134)

Judgment :-

W.P.No.23904 of 2010:

(Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in relation to the impugned order dated 24.9.2010 No. 2068/Ta. Pi.2/2010-1 and quash the same and consequently direct the respondent to permit the petitioner to hold a peaceful demonstration condemning the arrest of Thiru.Seeman Convener of the Political party Naam Thamilar Katchi on 30.10.2010 or on any other subsequent date.)

W.P.No.26073 of 2010:

(Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order made in No.2491/TP/2010-1, dated 16.11.2010, passed by the respondent herein and quash the same, as illegal and direct the respondent to grant permission to hold demonstration, on 25.11.2010, to secure the ends of justice.)

1. Since, the issues arising for consideration in both the writ petitions are similar in nature, they have been taken up together and a common order is being passed.
2. The above writ petitions had been filed challenging the impugned orders of the respondent in the writ petitions, rejecting the request of the petitioners, to hold a demonstration, on the specified dates, against the detention of the Tamil Activist Seeman,

This Product is Licensed to **Mr. Bhavani Mohan, Advcoate, Bhavani**

the convenor of "Naam Tamilar Katchi", which is a political party.

3. According to the petitioners, "Naam Tamilar Katchi" had been organising a number of demonstrations at various places in the State of Tamil Nadu to protect the interests and the welfare of the Tamil people. It had also organised a demonstration, on 10.7.2010, condemning the attacks, by the Sri Lankan Navy, on the fishermen belonging to the State of Tamil Nadu. Seeman, the convenor of the party, had spoken during the demonstration held, on 10.7.2010. On 12.7.2010, he had been arrested by the Police and thereafter, he had been remanded, on 17.7.2010, under the National Security Act, 1980. A number of leaders belonging to various political parties and other organisations had condemned the arrest of Seeman. While so, the petitioners had submitted their representations to the respondent in the writ petitions, seeking permission to hold demonstrations on the specified dates. However, the requests made by the petitioners had been turned down, by the respondents, without giving proper reasons. In such circumstances, the petitioners had filed the present writ petitions, before this Court, under Article 226 of the Constitution of India.

4. In the counter affidavit filed on behalf of the respondent, in W.P.No.26073 of 2010, it has been averred that, holding of such demonstrations would lead to a serious law and order situation. The impugned orders had been passed, rejecting the requests made by the petitioners, as the matter pertaining to the detention of Seeman is pending on the file of this Court in H.C.P.No.1471 of 2010. The impugned orders had been passed in view of the fact that, during the demonstration held, on 10.7.2010, many of the participants were wearing banians with the pictures of Prabhakaran, leader of the Liberation Tigers of Tamil Eelam, printed on them. They had also spoken against the Sri Lankan Military and the Indian force sent to Sri Lanka. Seeman had criticised the action of the Indian Government and he had also instigated the participants to indulge in violence against the Sri Lankan students, who are studying in the State of Tamil Nadu. He had, openly, encouraged the Liberation Tigers of Tamil Eelam, which is a banned organisation in India. The provocative speech of Seeman, inducing violence against a friendly Foreign State was contrary to law. Hence, he had been detained under the National Security Act, 1980. Therefore, the requests made by the petitioners, to hold demonstrations, had been refused by the respondents, by their impugned orders.

This Product is Licensed to **Mr. Bhavani Mohan, Advcoate, Bhavani**

5. The main contention of the learned counsels appearing on behalf of the petitioners is that the impugned orders passed by the respondent are arbitrary and illegal, as they are contrary to the principles enshrined in Article 19(1)(a) of the Constitution of India. They had also submitted that the impugned orders had been passed without considering the submissions made by the petitioners in support of their requests.

6. The learned counsels appearing on behalf of the petitioners had also submitted that the impugned orders passed by the respondent, refusing to grant permission to the petitioners to hold peaceful demonstrations, are in contravention to the freedom of speech and expression guaranteed under the Constitution of India.

7. The learned counsels appearing on behalf of the petitioners had also pointed out that the respondent cannot act on a mere apprehension that a law and order situation would arise, if such demonstrations are permitted. They had also submitted that it would be open to the respondent and the other authorities concerned, to initiate appropriate action against the persons concerned, if they indulge in activities, which are prohibited by law. However, the respondent cannot obstruct the petitioners from organising the demonstrations, to create public opinion in support of their views. The petitioners' freedom of speech and expression, guaranteed under Article 19(1)(a) of the Constitution of India, can be curtailed by the State, only as provided under Article 19(2) of the Constitution of India, by imposing reasonable restrictions, on the grounds mentioned therein. However, it is not open to the State to impose a blanket ban on the holding of demonstrations and protests organised to express their views, in a democratic manner, as per law.

8. The learned counsels for the petitioners had relied on the following decisions in support of their contentions:

8.1. In *P.NEDUMARAN Vs. STATE OF TAMIL NADU AND OTHERS* (1991-1-L.W.(CRL) 73 this Court had held as follows:

"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

This Product is Licensed to **Mr. Bhavani Mohan, Advcoate, Bhavani**

specified in Article 19 of the Constitution itself, and that power must be so exercised as to subserve 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.

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.

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.

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. The petitioner-Association has not been declared as unlawful Association. If the petitioner-Association does anything which constitutes an offence under the Unlawful Activities (Prevention) Act, it is always

This Product is Licensed to **Mr. Bhavani Mohan, Advcoate, Bhavani**

open to the authorities to initiate prosecution under that Act.

19. The meeting which the petitioner had wanted to hold was to have been held on the 19th January, 1997, well over a year ago. If the petitioner were to make a fresh application for holding a meeting, the authorities ought not to refuse permission mechanically. They should be in a position to satisfy the Court that such refusal falls strictly within the ambit of the permissible grounds for restricting the exercise of fundamental rights under Article 19 of the Constitution. A mere apprehension that some disturbance may be caused in the meeting place would not be sufficient. Under Sec.41 of the Madras City Police Act, the police have the power to depute one or more police officers to be present at the meeting. If, at the meeting, such police officers were to find that anything illegal was being done, it would be open to them to take such further action as may be considered necessary in the circumstances. A blanket order refusing to permit the meeting to be held is not the method of relating the exercise of fundamental rights of free speech, expression and assembly.

20. It is necessary to observe that the presence of some persons who may not be regarded as supporters of the banned organisation at the meeting by itself cannot be taken as proof of that meeting not being one which was meant to express support for a banned organisation.

21. The prayer in the writ petition that the respondents be directed to permit the future meetings cannot, however, be granted as the circumstances that may exist on the date of the proposed meeting cannot be visualised in vacuum. As and when an application is made, the respondents will consider the same in accordance with law, and in the light of what has been observed in the course of this order."

8.2. In C.J.RAJAN Vs. DY. SUPERINTENDENT OF POLICE (2008) 3 MLJ 926, a Division Bench of this Court had held as follows:

"A citizen has the right to hold a meeting on a matter of public importance and Section 30(2) of the Police Act 1861 provides for

This Product is Licensed to **Mr. Bhavani Mohan, Advcoate, Bhavani**

only a regulatory power and not a blanket power to stifle any democratic dissent of the citizens by the Police."

8.3. In V.MANIMARAN Vs. INSPECTOR OF POLICE, ((2010) 7 MLJ 330), this Court had held that a blanket order, refusing to grant the permission to hold a meeting, is not the proper method to be followed, while exercising the power to restrict the fundamental rights of freedom of speech, expression and assembly. A mere apprehension that some disturbance may be caused in the meeting place and that there may be a law and order problem and the hindrance to the freeflow of vehicular traffic, cannot be a ground to refuse the permission.

8.4. In C.SAKTHIVEL Vs. THE COMMISSIONER OF POLICE ((2010 (5) CTC 134), this Court had observed that "Law is well settled, as pronounced by the Supreme Court, as well as this Court, that reasonable restrictions for the purpose mentioned in Article 19(2) alone can be the reasons to refuse such a permission. A circumspection and clear analysis of the case on hand would not give any such impression for this Court that the demonstration contemplated by the petitioner is against any particular administrative function or otherwise, but, instead, they aim to protest against the action of the Government. If such permission is granted, it is always open for the authorities to regulate the same and also anything illegal being done and they can have every right to proceed against the perpetrators."

9. In response to the contentions raised by the learned counsels appearing for the petitioners, Mr.S.Gopinathan, the learned Additional Government Pleader, appearing for the respondent, had argued that the petitioners cannot be permitted to hold demonstrations against the detention of Seeman, who has been detained under the National Security Act, 1980.

10. The learned Additional Government Pleader, appearing for the respondent had submitted that the petitioners cannot be permitted to contravene the provisions of Section 13 of the Unlawful Activities (Prevention) Act, 1967, which reads as follows:

"13. Punishment for unlawful activities: - (1) Whoever-

This Product is Licensed to **Mr. Bhavani Mohan, Advcoate, Bhavani**

(a) takes part in or commits, or

(b) advocates, abets, advices or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under Section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therfor carried on by any person authorised in this behalf by the Government of India."

11. In view of the averments made in the affidavits filed in support of the writ petitions and the counter affidavit filed on behalf of the respondent in the writ petition, in W.P.No.26073 of 2010, and in view of the submissions made by the learned counsels appearing for the petitioners, as well as well as the respondent, and in view of the decisions cited supra, this Court is of the considered view that the respondent cannot pass blanket orders banning the holding of demonstrations, on a mere apprehension that it would lead to a law and order situation.

12. The respondents cannot pass orders curtailing or curbing the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India, except by imposing reasonable restrictions, in accordance with Article 19(2) of the Constitution of India.

13. It is a well settled position in law that the freedom of speech and expression, guaranteed under Article 19(1)(a) of the Constitution of India, cannot be subverted in an arbitrary manner. In a true democracy dissenting opinions should not be

This Product is Licensed to **Mr. Bhavani Mohan, Advcoate, Bhavani**

discouraged. Democracy can be alive and thriving, only if the State provides the necessary impetus, by encouraging healthy debates and exchange of ideas.

14. In a recent decision, in W.P.(MD) No.12537 of 2010, dated 26.11.2010, (SANKER AMBEDKAR Vs. THE SUPERINTENDENT OF POLICE AND OTHERS), this Court, after referring to a number of decisions of the Supreme Court, as well as of this Court, had held that every citizen of this country has the fundamental right to assemble and to express his opinion in public and the right to conduct a demonstration, under Article 19(1) of the Constitution of India. There is no doubt that the respondent is empowered to impose reasonable restrictions on the petitioners, while holding their demonstrations, as per the relevant provisions of law. However, the respondent is not entitled to impose a blanket ban on such demonstrations, without having a sufficient cause to do so.

15. If a person has been guaranteed certain rights, either under the Constitution of India or under any other law, which is in force and if he is denied access to such a right, then it would amount to a clear violation of his human rights. In the present case, no such cause has been shown by the respondent to prevent the petitioners from conducting such demonstrations.

16. Further, it has been brought to the notice of this Court that the arrest and the detention of Seeman, under the National Security Act, 1980, had been held to be illegal, by an order of a Division Bench, dated 9.12.2010, made in H.C.P.No.1471 of 2010.

17. In such view of the matter, this Court finds it appropriate to hold that it would be open to the petitioners to submit their representations to the authorities concerned, including the respondent in the present writ petitions, requesting for permission to hold demonstrations in a peaceful way, within the limits prescribed by law, if they deem fit to do so, and on such representations being made, the respondent shall consider the same and pass appropriate orders thereon, on merits and in accordance with law and by taking into consideration the observations made by this Court in the present order.

This Product is Licensed to **Mr. Bhavani Mohan, Advcoate, Bhavani**

The writ petitions are disposed of accordingly. No costs. Connected M.P.Nos.1 and 1 of 2010 are closed.

CDJLawJournal