

(2013) 12 MAD CK 0110

Madras High Court

Case No: W.P. No. 33758 of 2013

Naam Tamilar Katchi, Namakkal
Maavata Maanavar Paasarai,
rep. by Nalvinaiselvan, Namakkal
North District

APPELLANT

Vs

Superintendent of Police,
Namakkal, Namakkal District and
Others

RESPONDENT

Date of Decision: Dec. 13, 2013

Citation: (2014) 2 MLJ 736

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.

The District Secretary of Namakkal Maavata Maanavar Paasarai, Naam Tamilar Katchi has filed this writ petition, seeking to quash the order of refusal of the 3rd respondent dated 08.12.2013 with a consequential direction to the respondents to grant permission to the petitioner to conduct procession and public meeting on 15.12.2013. According to the petitioner, he had applied for permission from the third respondent to conduct a procession and public meeting to pay tribute during the memorial ceremony on the 18th death anniversary of Abdul Rashub, the first man to self immolate himself for the Sri Lankan Issue order and Mr. Seeman, the founder of Naam Tamilar Katchi had consented to participate in the public meeting and give speech also.

1a. It is submitted by the petitioner that the District Secretary of petitioner Katchi had made written representation to the third respondent as early as on 29.10.2013, who, for the reasons best known to him, had procrastinated in giving permission and later on, refused to grant permission on the ground that there exists

promulgation order u/s 30(2) of Police Act, 1861. Aggrieved by the same, the petitioner is before this Court seeking for the above relief.

2. The impugned order is challenged on the following grounds:

i) that the provision u/s 30(2) of Police Act, 1861 is only a regulatory power and not a blanket power to stifle the democratic dissent of the citizens and the democracy is meant for propagation of ideals, opinions and views of the speakers to the citizens;

ii) that Section 30(2) of the Act stipulates prescription of rules to conduct processions and the said Section cannot be used to prevent the political parties from conducting such meetings/processions;

iii) that the refusal of the 3rd respondent mainly stating that there will occur traffic congestion, is illegal, as there will not be any vehicular traffic on the said date, being Sunday evening and thus refusal is unconstitutional and violative of fundamental rights of freedom speech and expression.

3. A counter has been filed by the 2nd respondent, wherein it has been stated that the writ petition is not maintainable either in law or on facts. On receipt of petition from the petitioner for permission to conduct procession and public meeting in remembrance of Abdul Rashid on his 18th death anniversary, the respondent had refused for such procession vide his letter dated 08.12.2013, after analyzing various reasons, which read as under:

i) As per the order under 30(ii) Police Act, 1861, permission will not be granted for conducting procession or public meeting within the jurisdiction of Rasipuram Police Station from Old Bus Stand to new Bus Stand;

ii) The way from the old bus stand to new bus stand is one way, congestion area and also there is a Government Hospital. Hence, If the permission is granted, it will affect the public;

iii) There is no sufficient place to conduct the public meeting in the Rasipuram Town area participating over and above 1000 members;

iv) If the permission is granted, it will create law and order problem, since a lot of people from various places and various communities gather in one place and several vehicles such as vans, cars, two wheelers will flow into the town and in such event the entire general public will be affected. To maintain law and order and taking note of the interest of the public, permission was refused.

4a. It is stated in the counter that though the petitioner on earlier occasion had conducted procession in Rasipuram, keeping in view the festival time at present, viz., Christmas and New Year, if the permission is granted, it will create law and order problem on account of mass gathering of different community people and hence, it is prayed that the writ petition be dismissed.

5. Mr. R. Shanmuga Sundaram, learned Senior Counsel for Mr. N. Chandrasekaran, learned counsel appearing for the petitioner, in his submission has strenuously contended that the procession and public meeting are proposed to be conducted in order to bring out the pathetic conditions of Tamil people in Sri Lanka to the World in a peaceful manner without any kind of disturbance to the general public. The impugned order is not only contrary to the fundamental rights, but also against sovereignty of our country, which certainly needs interference by this Court.

6. In the course of his argument, learned counsel for the petitioner would rely on the following decisions:

(i) a decision of this Court reported in the case of C. Sakthivel v. Commissioner of Police 2010(5) CTC 134: LNIND 2010 MAD 3741: (2010) 8 MLJ 877;

8. It is seen that the petitioner is the District Secretary of Bahujan Samaj Party, North Chennai. It is claimed by him that his is a major political party in Indian continent and it is fighting for socially underprivileged and marginalized people through constitutional means and within the purview of established law. The petitioner also claims that the party is democratically fighting against social evils, concerns of the public, and conducting agitations through various methods viz., rally, fasting, dharna, public meeting etc. The petitioner gave a letter to the respondent on 24.07.2010 and sought for permission to convene the protest on 30.07.2010 against the action of the Government in respect of suspension of C. Uma Shankar, I.A.S., between 11.00 a.m. and 2.00 p.m. in front of Memorial Hall, which is the scheduled place for staging demonstration by all. A show cause notice was issued to the petitioner by the respondent, requesting to appear, for which the petitioner gave a reply on 28.07.2010. Thereafter, the petitioner met the respondent in person along with his counsel. However, permission to conduct the agitation was denied by the respondent, by passing the impugned order, dated 28.07.2010. Therefore, the petitioner has challenged the impugned order on the ground that it is in violation of Article 19(1)(a) of the Constitution. The petitioner has specifically contended that the respondent ought to have followed Section 41 of the Madras City Police Act, 1988, and the respondent has power to regulate the meetings, but not to refuse the permission of meeting.

9. In the case of S. Rangarajan v. P. Jagjivan Ram (supra), the Supreme Court had held that the democracy is a government by the people via open discussion. The democratic form of government itself demands its citizens an active and intelligent participation in the affairs of the community. The public discussion with peoples participation is a basic feature and a rational process of democracy which distinguishes it from all other forms of government. The democracy can neither work nor prosper unless people go out to share their views. The truth is that public discussion on issues relating to administration has positive value. The Supreme Court further held that there must be freedom of thought and the mind must be ready to receive new ideas, to critically analyse and examine them and to accept

those which are found to stand the test of scrutiny and to reject the rest. Article 19(2), freedom of expression cannot be suppressed on account of threat of demonstration and processions or threats of violence. That would tantamount to negation of the rule of law and a surrender to blackmail and intimidation. It is the duty of the State to protect the freedom of expression since it is a liberty guaranteed against the State. The State cannot plead its inability to handle the hostile audience problem. It is its obligatory duty to prevent it and protect the freedom of expression.

10. Also, this Court dealt with a similar matter in the case of P. Nedumaran, 1999(1) L.W. (Crl.) 73. In the said case, the stand of the State was that the petitioner was persistently extending support for an unlawful association viz., LTTE, which had been declared to be an unlawful association under the Unlawful Activities (Prevention) Act, 1967. This Court held that the power conferred on the Commissioner u/s 41 of the Madras City Police Act is sweeping and 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 Intelligent 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. 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. This Court, while analysing the case, held that the meeting which the petitioner had wanted to hold was to have been held on the 19th January, 1997, well over a year ago, and the authorities ought not to have refused 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 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 freedom of speech, expression and assembly.

13. In [Destruction of Public and Private Properties Vs. State of A.P. and Others](#), referred to above, the Supreme Court considered the two reports submitted one by Justice K.T. THOMAS and the other by F.S. NARIMAN. In para 20 of the judgment, it was pointed out that there is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

15. It is true, in the instant case, the demonstration sought to be made by the petitioner is against the administrative action of the State authorities in suspending an I.A.S. Officer, for furnishing alleged community certificate. The Constitution specifically mandates that no authority can prohibit a democratic activity, unless it is prohibited under Article 19(2) and such law imposes a reasonable restriction on the exercise of the right conferred in the interests of sovereignty and integrity of India, 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. When such a prohibition is not warranted, the authorities have no manner of right to deny or deprive any democratic process.

16. 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.

(ii) another decision of the Hon"ble Division Bench of this Court reported in the case of [The Home Secretary, Government of Tamil Nadu, The District Collector, Collectorate, Singaravelar Maligai, and The Commissioner of Police, Office of the Commissioner of Police, Egmore and The Assistant Commissioner of Police, Office of the Assistant Commissioner of Police, Mylapore Vs. Era. Selvam, ;](#)

5. It is an admitted fact the Viduthalai Siruthaigal Katchi (VCK) is conducting Dr. B.R. Ambedkar birth anniversary and award giving function from the year 2007. For conducting procession on 14.4.2013 the respondent in W.A. No. 842 of 2013 submitted an application on 26.3.2013 seeking permission to hold procession at 10.00 a.m. from Rajarathinam Stadium to Langs Garden Road under the leadership of party President, who is also a Member of Parliament. The said application was processed and according to the learned counsel for the respondents, the Commissioner of Police/3rd appellant requested the respondent to change the timing of procession to 3.00 p.m. and the said suggestion was agreed and request was made to give permission to conduct procession from 3.00 p.m. instead of from 10.00 a.m.

6. A show cause notice was issued on 10.4.2013 asking the respondents as to why the permission ought for to conduct procession shall not be rejected and the respondents were directed to approach the Assistant Commissioner of Police of the concerned police limit for the grant of permission to conduct public meeting. Time was granted to give objection up to 12.4.2013 at 11.00 a.m. and objection was filed before the Commissioner of Police on 10.4.2013 itself. No order having been passed and 12.4.2013 being the only working day, the respondents filed the writ petitions before this Court, which was taken up for hearing on 11.4.2013 in a special sitting and the learned Judge ordered to file counter/objection by the State Government and posted the matter on 12.4.2013. On 12.3.2013 counter affidavit was filed and the learned Advocate General urged all the grounds stated in the counter and opposed the prayer made in the writ petitions. The learned Judge passed orders granting permission to conduct procession and award giving function by fixing time i.e., to start procession at 3.00 p.m. and fixing time of meeting from 6.00 to 10.00 p.m. on 14.4.2013.

7. From the perusal of the order of the learned single Judge it could be seen that learned single Judge has ordered to regulate and control the procession without causing any hindrance to general public; procession should move quietly and peacefully; no words, actions, expressions shall be made by the writ petitioners and others, affecting the sentiments of others; the speakers can focus only on general topic and shall not speak on any other topics and on other parties/leaders; after the meeting people shall quietly disburse, without causing disturbance to people in and around and to general public; the vehicles shall be permitted to be parked in Marina area and police shall do the needful; and the cars and vehicles shall not be brought to the place of meeting. The leader of the party, who was present in the Court gave

an undertaking to control the entire cadre while conducting processing and meeting and his undertaking was also recorded in the order. The police was directed to provide adequate protection to avoid untoward incidents.

10. The appellants cannot deny the right of the people though discretion is vested with them u/s 41 of the Chennai City Police Act, 1888. In Chennai City sufficient police force is available to meet any eventuality. In the decision reported in [Himat Lal K. Shah Vs. Commissioner of Police, Ahmedabad and Another](#), it is held that although right to hold a public meeting at a public place may not be a fundamental right by itself, yet it is so closely connected with fundamental right that a power to regulate it should not be left in a nebulous state. Article 19(1)(a) of the Constitution of India guarantees to all citizen the right to freedom of speech and expression subject to reasonable restrictions on the grounds set out under Article 19(2). The reasonable limitations can be put in the interest of 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 of an offence. In the decision reported in [S. Rangarajan Vs. P. Jagjivan Ram and Others](#), the Supreme Court held thus,

53. Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself.

11. In the decision reported in [Ramlila Maidan Incident Vs. Home Secretary, Union of India \(UOI\) and Others](#), the Supreme Court held that the Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of democratic system. In para 245 the Supreme Court held thus,

245.....The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquility, as it may disturb the social order. This delegated power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to

subvert them.

12. Thus, the right of the citizens to conduct procession and public meeting cannot be curtailed, except on definite reasons and not on mere surmises. In the Division Bench Judgment of this Court reported in CDJ 2008 MHC 613 (cited supra) freedom to conduct meeting on a sensitive issue was considered and this Court directed to grant permission to hold the meeting and the police were directed to provide adequate protection for the smooth conduct of the meeting.

13. The decision cited by the learned Advocate General reported in [State of Karnataka and Another Vs. Dr. Praveen Bhai Thogadia](#), was rendered when the prohibitory order imposed u/s 144 of the CrI.P.C. was challenged to prohibit religious meeting at communally sensitive area where several communal clashes resulted in several deaths and damages to public and private properties. The said facts are entirely different from the fact of this case.

14. Considering the above principles in mind as well as the claim made by the respondents in these writ appeals that they are organising procession and award giving function on the birth anniversary day of Dr. B.R. Ambedkar on 14.4.2013 and to avoid apprehension expressed by the learned Advocate General that the entire persons participating in the procession will straight away go to the meeting place at Mangollai, Mylapore, Chennai, we are of the view that the said apprehension can be answered by modifying the order of the learned single Judge, directing the writ petitioners/respondents herein to hold procession between 10.00 a.m. and 1.30 p.m. on 14.4.2013 from Rajarathinam Stadium to Langs Garden Road and to conduct public meeting at Mangollai, Mylapore, Chennai-4 from 6.00 to 10.00 p.m. The change of timing will avoid the persons participating in the procession going to the place of meeting straight away as there will be a brake of 4.30 hours. The police are directed to regulate traffic and permit the writ petitioners to conduct procession and meeting as aforesaid. The conditions imposed by the learned single Judge in his order dated 12.4.2013 is to be scrupulously followed by the writ petitioners/respondents herein and organisers and leader of the party, who assured to control the entire cadre. It is needless to reiterate that while conducting procession during the above said time and conduct of meeting, the organisers should see that no untoward incident is allowed to happen and if any violation of the undertaking given by the organisers or by any other person, the appellants are entitled to deal with them to preserve maintenance of peace and tranquility and it is open to them to initiate appropriate action against the violators, in accordance with law.

(iii) yet another decision of this Court reported in the case of [Thol. Thirumavalavan Vs. The Government of Tamil Nadu, The District Magistrate and District Collector, The Superintendent of Police and The Tahsildar](#), ;

11. This Court, after considering various situations, particularly when there was a request for re-post mortem of the body of the deceased Elavarasan and the same was also allowed by this Court to be conducted by the Doctors from All India Institute of Medical Sciences (AIIMS), New Delhi and thereafter, funeral ceremony will be scheduled to be held on the date fixed by the family members of the deceased Elavarasan, is of the view that it is for the District Magistrate to take decision on the representations received from several political leaders including the petitioner, expeditiously, so that *actus curiae neminem gravabit*, which means, an act of law does no wrong.

14. In the meantime, a representation vide telegram dated 08.07.2013 has been sent by the petitioner to the District Collector, requesting to allow him to attend the funeral ceremony of Elavarasan. Since the petitioner is a Member of Parliament, espousing the cause of Dalit community and assured of maintaining public tranquility in the District, it would be appropriate to direct the second respondent to consider the request of the petitioner, taking into account the prevailing situation.

15. Accordingly, the writ petition is disposed of with a direction to the District Collector/2nd respondent to consider the petitioner's request dated 08.07.2013 and take a decision, after verifying all the factors and situation prevailing in Dharmapuri District on 13.07.2013. No costs. Consequently, connected miscellaneous petitions are closed.

7. On the other hand, Mr. V. Jayaprakash Narayanan, learned Special Government Pleader, while strongly objecting to the relief sought for by the petitioner in the writ petition, vehemently contended that if the petitioner's party is granted permission to conduct procession and public meeting, the party cadres will definitely indulge in such activities prejudicial to the interest of the public peace and tranquility. The respondents also apprehend that grant of permission will lead to severe law and order problem in that area owing to ensuing festivals like Christmas and New Year. Learned Special Government Pleader has also contended that there will be definite traffic congestion due to the proposed procession and moreover, hospital is located near the place where the proposed meeting is going to be organised. Hence, learned Special Government Pleader prays for dismissal of the writ petition in limine.

8. In response to the above submission, learned Senior Counsel for the petitioner submits that since procession and meeting are to be held on Sunday, there will be less traffic congestion and public movement, and that normally, shops will be kept closed in the evening hours of Sundays, no untoward incident will take place in the event of granting permission to conduct procession and public meeting.

9. Learned Special Government Pleader, in order to substantiate his stand, has relied on the following judgments:

i) a decision of the Hon'ble Supreme Court reported in the case of [State of Karnataka and Another Vs. Dr. Praveen Bhai Thogadia](#) ;

8. 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 of 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.

9. Our country is the world's most heterogeneous society, with rich heritage and our Constitution is committed to high ideas of socialism, secularism and the integrity of the nation. As is well known, several races have converged in this sub-continent and they carried with them their own cultures, languages, religions and customs affording positive recognition to the noble and ideal way of life - "Unity in Diversity". Though these diversities created problems, in early days, they were mostly solved on the basis of human approaches and harmonious reconciliation of differences, usefully and peacefully. That is how secularism has come to be treated as a part of fundamental law, and an unalignable segment of the basic structure of the country's political system. As noted in [S.R. Bommai and others Vs. Union of India and others etc. etc.](#), freedom of religion is granted to all persons of India. Therefore, from the point of view of the State, religion, faith or belief of a particular person has no place and given no scope for imposition on individual citizen. Unfortunately, of late vested interests fanning religious fundamentalism of all kinds vying with each other are attempting to subject the constitutional machineries of the State to great stress and strain with certain quaint ideas of religious priorities, to promote their own selfish ends, undeterred and unmindful of the disharmony it may ultimately bring about and even undermine national integration achieved with much difficulties and laudable determination of those strong spirited savants of yester years. Religion cannot be mixed with secular activities of the State and fundamentalism of any kind cannot be permitted to masquerade as political philosophies to the detriment of the larger interest of society and basic requirement of a welfare State. Religion sans spiritual values may even be perilous and bring about chaos and anarchy all around. It is, therefore, imperative that if any individual or group of persons, by their action or caustic and inflammatory speech are bent upon sowing seed of mutual hatred, and their proposed activities are likely to create disharmony and disturb equilibrium, sacrificing public peace and tranquility, strong action, and more so preventive actions are essentially and vitally needed to be taken. Any speech or action which would result in ostracization of communal

harmony would destroy all those high values which the Constitution aims at. Welfare of the people is the ultimate goal of all laws, and State action and above all the Constitution. They have one common object, that is to promote well being and larger interest of the society as a whole and not of any individual or particular groups carrying any brand names. It is inconceivable that there can be social well being without communal harmony, love for each other and hatred for none. The chore of religion based upon spiritual values, which the Vedas, Upanishad and Puranas were said to reveal to mankind seem to be -"Love others, serve others, help ever, hurt never" and "Sarvae Jana Sukhino Bhavantoo". Oneupship in the name of religion, whichever it be or at whomsoever's instance it be, would render constitutional designs countermanded and chaos, claiming its heavy toll on society and humanity as a whole, may be the inevitable evil consequences, whereof.

ii) a decision of the Hon"ble Division Bench of this Court reported in the case of [Rama Muthuramalingam, State Propaganda Committee Member Vs. The Deputy Superintendent of Police and Others, ;](#)

11. Maintenance of law and order is ordinarily an executive function and it is ordinarily not proper for the judiciary to interfere in this matter. The administrative authorities have expertise in law and order problems through their long experience and training, and the Courts should not ordinarily interfere in such type of matters. The judiciary must therefore exercise self-restraint and not try to interfere with the functions of the executive or the legislature. By exercising self-restraint it only enhances its prestige.

This Court should not ordinarily interfere in administrative matters, since the administrative authorities are specialists in matters relating to the administration. The court does not have the expertise in such matters, and ordinarily should leave such matters to the discretion of the administrative authorities. It is only in rare and exceptional cases, where the Wednesbury principle applies, that the Court should interfere, vide [Tata Cellular Vs. Union of India, , Om Kumar and Others Vs. Union of India, ,](#)

30. Thus, both the rights of freedom of speech and expression and the right to assemble peaceably are subject to reasonable restrictions from the point of view of public order, security of State, etc., and they are not absolute rights.

36. It is thus evident that public order is a matter within the domain of the State Legislature and the State Executive. That being so, it is not proper for the Judiciary to interfere in matters relating to public order, unless there is violation of some constitutional or statutory provision. There are various considerations for the administration in this matter and the Court should not ordinarily interfere with administrative decisions in this connection. It must be remembered that certain matters are by their very nature such as had better be left to the experts in the field instead of the courts themselves seeking to substitute their own views and

perceptions as to what is the best way to deal with the situation. In the present case, this Court should not interfere in a matter which relates to the administration, which is in the best position to know about the public order. What public order problem would arise if speeches are permitted or prohibited in connection with the arrest of Sankarachariyar and other incidental matters? How should the problem be tackled? It is the administration that best knows these problems and their solution. This Court should therefore exercise self-restraint and should not embarrass the administrative authorities in this connection.

38. Under our Constitution the Judiciary, the Legislature and the Executive have their own broad spheres of operation. It is important that these organs do not encroach on each others proper spheres and confine themselves to their own, otherwise there will always be danger of a reaction. Of the three organs of the State, it is only the judiciary which has the right to determine the limits of jurisdiction of all these three organs. This great power must therefore be exercised by the judiciary with the utmost humility and self-restraint.

39. The judiciary must therefore exercise self-restraint and eschew the temptation to act as a super legislature or a Court of Appeal sitting over the decisions of the administrative authorities. By exercising self-restraint it will enhance its own respect and prestige. Of course, if a decision clearly violates some provision of the law or Constitution or is shockingly arbitrary in the *Wednesbury* sense, it can be struck down, but otherwise it is not for this Court to sit in appeal over the wisdom of the legislature or the executive.

iii) another decision of this Court in the case of *Dr. K. Krishnasamy and Another v. Superintendent of Police, Virudhunagar District and Others* W.P. (MD) Nos. 9069, 9362 and 10223 of 2005 dated 22.12.2005;

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 subdivision 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, (supra) 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 T.V. Veerasamy's case 2004 W.L.R. 154 and Adhirai MM. Ibrahim case, 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.

iv) yet another decision of this Court in the case of M. Balaguru v. Commissioner of Police, Egmore and Others W.P. No. 1017 of 2010 dated 12.05.2010;

12. Section 41 of the Chennai City Police Act, 1888 clearly empowers the police authority to regulate assemblies, meetings and processions in public places. When the police receive Intelligence report with regard to the disturbance of law and order problem, to prevent the same, it is their duty to prohibit the conduct of the

meeting. Power to regulate includes power to cancel the permission already granted for valid reasons. In this case, the second respondent has given valid reasons in the counter affidavit by stating that Intelligence report was received apprehending likelihood of law and order problem and imminent possibility of unrest and disturbance of public order and tranquility. When the police is vested with the said power u/s 41 of the Act, the petitioner cannot contend that the permission already granted ought not to have been cancelled. The ground reality about the likelihood of disturbance of public order and tranquility can be ascertained only by the Officer, who is in charge of the area based on the Intelligence report and this Court in exercise of its powers under Article 226 of the Constitution of India, cannot find out whether there was any sufficient ground to arrive at a decision to cancel the permission already granted. Since no mala fide is alleged against the second respondent and the permission having been granted by the very same second respondent for the subsequent meeting held on 22.3.2010, I am of the view that the cancellation of permission originally granted to conduct the meeting on 5.1.2010 based on the Intelligence report cannot be found fault with.

13. It is well settled in law that law enforcing authorities are the best judge for meeting a situation prevailing in a particular locality based on which appropriate decision is to be taken either to grant permission to conduct meeting in a particular place and at a particular time. The Division Bench of this Court in the decision reported in [Rama Muthuramalingam, State Propaganda Committee Member Vs. The Deputy Superintendent of Police and Others](#), considered similar issue and held that the High Court in writ jurisdiction cannot give positive direction to grant permission to conduct public meeting, even though police refuse to grant permission. It is further held therein that if the administrative authorities feel that by granting permission to conduct meeting it may create a law and order or public order problem, then they may prohibit such activities. Applying the principle laid down by the Division Bench to the facts of this case, I am of the view that the second respondent is justified in cancelling the permission granted to conduct meeting on 5.1.2010 and there is no error in the said decision.

v) The Hon'ble Division Bench of this Court in the case of P. John v. Commissioner of Police, Egmore Chennai, W.A. No. 1798 of 2013 dated 31.08.2013 passed an interim order as under:

11. This Court, in a similar situation in the case of [The Home Secretary, Government of Tamil Nadu, The District Collector, Collectorate, Singaravelar Maligai, and The Commissioner of Police, Office of the Commissioner of Police, Egmore and The Assistant Commissioner of Police, Office of the Assistant Commissioner of Police, Mylapore Vs. Era. Selvam](#), , considered the request for holding procession elaborately and on examination of the situation as well as taking note of various decisions of the Supreme Court as well as this Court, held as follows:

14. Considering the above principles in mind as well as the claim made by the respondents in these writ appeals that they are organising procession and award giving function on the birth anniversary day of Dr. B.R. Ambedkar on 14.4.2013 and to avoid apprehension expressed by the learned Advocate General that the entire persons participating in the procession will straight away go to the meeting place at Mangollai, Mylapore, Chennai, we are of the view that the said apprehension can be answered by modifying the order of the learned single Judge, directing the writ petitioners/respondents herein to hold procession between 10.00 a.m. and 1.30 p.m. on 14.4.2013 from Rajarathinam Stadium to Langs Garden Road and to conduct public meeting at Mangollai, Mylapore, Chennai-4 from 6.00 to 10.00 p.m. The change of timing will avoid the persons participating in the procession going to the place of meeting straight away as there will be a brake of 4.30 hours. The police are directed to regulate traffic and permit the writ petitioners to conduct procession and meeting as aforesaid. The conditions imposed by the learned single Judge in his order dated 12.4.2013 is to be scrupulously followed by the writ petitioners/respondents herein and organisers and leader of the party, who assured to control the entire cadre. It is needless to reiterate that while conducting procession during the above said time and conduct of meeting, the organisers should see that no untoward incident is allowed to happen and if any violation of the undertaking given by the organisers or by any other person, the appellants are entitled to deal with them to preserve maintenance of peace and tranquility and it is open to them to initiate appropriate action against the violators, in accordance with law.

12. The ratio laid down by the Division Bench is not only on consideration of the circumstances in which the claim was made and also on reasonable restrictions that the Division Bench permitted the petitioner therein to hold a procession with stringent conditions. In view of the above ratio laid down, the following interim directions are issued:

(i) the respondent is directed to permit the appellant to hold a procession from Rajarathinam Stadium to Langs Garden Road Junction between 4.00 p.m. to 5.30 p.m. on 01.09.2013.

(ii) the appellant shall conduct the procession without affecting law and order and without any disturbance to the public tranquility.

(iii) the appellant shall hold the procession in an organised way and with assured control of the entire cadres.

(iv) while in the procession, the appellant shall not shout any slogans affecting the religious sentiments of the people and they would do everything in a dignified manner and the organisers of the procession shall not allow any untoward incident to happen.

(v) if there is any violation of the undertaking given by the appellant in their letter of undertaking dated 26.08.2013, the respondent is at liberty to initiate action against the person concerned as may be necessary in the circumstances.

10. I have heard the learned counsel on either side and perused the material documents available on record.

11. A perusal of the impugned order passed by the 3rd respondent shows that the request of the petitioner for conducting procession and public meeting, has been rejected for the reasons already stated above.

12. A circumspection of the fact would reveal that the petitioner, with a view to espousing the cause of Tamils at Sri Lanka, decided to conduct a procession and public meeting, for which, an application was made to the authorities concerned for grant of permission. It is obligatory on the part of the Law Enforcing Authority to analyze the law and order situation and other factors involved in the maintenance of public order before granting/rejecting the request, by duly following the principles of natural justice. It is also incumbent on the respondents to ensure that the fundamental rights of persons guaranteed under Article 19(1)(a) of the Constitution of India are not curtailed. However, the 3rd respondent has straightaway rejected the request of the petitioner for conduct of procession and meeting keeping in view the factum of fast approaching festivals like Christmas and New Year, which needs examination by this Court as to whether the impugned order of refusal is in accordance with law.

13. Admittedly, the request for procession and public meeting was made on 29.10.2013, which stood rejected after a lapse of about 35 days on 08.12.2013. A perusal of the order would reveal that without issuing any show cause notice and affording opportunity to the petitioner, the order came to be passed. This Court, time and again while considering such an order of rejection, held that without calling upon the petitioner to show cause as to why such permission cannot be rejected, no order of rejection is to be made. But, in the case on hand, such procedure has not been followed by the respondents, which is utter violative of principles of natural justice and the same, in my considered opinion, cannot be sustained and is liable to be set aside. Accordingly, the impugned order of rejection is quashed.

14. While doing so, this Court is also very cautious in taking note of the prevailing situation before granting such permission for procession and public meeting as also the real cause in conducting the said procession and public meeting. The cause projected for the procession and meeting is that of bringing to the outer World the untold sufferings of Tamilians living in Sri Lanka, which is in no way considered to be harmful to the general public. The respondents apprehended that in the event of granting permission for procession and meeting on the date proposed by the petitioner, it will deteriorate the peaceful atmosphere existing in the area and the

anti social elements will make use of the situation by creating disturbance to the public peace and tranquility and the apprehension of the respondents cannot also be brushed aside. Therefore, the request made by the petitioner to hold public meeting alone has to be accepted and the permission to be granted for the said meeting on 15.12.2013.

15. Accordingly, the respondents are directed to accord permission to the petitioner for holding Public Meeting, subject to the following conditions:

1. the respondents shall fix a place for meeting with the gathering of 1,000 people either in the location suggested by the petitioner or in the alternative place as mutually agreed upon between the petitioner and respondents between 05:00 p.m. and 07:30 p.m.;
2. Mikes with several loud speakers should not be used in the meeting as that would cause disturbance to the students, who are undertaking examinations and patients taking treatment at the nearby hospitals;
3. the District Secretary of petitioner Katchi is directed to advise his group not to deliver any provocative speeches so as to create law and order problem in the area;
4. During the meeting, the petitioner and his persons shall not shout any slogans affecting the sovereignty of India, that the meeting should be conducted in a peaceful and organised manner without creating or causing any law and order problems and that the organisers of the meeting shall not allow any untoward incident to happen;
5. if there is any violation or deviation of the direction issued by this Court, the respondents/law enforcing authorities are at liberty to initiate action against persons concerned as may be necessary in the circumstances.