

2023 PLRonline 9003

Supreme Court of India

Justice V. Ramasubramanian, Justice Pankaj Mithal

K. Phanindra Reddy, I.A.S. v. G. Subramanian

SPECIAL LEAVE PETITION (CIVIL) NO. 4163 OF 2023

11th April 2023

Chennai City Police Act, 1888 - Police Act, 1861

Chennai City Police Act, 1888 - S.41, S.41A, Police Act, 1861 - S.30

Order imposing conditons on taking out processions -

Petitions filed by the office bearers of the Rashtriya Swayam Sevak Sangh (RSS) seeking permission to conduct a procession (Route March) through identified places. The writ petitions were worked upon by a learned Judge of the Madras High Court by an order dated 22.09.2022. A batch of applications for review was filed by the state, and the representation seeking permission to hold the march in Chennai was rejected by the police. The High Court passed an order suggesting conducting the procession and public meetings on a different date. Pursuant to the order, the Director General of Police issued a memorandum instructing Commissioners/Superintendents of Police of the Districts to pass necessary orders on the representations of the organizers. In the light of the memorandum, the learned Judge passed an order fixing 06.11.2022 as the date to conduct the procession with certain conditions. The given context also provides the names of the learned senior counsels appearing for the petitioner and respondents.

JUDGEMENT

V. Ramasubramanian, J.

1. Delay condoned in Special leave Petition (Civil) @ D.No.10656 of 2023.
2. While the first special leave petition arises out of an order passed by the Division Bench of the Madras High Court in an intracourt appeal challenging an order passed by the learned Judge in a contempt petition, the other special leave petitions arise out of the order passed substantially in a writ petition and in a review petition.
3. We have heard Shri Mukul Rohatgi, learned senior counsel appearing for the petitioners in all the special leave petitions and Shri Mahesh Jethmalani, Shri Guru Krishna Kumar, Dr. Menaka Guruswamy, learned senior counsel appearing for the respondent.
4. The brief facts sufficient for the disposal of all these special leave petitions are as follows:-

(i) A batch of 49 writ petitions were filed by the office bearers of the Rashtriya Swayam Sevak Sangh (RSS), on the file of the High Court of Judicature at Madras seeking a direction to the State, the Director General of Police, the Superintendents of Police of various districts and the Inspectors of Police of certain police stations to permit the members of the Organisation to conduct a procession (Route March) through identified places. The contention of the writ petitioners was that they wanted to hold the procession on 02.10.2022, but that their applications for permission to hold the Route March were not considered by the appropriate authorities;

(ii) The batch of writ petitions were disposed of by a learned Judge of the Madras High Court, by an order dated 22.09.2022, with certain directions;

(iii) The State filed a batch of applications for review. At about the same time, one of the representations seeking permission to hold the march in Chennai was rejected by the local Inspector of Police, by an order dated 27.09.2022;

(iv) The order of rejection led to a legal notice dated 28.09.2022 followed by a Contempt Petition, against, (i) The Secretary to Government, Home Department; (ii) The Director General of Police; (iii) The Superintendent of Police; and (iv) The Inspector of Police;

(v) When the contempt petition came up for hearing on 30.09.2022, the date on which the organisers wanted to conduct the Route March was only 48 hours away. Therefore, the learned Judge before whom the contempt petition came up, passed an order on 30.09.2022 to the following effect:-

“5. Hence, the respondents justified the reasons for rejecting the request made by the petitioners. Therefore, it is not possible for the respondents to grant permission for the procession to be held on 02.10.2022. However, this Court suggested for any other date except Gandhi Jayanthi i.e. 02.10.2022 to conduct procession and to conduct public meeting.

6. The learned Senior Counsels appearing for the petitioners suggested four dates i.e. 09.10.2022, 16.10.2022, 06.11.2022 and 13.11.2022 and the learned Senior Counsel appearing for the first respondent submitted that except Gandhi Jayanthi on 02.10.2022, they will consider the same representations of the respective petitioners seeking permission to conduct procession and to conduct public meetings on any other date.

7. Considering the above submissions made on either side, this Court fix the date to conduct procession and to conduct public meetings on 06.11.2022. Till then, the petitioners are directed not to precipitate the issue. However, it is for the State to maintain law and order problem. It is made clear that the respondents shall permit the petitioners on their earlier representations to conduct procession and to conduct public meetings on 06.11.2022.

8. Registry is directed to list the matter along with all the connected contempt petitions numbered subsequently on 31.10.2022”

(vi) Pursuant to the aforesaid order dated 30.09.2022, the Director General of Police issued a memorandum dated 29.10.2022 instructing Commissioners/Superintendents of Police of the Districts to pass necessary orders on the representations of the organisers;

(vii) In the light of the memorandum issued by The Director General of Police on 29.10.2022, the learned Judge before whom the contempt petitions came up on 31.10.2022, passed an order to the following effect:-

“The learned Senior Counsel appearing for the petitioner produced the order passed by the second respondent viz., the Director General of Police, dated 29.10.2022, thereby directing all the Commissioner of Police/Superintendent of Police, to pass order on the applications made by the respective petitioners in accordance with the order passed by this Court dated 22.09.2022 in W.P.No.24540 of 2022 etc., batch. Accordingly all the applications submitted by the petitioners are under consideration of the respective Commissioner of Police/Superintendent of Police and they are about to pass orders within a day or two.

2. Post the matter on 02.11.2022 under the caption “for reporting compliance” at 2.15 p.m.

(viii) On 02.11.2022, the Staff Officer in the Office of the Director General of Police filed a status report claiming that in view of certain developments that took place after a cylinder blast in Coimbatore City on 23.10.2022, a fresh assessment of the local situation had to be made by the Commissioners/Superintendents of Police. In short, the status report indicated that, (i) it is not advisable to permit any processions/public meetings in 24 locations; (ii) that processions/public meetings can be permitted in 23 locations only in enclosed ground/premises; and (iii) procession can be permitted in three locations;

(ix) Incidentally, the contempt petitions as well as the applications for review were listed before the learned Judge on the very same date namely 02.11.2022. The learned Judge passed two independent orders, one in the batch of contempt petitions and another in the batch of review applications;

(x) The relevant portion of the order passed in the review applications reads as follows:-

“3. Today when the matters are taken up for hearing, the learned State Public Prosecutor appearing for the petitioners submitted that out of 50 places, in three places, the respective respondents were granted permission to conduct procession and public meeting on 06.11.2022. Insofar as 23 places are concerned, respective respondents are permitted to conduct procession/public meeting in an indoor place. Insofar as 24 places are concerned, respective authorities found that there will be a law and order issue and rejected the requests in view of the intelligence report received from the authorities concerned. He further submitted that the respective respondents also approached this Court by way of Contempt Petitions and same are pending before this Court.

4. In view of the various orders passed by the authorities concerned, nothing survive in these Review Applications. Accordingly, all the Review Applications are closed. Consequently, the connected miscellaneous petitions are also closed.

(xi) But in the batch of contempt petitions, the learned Judge passed an order adjourning the contempt petitions to 04.11.2022, for passing appropriate orders after perusing the Intelligence Report produced by the State in a sealed cover;

(xii) On 04.11.2022 the learned Judge passed final orders in the contempt petitions, virtually modifying the original order passed on 22.09.2022. The operative portion of the Order passed on 04.11.2022 passed in the batch of contempt petitions reads as follows:

“9. Therefore, this Court is inclined to grant permission to conduct procession and public meeting on 06.11.2022 on the following conditions:-

i. The procession and public meetings should be conducted in a compounded premises such as Ground or Stadium. It is made clear that while proceeding to conduct procession and public meeting, the participants shall go by walk or by their respective vehicles without causing any hindrance to the general public and traffic.

ii. During the program, nobody shall either sing songs or speak ill on any individuals, any caste, religion, etc.,

iii. Those who participate in the program shall not for any reason talk or express anything in favour of organizations banned by Government of India. They should also not indulge in any act disturbing the sovereignty and integrity of our country.

iv. The program should be conducted without causing any hindrance to public or traffic.

v. The participants shall not bring any stick, lathi or weapon that may cause injury to any one.

vi. The organizer(s) shall make adequate arrangements for drinking water and proper First Aid/Ambulance/Mobile Toilets/CCTV Cameras/Fire Fighting equipments etc., in consultation with the Police/Civic/Local Bodies as directed by the police.

vii. The organizer(s) shall keep sufficient volunteers to help the police for regulation of traffic and the participants.

viii. Only box type speakers should be used and output of the speakers should not exceed 15 watts~ad within a radius of 30 meters only. Cone Speakers should not be used at any cost.

ix. In the procession, the processionists shall not by any manner offend the sentiments of any religious, linguistics, cultural and other groups.

x. An undertaking to reimburse the cost for any damage that may occur enroute to any public/private property and an undertaking to bear the compensation/replacement costs as well, if are to be awarded to any other institution/person, who may apply for the same.

xi. If there is violation of any one of the conditions imposed, the concerned police officer is at liberty to take necessary action, as per law.”

(xiii) Aggrieved by the order so passed by the learned Judge on 04.11.2022 in the batch of contempt petitions, a batch of intra-court appeals were filed by the organizers. These intra-court appeals were allowed by a Division Bench of the High Court by an order dated 10.02.2023. The operative portion of the order of the Division Bench reads as follows:-

“33. In the result, the order dated 04.11.2022 passed in the contempt petitions, which is under challenge in the present LPAs, is set aside, and the order dated 22.09.2022 passed in the writ petitions stand restored and would be enforceable. As the dates on which the appellants wanted to conduct the route-march, have passed, it is only appropriate that a direction be issued in this regard. Accordingly, the appellants are directed to approach the State authorities with three different dates of their choice for the purpose of holding the route-march/peaceful procession and the State authorities are directed to grant permission to the appellants on one of the chosen dates out of the three. The organization shall ensure that strict discipline is followed at their end and that there is no provocation or incitement on their part. The State on the other hand has to take adequate safety measures and make traffic arrangements to ensure that the procession and the meeting shall go on peacefully.”

(xiv) Challenging the order of the Division Bench passed in the intra-court appeals arising out of the order passed in the contempt petitions, the Secretary to Government, Home Department, the Director General of Police, the Commissioner of Police and the Inspector of Police first came up with a special leave petition in Special Leave Petition (C) No.4163 of 2023. When this special leave petition came up for orders as to admission on 03.03.2023, it was submitted by Shri Mukul Rohatgi, learned senior counsel and Shri V. Krishnamurthy, learned AAG for the State of Tamil Nadu that the State would come up with some suggestions as to how best to resolve the issue. Therefore, Special Leave Petition (C) No.4163 of 2023 was adjourned to 17.03.2023.

(xv) Subsequently, the State filed the other special leave petitions challenging the earliest order of the learned Judge of the High Court dated 22.09.2022 passed in the batch of writ petitions as well as the order dated 02.11.2022 passed by the learned Judge in the batch of review applications.

(xvi) Thus we have on hand, three special leave petitions, the first one arising out of the last order, namely, that of the Division Bench of the High Court dated 10.02.2023 and the other two special leave petitions arising out of the earlier orders of the learned Single Judge dated 22.09.2022 and 02.11.2022.

5. Insofar as the first special leave petition is concerned, it arises out of the order of the Division Bench passed in a batch of intracourt appeals challenging the order passed by the learned Judge in a batch of contempt petitions. This Court need not even go into several aspects argued across the Bar, for the simple reason that the learned Judge travelled beyond the scope of a contempt petition and this is why the said order warranted interference by the Division Bench. After having disposed of the batch of main writ petitions by a final order dated 22.09.2022 in a particular manner and after having dismissed the batch of review applications on 02.11.2022, the learned Judge could not have modified his original order dated 22.09.2022 in a batch of contempt petitions on 04.11.2022. Therefore,

the Division Bench of the High Court was justified in interfering with the order of the learned Judge. On this short ground, Special Leave Petition (C) No.4163 of 2023 deserves to be dismissed.

6. Coming to the other special leave petitions, the same arise out of the original order passed by the learned Judge on 22.09.2022 in the batch of writ petitions and the order dated 02.11.2022 passed in the batch of review applications. A perusal of the order of the learned Judge shows that the learned Judge considered the scope of Sections 41 and 41A of the Chennai City Police Act, 1888 and Section 30 of the Police Act, 1861, to come to the conclusion that the reliefs sought in the writ petitions deserved to be granted subject to certain conditions. The operative portion of the order dated 22.09.2022 reads as follows:

“11. In view of the above order passed by the Hon’ble Supreme Court of India as well as various orders passed by this Court, it would be appropriate to direct the respondents to grant permission to conduct procession and to conduct public meeting on 02.10.2022 at various places subject to the following conditions on or before 28.09.2022:-

- i. During the program, nobody shall either sign songs or speak ill on any individuals, any caste, religion, etc.,
- ii. Those who participate in the program shall not for any reason talk or express anything in favour of organizations banned by Government of India. They should also not indulge in any act disturbing the sovereignty and integrity of our country.
- iii. The program should be conducted without causing any hindrance to public or traffic.
- iv. The participants shall not bring any stick, lathi or weapon that may cause injury to any one.
- v. The organizer(s) shall make adequate arrangements for drinking water and proper First Aid/Ambulance/Mobile Toilets/CCTV Cameras/ Fire Fighting equipments etc., in consultation with the Police/Civic/Local Bodies as directed by the police.
- vi. The procession shall proceed in any orderly manner along the sanctioned route keeping to the left and shall not halt on the way or cause impediment to the normal flow of traffic. The procession shall occupy only one-fourth of the road.
- vii. The organizer(s) shall keep sufficient volunteers to help the police for regulation of traffic and the participants.
- viii. The organizer(s) of procession/rally shall be responsible for ensuring that the route permitted to them by the Police Authorities is strictly followed.
- ix. Only box type speakers should be used and output of the speakers should not exceed 15 watts and within a radius of 30 meters only. Cone Speakers should not be used at any cost.
- x. In the procession, the processionists shall not in any manner offend the sentiments of any

religious, linguistics, cultural and other groups.

xi. An undertaking to reimburse the cost for any damage that may occur enroute to any public/private property and an undertaking to bear the compensation/replacement costs as well, if are to be awarded to any other institution/person, who may apply for the same.

xii. If there is violation of any one of the conditions imposed, the concerned police officer is at liberty to take necessary action, as per law.”

7. The learned Judge not only interpreted the relevant provisions of the law correctly but also imposed necessary conditions. This is why the learned Judge could not review his own order.

8. It is to be noted that the learned Judge in fact followed several similar orders passed by the other Judges of the same High Court including one of us (V. Ramasubramanian, J. as he then was at the Madras High Court) in the past.

9. As rightly contended by all the learned senior counsel on the side of the respondent, the main objection raised by the State before the High Court was that after the imposition of a ban order on another organization, law and order problems cropped up in certain places and that the same led to several cases being registered. The details of those cases are actually furnished in the memorandum of grounds of special leave petition(s). We do not wish to extract in this order, the Chart provided by the State in Ground No.BB of Special Leave Petition (C) No.4163 of 2023, on account of its sensitivities. But the Chart provided by the State Government shows that the members of the respondent organization were the victims in many of those cases and that they were not the perpetrators. Therefore, it is not possible for us to find fault with the order passed by the learned Judge either in the main writ petitions or in the review applications. Hence all the special leave petitions are liable to be dismissed.

10. The Special Leave Petitions are accordingly dismissed. No costs. Pending application(s), if any, shall stand disposed of.