

W.M.P.No.36634 of 2019
in W.P.Nos.35712
and W.P.35713 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.12.2019

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
&
THE HON'BLE MS.JUSTICE P.T.ASHA

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Varaaki
S/o.Radhakrishnan
Founder and President
Indian Makkal Mandram
No.2/3, Sudhananda Bharathi Street,
Ganapathipuram, East Tambaram,
Chennai-600 059.

... Petitioner

-VS-

1. The Chief Secretary,
Secretariat, St.George Fort,
Chennai-600 009.
2. The Home Secretary,
Secretariat, St.George Fort,
Chennai-600 009.

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3. The Director General of Police,
O/o.The Director General of Police
Mylapore, Chennai-600 004.
4. The Commissioner of Police,
Greater Chennai Police Commissionarate
Veppery, Chennai-600 007.

... Respondents

Prayer in WP: Writ petition is filed under Article 226 of Constitution of India for issuance of a writ of Mandamus, forbearing the respondents herein from giving any kind of permission to the unlawful demonstration to be conducted on 23.12.2019 by the Opposition Parties in the State of Tamil Nadu.

Prayer in WMP: To grant an order of interim injunction restraining the opposition Parties in the State of Tamil Nadu from proceeding with the unlawful Demonstration to be conducted on 23.12.2019, pending disposal of the Writ Petition.

For Petitioner : Mr.B.Janakiram
For Respondents : Mr.V.Jayaprakash Narayan
Govt. Pleader

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A.Ezhilarasu

S/o.Arunachalam
97, APH Road,
Ezil Rajkumar Illam,
Avadi, Chennai-600 054.

... Petitioner

-VS-

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1. Mr.M.K.Stalin
S/o.(late) Hon'ble Dr.Kalaignar M.Karunanidhi
President,
Dravida Munnetra Kazhagam Political Party,
Anna Arivalayam,
389, Anna Salai,
Rostrevor Garden,
Teynampet,
Chennai-60 017.
2. Mr.Vai.Gopalasamy M.P.,
General Secretary
Marumalarchi Dravida Munnetra
Kazhagam Political Party,
Thayagam,
8/143, Rukmani Lakshmimathy :Road,
Egmore, Chennai-600 008
3. Mr.Thol Thirumavalavan M .P.,
Founder President
Viduthalai Chiruthaigal Katchi
VCK Head Quarters,
2nd Avenue TNHB Colony
Velacherry Chennai-600 042.
4. The Secretary
Communist Party of India (Marxist)
PR Ninaivagam
Vaidyaram Street,
Parathasarathi Puram
T.Nagar, Chennai-600 017.
5. The Secretary,
India :Communist party
86 Kilpauk Garden Road
T.P.Chaitiiram Main Road
Jyothi Ammal Nagar Shenoy Nagar
Chennai-600 010.

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6. Mr.Kamal Hassan
Founder President
Makkal Needhi Maiam
4 Eldams Road
Vannia Teynampet
Alwarpet Chennai-600 018
7. Mr.K.S.Alagiri
President Tamil Nadu Chapter
Tamilnadu Congress Committee
Satyamurthy Bhavan
40 Thiruvika Salai
Chennai- 600 002.
8. K.M.Kadar Mohaideen
Maraikayar Labbai Street
Chennai.
9. Mr.M.H.Jawahirullah
Founder President
6-7 Vada Maracoir Street
Seethakadi Nagar
George Town, Chennai 600 001.
10. E.R.Easwaran M.P.,
Secretary General
Kongunadu Makkal Desiya Katchi
Administrative office
46 Sampath Nagar,
Erode.
11. T.R.Parivendhar @ Dr.TR.Pachamuthu, M.P.,
President
Indhiya Jananayaga Katchi
20/4 Prakasrar Salai
Janaki Nagar
Valasara Vakkam
Chennai-600 087

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12. Mr.Thamimun Ansari M.L.A.,
General Secretary
Manitha Neya Jananayaga Katchi
26, Kalitheru, Thoppudurai Post
Vedharanyan Taluk, Nagapattinaum District
13. The General Secretary
Social Democratic Party of India, (SDPI)
4/7, Ibrahim Sahib Street,
Seethakadi Nagar,
Mannady, Chennai-1.
14. The Chief Secretary
Govt of Tamilnadu
Secretariat, Fort St George
Chennai-600 009.
15. The Director General of Police
State Police Head Quarters
Government of Tamil Nadu
Secretariat, Fort St.George
Chennai-600 009.
16. The Commissioner of Police
Greater Chennai
Vepery, Egmore
Chennai-600 008.
17. The Commissioner,
Greater Chennai Municipal Corporation,
Chennai

... Respondents

Prayer in WP: Writ petition is filed under Article 226 of Constitution of India for issuance of a writ of Mandamus, directing the 15th and 16th respondents not to permit the 1st to 13th respondents to conduct the scheduled rally / procession /

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protest on 23.12.2019 as against the Citizenship (Amendment) Act, 2019 since the same kind of held procession in Delhi, Karnataka, U.P., Assam turned violent and affected the Normal Tempo of life, in the larger interest of public, public properties and to protect the law and order on the basis of The Newspaper Report published in Dinamalar Tamil Daily dated 21.12.2019.

For Petitioner : Mr.R.Krishnamurthy

For R14 to R17 : Mr.V.Jayaprakash Narayan
Govt. Pleader

I N T E R I M O R D E R

S.VAIDYANATHAN,J.,
AND
P.T.ASHA,J.,

The Writ Petition in W.P.No.35713 of 2019 is admitted. Notice.

The petitioners seek to forbear the respondents herein from giving any kind of permission to the unlawful demonstration to be conducted on 23.12.2019 by the Opposition Parties in the State of Tamil Nadu.

2. When the matters are taken up for hearing, it is represented by the

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learned Government Pleader that the respondents in W.P.No.35713 of 2019 have made an application on 18.12.2019, seeking permission from the Police for conducting demonstration on 23.12.2019 and on 19.12.2019, the Police sought for certain information from the applicant regarding the number of persons participating in the rally and the name of the person, who is going to take the responsibility in case of any untoward incident and destruction of public property. To the information sought for by the Police, a reply was sent by the respondents stating that some of the questions are not at all applicable to the present situation, thereby they have given evasive answers to the queries raised in Sl.Nos.9, 10, 14 to 16. The answer in vernacular is “பொருந்தாது”.

3. The evasive manner in which a responsible political party has answered the queries gives rise to a doubt in the mind of the Court that the leaders, who are spearheading the agitation are reluctant to take responsibility in the event of any damage to the public property or any untoward incident.

4. The evasive response to the queries has made the Police to reject the request of the applicants vide order dated 22.12.2019 in No.1373/TP2/2019.

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The rejection order dated 22.12.2019 has not been challenged by the respondents in W.P.No.35713 of 2019. However, the petitioners apprehend that there may be untoward incident, if the respondents, defying the rejection order, proceeds to conduct the demonstration/protest and they, therefore, seek to forbear the respondents from giving any kind of permission to the unlawful demonstration to be conducted on 23.12.2019 by the Opposition Parties in the State of Tamil Nadu.

5. In a democratic country, a peaceful demonstration cannot be prevented, as it is the backbone of the democratic set up. From the reply given by the respondents, it could be seen that the political party, which is scheduled to conduct the rally / procession / protest, is reluctant to take on responsibility. However, according to us, the queries raised by the Police are indeed very relevant to the present case on hand in the light of the judgment of the Hon'ble Supreme Court in the case of *Destruction of Public and Private Properties vs. State of A.P. and Others*, reported in *AIR 2009 SC 2266*, in which the Hon'ble Supreme Court has stated as follows:

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“Next we considered how far the leaders of the organizations can also be caught and brought to trial, when public property is damaged in the direct actions called at the behest of such organizations. Destruction of public property has become so rampant during such direct actions called by organizations. In almost all such cases the top leaders of such organisations who really instigate such direct actions will keep themselves in the background and only the ordinary or common members or grass root level followers of the organisation would directly participate in such direct actions and they alone would be vulnerable to prosecution proceedings. In many such cases, the leaders would really be the main offenders being the abettors of the crime. If they are not caught in the dragnet and allowed to be immune from prosecution proceedings, such direct actions would continue unabated, if not further escalated, and will remain a constant or recurring affair.”

This judgment has been followed in *Kodungallur Film Society and Others*, reported in 2019 (4) SCJ 703.

6. Admittedly, the request of the Political Party has been declined and no one has as of now challenged the said rejection order dated 22.12.2019. When this Court posed a question that in case the scheduled agitation takes place, despite the rejection order, the learned Government Pleader has stated that the State machinery will take care of the same and the Police will certainly prevent such procession and take adequate measure so as to ensure that law and order is maintained.

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7. Though the reply given by the Government Pleader is convincing, we do not want to play with the life of innocent people in case of any untoward incident and it is the duty of the Court to protect every citizen of the State in the light of the judgment of the Hon'ble Supreme in the case of *Destruction of Public and Private Properties vs. State of A.P. and Others* (cited supra).

8. Hence, as an interim measure, in the event of the political parties proceeding with the agitation “**DESPITE REFUSAL**” there shall be an interim direction to the Police that the entire area, including the diverted area as found mentioned in the pamphlet of the respondents (it was not originally indicated in the application made by them), for which the permission for procession is sought should be videographed and the drone technology can also be used for the purpose of recording the demonstration so that the liability can be foisted on the leaders and not on the followers. Notice.

Post on **30.12.2019.**

Sd.../-
22.12.2019
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