(2005) 12 MAD CK 0057

Madras High Court

Case No: Writ Petition (MD) No''s. 9069, 9362 and 10223 of 2005

Dr. K. Krishnasamy and Another		APPELLANT
	Vs	
The Superintendent of Police and Others		RESPONDENT

Date of Decision: Dec. 22, 2005

Acts Referred:

- Constitution of India, 1950 - Article 14, 19, 19(1), 19(2), 21
- Criminal Procedure Code, 1973 (CrPC) - Section 144
- Madras City Police Act, 1888 - Section 3, 41, 41(4)
- Police Act, 1861 - Section 30, 30(2), 41
- Representation of the People Act, 1951 - Section 29(A)

Hon'ble Judges: D. Murugesan, J

Bench: Single Bench

Advocate: K. Chandru for G.R. Swaminathan, for the Appellant; A.L. Somayaji, A.A.G. assisted by K. Mahendran, Special Government Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D. Murugesan, J.
As the issues raised in all these writ petitions are identical, they are disposed of by this common order.

2. The Petitioner in W.P. (MD) No. 9069 of 2005 is Dr. K. Krishnasamy, the President of Puthiya Tamilagam Political Party (hereinafter referred to as the "party") and a former Member of the Legislative Assembly of Tamil Nadu. The said party is registered with the Election Commission of India u/s 29A of the Representation of People Act, 1951 on 15.12.1997. According to the petitioner, the said party is engaged in the upliftment of downtrodden sections of society irrespective of caste, creed and religion. In view of the ensuing elections of Tamil Nadu Legislative Assembly, the party decided to conduct District Level Conferences in the southern

districts of Tamil Nadu. In the first phase, the conferences were organised to focus on the issues of land for landless and job of jobless people belonging to the oppressed and suppressed sections of the society. The conferences were to highlight the requirement of bringing in suitable legislation by the Central and State Governments to fulfill the said objectives and also for the purpose of fund raising. Such District Level Conferences were planned in the nine southern districts of Tamil Nadu Commencing from the month of October to December, 2005. The first such conference was planned and proposed to be held on 16.10.2005 in Virudhunagar District at Rajapalayam. Accordingly, an application for permission dated 19.9.2005 was made to the Deputy Superintendent of Police, Rajapalayam by the Rajapalayam Town Organising Secretary of the party to conduct the procession from Nehru Statue upto Jawahar Maidan. A further request dated 27.9.2005 was also made to the Superintendent of Police of the District by the same Secretary to conduct a public meeting in Jawahar Maidan. By the impugned orders dated 27.9.2005 and 28.9.2005, the requests were rejected.

3. W.P.(MD) No.9362 of 2005 was also filed by the President of the same party. The Tirunelveli District Organising Secretary of the party made a request on 5.10.2005 to the Superintendent of Police of the District for permission to conduct the procession from Dr. Ambedkar Nagar upto Congress Centenary Maidan in Sankarankoil. By the impugned order dated 13.10.2005 the said request was rejected.

4. The petitioner in W.P.(MD) No. 10223 of 2005 is the District Joint Secretary of the same party, Ramanathapuram. Similarly, a request was made to the Deputy Superintendent of Police, Paramakudi seeking permission to conduct the procession and public meeting and the request was rejected by the impugned order dated 23.10.2005. The petitioners have questioned the above orders of rejection in the writ petitions.

5. The impugned orders are basically questioned on the ground that (1) they are arbitrary and violative of the fundamental rights enshrined in Articles 14 19(1)(a) 19(1)(b) and 21 of the Constitution of India. (2) They were passed with a prejudiced mind relying on extraneous consideration; and (3) the petitioners were not granted opportunity before passing the orders as per sub-section (4) of Section 41 of the Madras City Police Act.

6. Mr. K. Chandru, the learned Senior Counsel appearing for the petitioners fairly conceded that the petitioners do not press the challenge as to the orders rejecting the request to take out procession in the Highways. The learned Senior Counsel advanced his argument only in respect of the orders of rejection to hold the meetings. According to the learned Senior Counsel, the cause for conduct of the public meetings is to provide land for landless and job for jobless people belonging to the oppressed and suppressed sections of society. The further object is to insist that such oppressed and suppressed people do not want food for work, but they want land. The object is for legitimate and great purpose. The party has

fundamental right under Article 19(1)(a) to express the grievance and demands of the downtrodden people. The right also flows from the fact that the party is registered u/s 29A of the Representation of the People Act. He would also submit that the application of Section 30(2) of the Police Act, 1861 is bad for prohibiting the meetings and the proper section would be only Section 41 of the Madras City Police Act, 1888. By placing reliance on the judgment of this Court in P. Nedumaran v. State of Tamil Nadu, rep. by the Secretary to Government Home Department, Fort St. George, Chennai and 3 Ors. 1999 (1) LW. (Crl.) 73. he would submit that the right of a political party to conduct the meetings cannot be curtailed, except for the grounds of public order and public tranquillity. He would also rely upon the judgments in Arcot N. Veerasamy v. The Government of Tamil Nadu, rep. by its Home Secretary, Fort St. George, Chennai and 2 Ors. 2004 W.L.R.154 and Adhirai M.M. Ibrahim Vs. The Commissioner of Police, to highlight the right of the petitioners guaranteed under Article 19(1)(a) read with Article 21 of the Constitution of India. He would further submit that inasmuch as the reasons given in W.P.(MD) No. 9069 of 2005 viz., that the Deepavali is forthcoming and there will be a law and order problem are no more in existence. He would also submit that inasmuch as the power u/s 41 of the Madras City Police Act is sweeping and without great caution the impugned decisions were taken based on unreasonable and arbitrary grounds.

7. The respective respondents have filed counter affidavits in all the writ petitions. So far as the claim of the petitioner in W.P.(MD) No. 9069 of 2005 is concerned, it is stated that the request for conducting the procession as well as the meeting was rejected after careful analysis of apprehending breach of peace and to prevent communal clashes, since Rajapalayam is highly sensitive for communal clashes. It is also stated that the decision was taken considering the past experiences and prevailing circumstances, the choice of the town in the district and the particular place in the town for conducting such meeting would affect the peace and tranquillity of the area. It is further averred that the request for conducting meeting and procession is in the most sensitive place, where already several persons were killed in clashes viz., 24 persons belonging to scheduled caste, 12 belonging to nadar caste, 8 belonging to devar caste and one other caste in the last 15 years. It is further stated that in the year 2001, the Devar statue situate at Rajapalayam was garlanded with chappals by the petitioner''s partymen and a case was also registered, but the accused were subsequently acquitted. On 6.2.2005, at Devanathan village 14 kms. away from Rajapalayam, the petitioner and his partymen without obtaining permission from the authorities, proposed to open one statue of Veeran Sundaralingam by getting permission only for a public meeting at Devanathan outer area. After gathering with a huge crowd, a demand was made to conduct the public meeting near the statue and the same was granted at the last minute. However, at the guise of conducting meeting, the petitioner''s partymen threw soda bottles at Devar statue and in this connection a case was registered and the same is pending trial. It is also stated that on 16.6.2005 at 20.00 hours, the

petitioner''s partymen without getting permission conducted a procession and violated the rules and regulations and in this connection a case was registered against the District Secretary of the party and six other partymen. It is also stated that on 16.10.2005, after the writ petition was filed, the petitioner announced demonstration against the rejection of permission for political conference at Rajapalayam and that the permission was denied by the police on the ground that the matter was sub-judice. However, violating the police order, the petitioner''s partymen numbering 216 gathered and tried to conduct demonstration. Hence a case was registered and the said partymen were arrested. Taking into account the said facts, the request was rejected.

8. So far as the claim of the petitioner in W.P.(MD) No. 9362 of 2005 is concerned, the second respondent has averred that the request of the petitioner was rejected only after perusal of the case diaries pertaining to the communal clashes that had taken place in Sankarankoil during the recent past and the cases registered viz., (i) Cr. No. 239 of 1999 on the file of Chinnakovilankulam Police Station; (ii) Cr.No. 717 of 1999 on the file of Sankarankoil Town Police Station; (iii) Cr.No. 482 of 2000 on the file of Sankarankoil Town Police Station; and (iv) Cr.No. 142 of 2003 on the file of Sankarankoil Town Police Station for various offences of IPC read with the Arms Act and the Explosive Substances Act. It is also stated that it took more than three years to restore normalcy in Sankarankoil. It is also stated that the petitioner organized a procession on 23.7.99 at Tirunelveli on certain demands, but it turned violent, where 17 persons were drowned in Tamirabarani river and for which a Commission of Inquiry was constituted under the Hon''ble Justice S. Mohan. After inquiring into the incident, he has observed that (i) the total failure on the part of the political leaders to control the crowd, to maintain peace led to the use of force and the crowd became encouraged by the incitement of the leaders and; (ii) all the unruly behaviour of the processionists coupled with raising unparliamentary slogans and unparliamentary language against the police and the administration led to the use of force. Hence it is stated that only on consideration of the above, the request was rejected.

9. In so far as the claim of the petitioner in W.P.(MD) No. 10223 of 2005, the second respondent has averred that the request of the petitioner was rejected only due to the communal incidents that happened in Paramakudi subdivision viz., in the year 1996, there was a communal riot hi Paramakudi which resulted in the loss of life of three persons and that all the three murders took place only because of a procession followed by a bandh organised by the Devendra Kula Velalar Sangam and a case was registered in Cr.Nos.43, 47 and 19 of 1996 on the file of Paramakudi Town Police Station. It is also stated that in the year 1997, fire was opened by the police on two occasions since the communal mob comprising of dalit community hurled boms against the police and public and a case was registered in Cr.Nos.217 and 225 of 1997 on the file of Paramakudi Town Police Station. It is also stated that on 4.10.98, one person died and six were injured due to a communal riot that broke

because of permission to conduct conference in Ramnad District. It is also stated that between 6.9.98 and 5.10.98, 23 cases were registered because of communal riots between devar caste persons and scheduled caste persons, in which 13 thevar caste persons and 7 scheduled caste persons were injured. Hence, from the year 1999 to till date, no conferences were allowed to be conducted by both the devar and dalit communities. It is also averred that on 25.7.2003, in Paramakudi, bombs were hurled by dalit persons against the devar community persons because of vengeance carried out by the dalit people over the murder of their leader by the thevar people and only thereafter, the administration headed by the Collector and the Superintendent of Police have not so far allowed any conferences to be conducted by the leaders of both the groups in Ramanathapuram district. Hence the request was rejected.

10. Mr. A.L. Somayaji, the learned Additional Advocate General appearing for the respondents elaborately drew the attention of this Court to the entire counter affidavits and submitted that the places for conducting meetings are sensitive and the incidents in the past show the communal disturbances and violence. Only to avoid such recurrence, the requests of the petitioners were rejected. He would also submit that as against the right of the political party to conduct meetings, the public order, safety and security of the common man is paramount and in the event the State is of the considered view that the grant of permission may amount to the disturbance of public order, which would directly or indirectly affect the rights of general public, such orders of rejection cannot be considered to be unreasonable or arbitrary. He would also submit that the theory of rejection of the requests on pre-judged notion is invented only for the purpose of the case. The past incidents coupled with the fact that the area is prone for communal disturbances frequently were alone the basis for the impugned orders. He would therefore submit that there is no substance in challenging the impugned orders.

11. I have given my due consideration to the above submissions. The petitioner''s party is registered u/s 29A of the Representation of the People Act and is entitled to exercise the rights conferred under the said Act. Such right is statutory in nature. Apart from the same, the party is also entitled to express views in support of the common man, members of the party in general and the downtrodden people in particular in view of the fundamental rights guaranteed under Article 19(1)(a) of the Constitution of India. Though tire statutory right is very restricted and can be claimed only to the limited extent provided under the Representation of the People Act, the fundamental right of the party under Article 19(1)(a) could be restricted only on the ground of reasonableness. On the facts of the given case, whether the orders of rejection would be reasonable or arbitrary is the question to be considered.

12. Article 19(1)(a) of the Constitution of India reads thus :-

Protection of certain rights regarding freedom of speech, etc.--

(1) All citizens shall have the right--

(a) to freedom of speech and expression;

. . .

(2) Nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said Sub-clause in the interest of the sovereignty and integrity of India the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence.

(3) Nothing in Sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said Sub-clause.

. . .

13. Freedom of speech and expression guaranteed under Article 19(1)(a) is subject to reasonable restriction. The only restriction which may be imposed on the rights of an individual under the said Article are those under Clause (2) of Article 19 permits and no other. The Apex Court in the judgment in The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia, has held that the public order is synonymous with public peace, safety and tranquillity. It is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife and war, affecting the security of the State. The Court held that in order that limitation on the right conferred by Article 19 to be reasonable, limitation must have a proximate connection to "public order" and not one farfetched, hypothetical, problematic or too remote.

14. In the judgment in Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI), the Apex Court held that the expression "public order" must have proximate and direct connection with the specific restrictions as contemplated under the Constitution. A mere apprehension of public order cannot be on the basis of a remote and indirect cause or apprehension. The apprehension must be real and proximate.

15. In the judgment in O.K. Ghosh and Another Vs. E.X. Joseph, a Constitution Bench of the Apex Court has held as follows :

...This clause again cannot be interpreted to mean that even if the connection between the restriction and the public order is remote and indirect the restriction can be said to be in the interests of public order. A restriction can be said to be in the interests of public order only if the connection between the restriction and the

public order is proximate and direct. Indirect or far-fetched or unreal connection between the restriction and public order would not fall within the purview of the expression ''in the interests of public order''. This interpretation is strengthened by the other requirement of Clause (4) that, by itself, the restriction ought to be reasonable. It would be difficult to hold that a restriction which does not directly relate to public order can be said to be reasonable on the ground that its connection with public order is remote or farfetched. There is another consideration which is relevant. Therefore, reading the two requirements of Clause(4), it follows that the impugned restriction can be said to satisfy the test of Clause(4) only if its connection with public order is shown to be rationally proximate and direct. That is the view taken by this Court in The Superintendent, Central Prison, Fatehgarh Vs. Dr. Ram Manohar Lohia, . In the words of Patanjali Sastri, J., in Rex v. Basudev 1949 FCR 657: AIR 1950 FC 67, ''the connection contemplated between the restriction and public order must be real and proximate, not farfetched or problematical''. It is in the light of this legal position that the validity of the impugned rule must be determined.

16. The Apex Court in the case of S. Rangarajan Vs. P. Jagjevan Ram and Others, held that the freedom of speech under Article 19(1)(a) of the Constitution of India means the right to express one''s opinion by word of mouth, printing, picture or is 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''.

17. There cannot be an absolute or uncontrolled liberty wholly free from restraint, as it would lead to anarchy and disorder. When there is a threat to public order, interference of the Court is not restricted to protect the right of an individual to life and liberty on the ground that any restriction made to ensure the fundamental right of an individual or the public in general to life and liberty is not either disturbed or interfered. However, restriction must not be arbitrary or of excessive nature so as to go beyond the requirement of the interest of the general public.

18. Article 21 includes the right of an individual or the general public for that matter, to move freely and mingle with fellow beings. Right to life enshrined in the said Article means something more than a mere survival or animal existence. Right to life

includes a right to live with human dignity and with a feeling of security at the hands of the State. Article 21 of the Constitution of India reinforces "right to life". Life in its expanded horizon includes a right to "secured and protected life" and such right is inherent in every human being. When the right to expression guaranteed under Article 19(1)(a) is put in issue vis-a-vis the right to life and personal liberty, the Court must strike a balance between both the above fundamental rights. Nevertheless, at the guise of freedom of speech and expression, right of an individual to life and liberty cannot be either deprived of or interfered even by any individual or association or the political party for that matter. The fundamental rights of the people as a whole cannot be subservient to individual right or only a section of the people.

19. Rights of the general public were considered by the Apex Court in Communist Party of India (M) Vs. Bharat Kumar and Others, and the Apex Court held thus:

There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people.

The leaders of the political parties who call for the bandh cannot escape by saying that they are not directly telling the citizens to do these things under threat but if some of the participants in the bandh indulge in such activities, they cannot be held responsible. Obviously, they can with reasonable intelligence foresee the consequences of their action in calling for the bandh. Nor can they pretend that the consequences that arise out of the calling for a bandh, is too remote or does not have reasonable proximity to the call they have made. Learned counsel appearing for the political parties contended that this Court cannot take note of what actually happens when a bandh is called, but this Court can only go by the call for the bandh itself which does not involve the call for violence or forceful prevention of people from going about their avocation. We do not think that we would be justified in adopting such an ostrich like policy. We cannot ignore the reality of what is involved, when a bandh is called.

In this context, useful reference also can be made to the reference made by the Apex Court in the judgment in Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad and Another, as to the observation "Dicey" in his Law of the Constitution that:

A has a right to walk down the High Street or to go on to a common, B, has the same right, C, D and all their friends have the same right to go there also. In other words, A, B, C and D, and ten thousand such, have a right to hold a public meeting.

It might not follow that because A, B, C, D, etc. have a right to walk down the High Street, they have a legal right to hold a public meeting. Beatty v. Citibank''s which Dicey cites as the leading case on the law of public meeting was not directly concerned with this question as the appellants there who were leading a procession

through the street intended to hold their meeting on private premises. Dicey has himself pointed out in the appendix to the eighth edition of the book as follows:

Does there exist any general right of meeting in public places? The answer is easy. No such right is known to the law of England.

...But speaking in general terms the Courts do not recognise certain spaces as set aside for that end. In this respect, again, a crowd of a thousand people stand in the same position as an individual person. If A wants to deliver a lecture, to make a speech, or to exhibit a show, he must obtain some room or field which he can legally use for his purpose. He must not invade the rights of property i.e., commit a trespass. He must not interfere with the convenience of the public i.e., create a nuisance. The notion that there is such a thing as a right of meeting in public places arises from more than one confusion or erroneous assumption. The right of public meeting-that is, the right of all men to come together in a place where they may lawfully assemble for any lawful purpose, and especially for political discussion-is confounded with the totally different and falsely alleged right of every man to use for the purpose of holding a meeting at any place which in any sense is open to the public. The two rights, did they both exists, are essentially different, and in many countries are regulated by totally different rules. It is assumed again that squares, streets, or roads, which every man may lawfully use, are necessarily available for the holding of a meeting. The assumption is false. A crowd blocking up a highway will probably be a nuisance in the legal, no less than in the popular sense of the term, for they interfere with the ordinary citizen''s right to use the locality in the way permitted to him by law. Highways, indeed, are dedicated to the public use, but they must be used for passing and going along them, and the legal mode of use negatives the claim of politicians to use a highway as a forum, just as it excludes the claim of actors to turn it upto an open-air-theatre. The crowd who collect, and the persons who cause a crowd, for whatever purpose, to collect in a street, create a nuisance....

In Burden v. Rigler the evidence showed that the urban authority had tacitly licensed the meeting and so it was hot a trespass as against them. No evidence was also adduced that the meeting caused any appreciable obstruction on the highway and so there was no proof of any nuisance. The Court held that the fact that a public meeting is held upon a highway does not make the meeting unlawful whether it is unlawful or not depends upon the circumstances in which it is held, e.g., whether or not an obstruction is caused. The Court further held that even though there is no right to hold a meeting on a highway i.e., no absolute legal right, it does not necessarily follow that, if a meeting is held, it may not be lawful. And after referring to the decision in ex parte Lewis already referred to, the Court said that the convenors of a meeting cannot, under all circumstances, insist on holding a meeting.

In Harrison v. Duke of Rutland, Lord Esher, M.R. Observed:

Highways are no doubt dedicated prima facie for the purpose of passage; but things are done upon them by everybody which are recognised as being rightly done, and as constituting a reasonable and usual mode of using a highway as such.

In Halsbury ''s Laws of England, it is said that it is a nuisance to organise or take part in a procession or meeting which naturally results in an obstruction and is an unreasonable use of the highway.

Public processions are prima facie legal. If A, B and C have each a right to pass and repass on the highway, there is nothing illegal in their doing so in concert, unless the procession is illegal on some other ground (see Manzur Hasan v. Muhammed Zaman and Chandu Sajan Patil v. Nyahalchand As the public interest is paramount, it is sometimes suggested that, on the analogy of a public meeting, any procession which causes an appreciable obstruction to the highway must be a public nuisance. This, however, is not so. As a public meeting is not one of the uses for which the highway has been dedicated, it is a nuisance if it appreciably obstructs the road. It is no defence to show that sufficient available space is left if a part of the highway actually used by passengers is obstructed. But, and this is most important, in the case of a procession, the test is whether in all the circumstances such a procession is a reasonable user of the highway, and not merely whether it causes an obstruction. Thus to take an obvious illustration, the temporary crowding in a street occasioned by people going to a circus or leaving it is not a nuisance, for if such a temporary obstruction were not permitted then no popular show could ever be held (see Goodhart Public Meetings and Processions.) The distinction between the use of a highway to hold a public meeting and the use of it to conduct procession thereon is pointed out by the author and he takes the view that no person has a right to use a highway for holding public meeting even though no nuisance is created. According to him, under the law, a person can use a highway for the purpose for which it has been dedicated i.e., to pass and repass and any other unlicensed use, however desirable it may be from other standpoints is legally wrongful.
In Lowdens v. Keaveney, Gibson, J., said that a procession is prima facie legal and that it differs from ''the collection of a stationary crowd'' but that a procession may become a nuisance if the right is exercise unreasonably or with reckless disregard of the rights of others.

Justice Holmes, while he was Chief Justice of the Massachusetts Supreme Court said:

For the Legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house. When no proprietory rights interfere, the Legislature may end the right of the public to enter upon the public place by putting an end to the dedication to public use. So it may take the less step of limiting the public use to certain purposes.

20. Coming to the right of a political party for freedom of speech and expression vis-a-vis the individual fundamental right of life and liberty, the following judgment of the Apex Court is referable. In T.K. Rangarajan Vs. Government of Tamil Nadu and Others, the Apex Court has observed as follows:

No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoint, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the Stale or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it.

Apart from statutory rights, Government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievance. Strike as a weapon is mostly misued which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakhs employees go on strike en masse, the entire administration conies to a grinding halt. In the case of strike by a teacher, the entire educational system suffers; many students are prevented from appearing in their exams which ultimately affects their whole career. In case of strike by doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a standstill; business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among the public against those who are on strike.

21. Insofar as the power of the police to regulate the procession and meeting, the following judgment of the Apex Court is referable. In Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad and Another, the Apex Court has held that the right to hold a public meeting can be regulated, as follows:-

We may make it clear that there is nothing wrong in requiring previous permission to be obtained before holding a public meeting on a public street, for the right which flows from Article 19(1)(b) is not a right to hold a meeting at any place and time. It is a right which can be regulated in the interest of all so that all can enjoy the right.

22. So far as the power of the Courts to interfere in the right of an individual or an association for that matter, the Apex Court while considering the power of the Courts to interfere in matters relating to law and order which is primarily the domain of administrative authorities concerned has in State of Karnataka and Another Vs. Dr. Praveen Bhai Thogadia, observed as follows:

Courts should not normally interfere with matters relating to law and order which is primarily the domain of the administrative authorities concerned. They are by and large the best to assess and to handle the situation depending upon the peculiar needs and necessities within their special knowledge. Their decision may involve to some extent an element of subjectivity on the basis of materials before them. Past conduct and antecedents of a person or group or an organisation may certainly provide sufficient material or basis for the action contemplated on a reasonable expectation of possible turn of events, which may need to be avoided in public interest and maintenance of law and order. No person, however big he may assume or claim to be, should be allowed, irrespective of the position he may assume or claim to hold in public life, to either act in a manner or make speeches which would destroy secularism recognised by the Constitution of India. Secularism is not to be confused with communal or religious concepts of an individual or a group of persons. It means that the State should have no religion of its own and no one could proclaim to make the State have one such or endeavour to create a theocratic State. Persons belonging to different religions live throughout the length and breadth of the country. Each person, whatever be his religion, must get an assurance from the State that he has the protection of law freely to profess, practice and propagate his religion and freedom of conscience. Otherwise, the rule of law will become replaced by individual perceptions of one''s own presumptions of good social order. Therefore, whenever the authorities concerned in charge of law and order find that a person''s speeches or actions are likely to trigger communal antagonism and hatred resulting in fissiparous tendencies gaining foothold, undermining and affecting communal harmony, prohibitory orders need necessarily to be passed, to effectively avert such untoward happenings.

Communal harmony should not be made to suffer and be made dependant upon the will of an individual or a group of individuals, whatever be their religion, be it of a minority or that of the majority. Persons belonging to different religions must feel assured that they can live in peace with persons belonging to other religions. While permitting holding of a meeting organised by groups or an individual, which is likely to distub public peace, tranquillity and orderliness, irrespective of the name, cover and methodology it may assume and adopt, the administration has a duty to find out who are the speakers and participants are and also to take into account previous instances and the antecedents involving or concerning those persons. If they feel that the presence or participation of any person in the meeting or congregation would be objectionable, for some patent or latent reasons as well as the past track record of such happenings in other places involving such participants, necessary prohibitory orders can be passed. Quick decisions and swift as well as effective action necessitated in such cases may not justify or permit the authorities to give prior opportunity or consideration at length of the pros and cons. The imminent need to intervene instantly, having regard to the sensitivity and perniciously perilous consequences it may result in if not prevented forthwith,

cannot be lost sight of. The valuable and cherished right of freedom of expression and speech may at times have to be subjected to reasonable subordination to social interests, needs and necessities to preserve the very core of democratic life--preservation of public order and rule of law. At some such grave situation at least the. decision as to the need and necessity to take prohibitory actions must be left to the discretion of those entrusted with the duty of maintaining law and order, and interpersonation of Courts--unless a concrete case of abuse or exercise of such sweeping powers for extraneous considerations by the authority concerned or that such authority was shown to act at the behest of those in power, and interference as a matter of course and as though adjudicating an appeal, will defeat the very purpose of legislation and legislative intent. It is useful to notice at this stage the following observations of this Court in the decision reported in Madhu Limaye v. Sub Divisional Magistrate, Monghy:

The gist of action u/s 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible to act absolutely and even exparte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. It is not an ordinary power flowing form administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application. There is no general proposition that an order u/s 144, Criminal Procedure Code cannot be passed without taking evidence: see Jagrupa Kumari v. Chotey Narain Singh which in our opinion is correct in laying down this proposition. These fundamental facts emerge from the way the occasions for the exercise of the power are mentioned. Disturbances of public tranquillity, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevened. We are, however, not concerned with this part of the section and the validity of this part need not be decided here. Insofar as the other parts of the section are concerned the keynote of the power is to free society from menace of serious disturbances of a grave character. The section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If that be so the matter must fall, within the restrictions which the Constitution itself visualizes as permissible in the interest of public order, or in the interest of the general public. We may say, however, that annoyance must assume sufficiently grave propositions to bring the matter within interests of public order.

The High Court in our view should not have glossed over these basic requirements, by saying that the people of the locality where the meeting was to be organised were sensible and not fickle-minded, to be swayed by the presence of any person in their midst or by his speeches. Such presumptive and wishful approaches at times may do greater damage than any real benefit to individual rights as also the need to protect and preserve law and order. The Court was not acting as an appellate

authority over the decision of the official concerned. Unless the order passed is patently illegal and without jurisdiction or with ulterior motives and on extraneous considerations of political victimisation by those in power, normally interference should be the exception and not the rule. The Court cannot in such matters substitute its view for that of the competent authority.

During the course of hearing, learned Counsel for the parties submitted that the prohibitory orders should not be allowed to be passed at the ipse dixit of the executive officials concerned. There must be transparent guidelines applicable. Since different fact situations warrant different approaches, no hard-and-fast guidelines which can have universal application can be laid down or envisaged. The situation peculiar to a particular place or locality vis-a-vis a particular individual or group behaving or expecting to behave in a particular manner at a particular point of time may not be the same in all such or other eventualities in another part of the country or locality or place even in the same State. The scheme underlying the very provisions carries sufficient inbuilt safeguards and the avenue of remedies available under the Code itself as well as by way of judicial review are sufficient safeguards to control and check any unwarraned exercise or abuse in any given case and Courts should ordinarily give utmost importance and primacy to the view of the competent authority, expressed objectively also, in this case without approaching the issue, as though considering the same on an appeal, as of routine, keeping in view the fact that orders of the nature are more preventive in nature and not punitive in their effect and consequences.

23. The above analysis would ultimately lead to the following conclusions: (1) The freedom of speech and expression guaranteed under Article 19(1)(a) is subject to reasonable restriction and the restriction imposed on the rights of an individual shall fall under Clause (2) of Article 19(2) The expression of views by conduct of public meeting shall not be at the sacrifice of public peace, safety and tranquillity. (3) The fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. (4) Any reasonable restriction which has proximate and direct connection to public order shall be only to protect the right under Article 21(5) It is the prerogative of the police either to grant or to reject permission for holding the meeting considering the threat to public order. However, the reasons for such conclusion of the authority must be supported by materials and shall not be unreasonable or arbitrary.

24. Coming to the facts of this case, the incidents of communal clashes in all the three places namely Rajapalayam, Sankarankoil and Paramakudi have been elaborately given by the respective respondents in the counter affidavits and the same have been extracted in paragraphs 7 to 9 of this order. In addition to the above, the learned Additional Advocate General has produced the details as to the communal clash cases pending in Rajapalayam sub-division amounting to 199 from the year 1990. He has also produced the communal clash cases in Sankarankoil

Sub-Division amounting to 21 from the year 1991. Similarly for Paramakudi Sub-Division, the particulars as to the communal clash cases show 68 from the year 1996. In the impugned orders, the respective respondents have relied upon the past incidents and have rejected the requests for permission to hold the meeting on the ground that the areas are sensitive and prone to communal clashes. In my opinion, the grounds on which the impugned orders were passed cannot be either termed as arbitrary, unreasonable or made with pre-judged mind on extraneous consideration. Instances are not rare that whenever the procession is taken or the meeting is organised in a sensitive area and prone to communal clashes, the ultimate sufferers are the innocent people resulting in the loss of not only their valuable lives and properties but also the damage caused to the public properties. While judging the administrative orders, the Court must not fail to keep the above in mind, as otherwise such instances will result in the interference of the right to life and liberty enshrined under Article 21 of the Constitution at the guise of freedom of expression. No political party or organisation can claim that it is entitled to disturb the public order. The curtailment of the conduct of public meeting cannot in any way be construed or questioned on the ground of violation of the right to speech and expression under Article 19(1)(a) of the Constitution. The learned Senior Counsel relied upon the judgment of a learned single Judge in P. Nedumaran''s case, 1999 (1) L.W. (Crl.) 73 in support of his submission. Even in that case, the learned Judge has only held that the police should exercise the power 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 restriction so placed should be shown to be essential. As I have held, on the facts of this case, that the reasons for rejecting the requests of the petitioners had proximity to the disturbance of public order, I do not think that the above finding of the learned Judge is in any way different from one expressed by the Apex Court. Similarly the judgments relied upon by the learned Senior Counsel in Arcot TV. Veerasamy''s case 2004 W.L.R. 154 and Adhirai M.M. Ibrahim Vs. The Commissioner of Police, relating to the right guaranteed under Article 19(1)(a) read with Article 21 of the Constitution are of no help to the petitioners on the facts and circumstances of the case.

25. The reasons adduced in the impugned orders are not based on mere apprehension. The expression ''public order'' in the impugned order has a proximate and direct connection with the restriction and the restriction is supported by materials. When the authority entrusted with the duty of maintaining law and order, it can certainly take note of the circumstances that prevail in the area when the request for conduct of public meeting is considered. In the event such authority is of the view that if permission is granted there is every possibility of breach of public order resulting in the loss of valuable human lives, it can certainly reject the request. In fact, in the counter affidavit in W.P.(MD) No. 10223 of 2005, the second respondent has specifically stated that from the year 1999 no conferences were

allowed to be held in Paramakudi Sub-Division apprehending communal clashes. While that being the situation, grant of permission to a group of people or association or even a political party for that matter, to conduct public meeting, though for good reasons, must strictly be avoided.

26. It was lastly contended by the learned Senior Counsel for the petitioners that the application of Section 30(2) of the Police Act, 1861 is bad inasmuch as the respondents could have invoked only Section 41 of the Madras City Police Act, 1888. Section 41 empowers the Commissioner of Police or, subject to his orders, any Police Officer above the rank of Head Constable, the power to regulate assemblies, meetings and processions in public places, etc. The provisions of the said Act are extended to the City of Madras as defined u/s 3. Those provisions were made applicable to the cities of Madurai and Coimbatore by the Tamil Nadu Act 32 of 1987 and so far as the other places, the Police Act, 1861 is alone applicable. For the purpose of regulating public assemblies and processions and licensing of the same in the places in question, the provisions of Section 30 of the Police Act, 1861 are applicable and the said Section reads as under:

(1) The District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions on the public roads or in the public streets or thoroughfares, and prescribe the routes by which, and the time at which, such processions may pass.

(2) He may also, on being satisfied that it is intended by any person 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:

Provided that no fee shall be charged on the application for, or grant of, any such licence.

(4) He may also regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies.

27. A plain reading of the said Section does not contemplate any opportunity to be given to a person before the request is rejected. The licensing authority on being satisfied that any public assembly or procession, if allowed, be likely to cause a breach of the peace, may reject the same. Only in the event if the authority invokes

the power u/s 41 of the Madras City Police Act, an opportunity is contemplated. As the power to pass the impugned orders is traceable to Section 30(2) of the Police Act 1861, the grievance of the petitioners that they were not given opportunity before the requests were rejected cannot be accepted.

28. For all the above reasons, I do not find any merit in the challenge to the impugned orders. Accordingly, the writ petitions fail and the same are dismissed. No costs. Consequently, W.P.M.P.(MD) Nos.9769, 9770, 10095, 10923 and 10924 of 2005 are also dismissed.