

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.8980 of 2021

R.Rajangam
Secretary, Communist Party of India (Marxist)
Puducherry Pradesh Committee
No.18, Nallasivam Ninaivagam
Moogambikai Street, Ajis Nagar
Reddiyarpalayam, Puducherry. .. Petitioner

Vs

1. Union Territory of Puducherry
rep. by Government of Puducherry
rep. by its Chief Secretary
Puducherry.
2. The Chief Electoral Officer
Puducherry.
3. The District Collector सत्यमेव जयते
-cum- The District Magistrate
Collectorate, Government of Puducherry
Puducherry.
4. Purva Garg, I.A.S.,
Collectorate, Government of Puducherry
Puducherry. .. Respondents
(Respondent No.4 – deleted as per this order)

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the third respondent herein in her proceedings in Order No.1203/DM/D1/GEPLA/2021, dated 22.3.2021 and quash the same.

For Petitioner : Ms.M.N.Sumathy

For Respondents : Mrs.N.Mala
Government Pleader
(Puducherry)
for respondents 1 and 3

: Mr.Niranjan Rajagopalan
Standing Counsel
for 2nd respondent

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

A Puducherry official of a national level political party has instituted the present public interest litigation, complaining of an order passed under Section 144 of the Code of Criminal Procedure, 1973 by the District Magistrate in Puducherry.

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2. The relevant order dated March 22, 2021 was, according to the petitioner, made public only on April 1, 2021 and is to come into

effect from 7 pm today. Indeed, it is already around the time that the order comes into effect.

3. The petitioner points out that there is nothing in the relevant order which even remotely suggests any unrest or anything untoward or even the apprehension of anything unlawful for a clampdown to be imposed. The petitioner says that since this is a free country, the citizens can go about their usual chores as they choose and the election day, when they exercise their most basic democratic right, is no time to curb their right to move about freely or do other things as they choose.

4. The petitioner says that it is inconceivable that throughout the entire Union Territory of Puducherry, small as it is, there is a situation that requires an order of the nature under Section 144 of the Code to be imposed. The petitioner submits that while Assembly elections are being conducted in several other States, except in certain sensitive areas in some of the other States – and not even covering the entirety of the constituency in each case – has Section

144 of the Code been imposed. The petitioner insists that the sine qua non for passing such an order, restraining the usual freedom of movement, is upon the apprehension of any mischief or anything untoward or an emergency; and, without the satisfaction of the Magistrate being expressed in such regard, the power to invoke the jurisdiction does not arise.

5. A further ground urged by the petitioner is that there was no tearing hurry for an order to be passed on March 22, 2021 without giving any notice in accordance with Section 134 of the Code and the entire object indicates a kind of premeditated mind to instill fear in the minds of the citizens. The underlying insinuation of the petitioner is that in such a scenario, it is only the committed voter who will step out to vote as the ordinary voter may be led to believe that there is a possibility of trouble or violence and it may be better to not step out, even to vote.

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6. The Election Commission says that Section 144 of the Code has been imposed throughout Puducherry in every general election

since 2014. The Election Commission also clarifies that the prohibition is restricted to “unlawful assembly & movement, holding of public meetings, carrying of weapons, sticks, banners, placards etc., by any person ... and ... shouting of slogans and using of Loud Speakers and acting in any manner detrimental to public peace and tranquility...” The Commission is quick to indicate that the prohibitory order does not apply to religious functions, marriages, funerals and the gathering of people inside polling booths for voting purpose.

7. The Union Territory refers to the “Standard Operating Procedure For Last 72 Hours Till Counting” published in December, 2016 by the Election Commission of India. The relevant section, that covers the last 48 hours before polling begins, contemplates issuance of orders under Section 144 of the Code; but that does not imply that such a prohibitory order may be passed as a routine exercise or invariably in respect of all constituencies prior to any election thereat.

8. Thankfully, this country allows expansive freedom to its citizens and, as the Constitution provides, there cannot be any authoritarian regime possible in the country nor any regimentation of the citizens or their lives. However, for the purpose of maintaining law and order and in public interest, certain restrictions may be imposed; but such restrictions have always to be reasonable, proportional to the anticipated problem and the decision in such regard is always justiciable.

9. Every citizen in a free country can do anything lawful that the citizen chooses and even the slightest of restriction on the citizens' movement has to be justified. In the present case, the impugned notice of March 22, 2021 is singularly lacking in indicating any cogent reason for imposing restrictions on citizens' movement and how citizens may choose to go about their business. It is also facetious that a blanket prohibitory order is passed merely because it was done on one or two previous occasions and despite the order not indicating any basis for any apprehension of trouble or unlawful activities. The issuance of a supercilious prohibitory order

on the ruse that it would lead to a smooth conduct of the election cannot pass muster without there being any justifiable basis therefor.

10. However, to the extent that the Election Commission has clarified that the prohibition should not be regarded as a blanket prohibition of movement or assembly but confined to the specific areas spelt out in the fourth paragraph of the order dated March 22, 2021, it needs to be reiterated that the relevant order will be strictly restricted only to the prohibition of "unlawful assembly & movement, holding of public meetings, carrying of weapons, sticks, banners, placards etc., by any person and ... shouting of slogans and using of Loud Speakers and acting in any manner detrimental to public peace and tranquility ..." In a sense, it is unnecessary to issue an order prohibiting unlawful assembly, since such an assembly, by definition, is illegal.

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11. Common citizens must immediately be informed, by a further clarification that the Election Commission has agreed to

issue in course of the day, that the expression “prohibit the unlawful assembly & movement” will not stand in the way of citizens going about their normal business and chores and even gathering for private functions, if only to celebrate Sunday evening or Monday afternoon. Similarly, the prohibition in the impugned order should not deter friends and family congregating together to go to vote and celebrate the festival of democracy in proper spirit.

12. Of course, since campaigning has come to an end, political activities may not be carried on and the modern day menace of motorcycle rallies must be curbed with a heavy hand; but the ordinary citizen must be left free to do whatever he chooses without being found to be in breach of the impugned order and without any fear in such regard being instilled in her.

13. There is sufficient basis to the petitioner's suggestion that the impugned order may otherwise not be justified, particularly since it is difficult to imagine how and in what circumstances the order has been made some 10 or 15 days before the order comes

into effect. Officials must be reminded that curbs are imposed on citizens and their freedom of movement and the like only when there is an imminent need therefor or it is in the larger public interest. Due care and caution must be exercised to ensure that the restrictions are not unreasonable or suffocating. The present kind of unreasoned order prepared 10 or 15 days in advance and produced a day or two before it becomes effective goes against the ethos of Section 144 of the Code, though it must be acknowledged that the Union Territory says that the notice was published on the Union Territory's website on March 23, 2021.

14. There is no doubt that the Election Commission has primacy in how to conduct elections and the control of law and order, in a sense, passes on to the Election Commission at the time of the elections being conducted; but just like any other authority answering to that description in Article 12 of the Constitution and notwithstanding Article 324 thereof, the Election Commission is also required to act reasonably, rationally and without the slightest hint of any bias on its part.

15. So that there is no further confusion, the order impugned is not set aside in its entirety, but is confined strictly to the areas spelt out therein and it is made abundantly clear that the prohibition of unlawful assembly and movement in terms of the relevant order will not affect the usual life of citizens as they go about their business and chores as long as they do not indulge in anything illegal or foment trouble or breach of peace.

16. W.P.No.8980 of 2021 is disposed of without calling for affidavits since the petition loses all meaning in the next 48 hours. It is recorded that the Election Commission has undertaken to immediately issue a clarification so that ordinary citizens do not remain under any fear over the next 48 hours and can go about their usual activities without any apprehension. However, Covid protocol must be maintained at all times, including social distancing and wearing of mask.

17. This order will be prominently displayed on the Election

Commission's website and the website of the Union Territory of Puducherry with effect from this evening itself.

18. The fourth respondent has been needlessly impleaded by name. The fourth respondent be deleted from the array of parties.

There will be no order as to costs. Consequently, W.M.P.Nos.9497 and 9498 of 2021 are closed.

(S.B., CJ.)

(S.K.R., J.)

04.04.2021

Index : Yes
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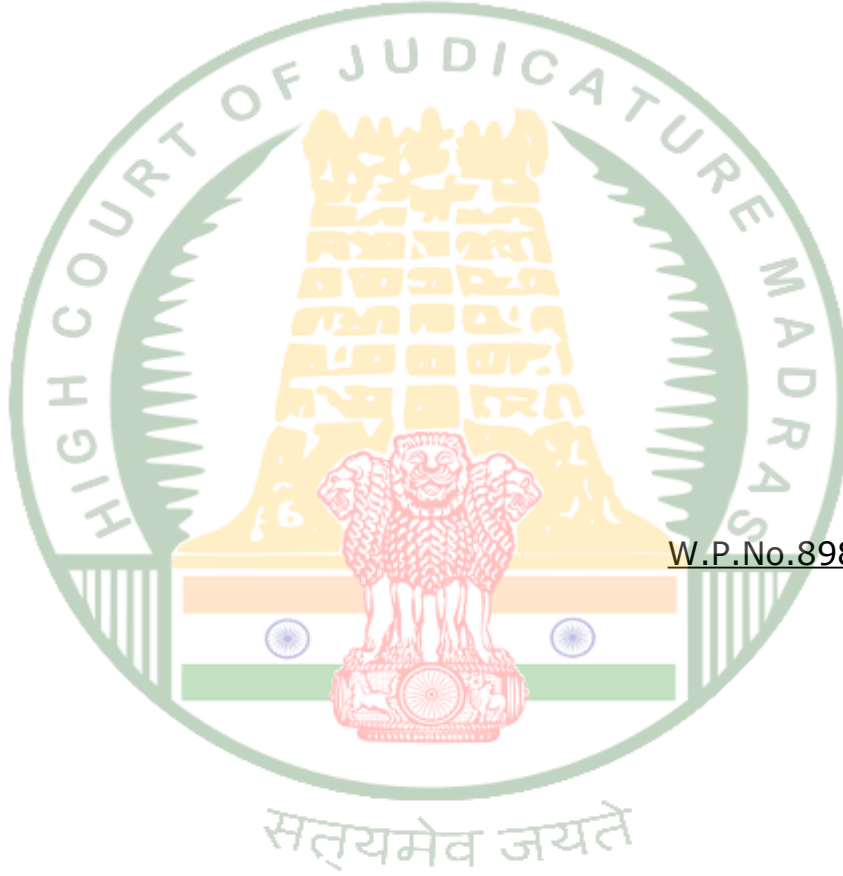
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THE HON'BLE CHIEF JUSTICE
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