

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.04.2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

WP No. 7458 of 2020

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Dravida Munnetra Kazhagam
rep. by its Organising Secretary
R.S. Bharathi
"Anna Arivalayam"
No.367 & 369, Anna Salai
Chennai - 600 018 .. Petitioner

Versus

1. The State of Tamil Nadu
rep. by its Chief Secretary to Government
Secretariat, Fort St. George
Chennai - 600 009
2. The Secretary to Government
Health and Family Welfare Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai - 600 009
3. The Secretary to Government
Revenue and Disaster Management Department
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai - 600 009
4. The Director General of Police, Tamil Nadu
office of the Director General of Police

Dr. Radhakrishnan Salai, Mylapore
Chennai - 600 004

5. The Director, Information and Public Relations Department
Secretariat, Fort St. George
Chennai - 600 009 .. Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari and Mandamus calling for the records of the fifth respondent pertaining to Press Release No.265 dated 12.04.2020 and quash the same, and consequently forbear the respondents from in any way interfering with the public welfare measures of the Petitioner including distribution of cooked food, food items, food grains, groceries, vegetables, medical kits and so on and so forth to the needy within the State of Tamil Nadu during the lockdown period due to COVID-19.

For Petitioner : Mr. P. Wilson, Senior Advocate
for M/s. P. Wilson Associates

For Respondents : Mr. Vijay Narayan, Advocate General
assisted by Mr. S.R. Rajagopal
Additional Advocate General,
Mr. V. Jayaprakash Narayanan, Government Pleader,
Mr. E. Balamurugan, Special Government Pleader

ORDER

The petitioner has filed this writ petition questioning the legality and/or validity of the Press Release No.265 dated 12.04.2020 issued by the first respondent and quash the same, and consequently forbear the respondents from in any way interfering with the public welfare measures carried out by the Petitioner, including distribution of cooked food, food items, food grains, groceries, vegetables, medical kits and so on and so forth to the needy within the State of Tamil Nadu during the lock down period due to COVID-19.

2. The petitioner is the Organising Secretary of Dravida Munnetra Kazhagam, a major political party founded in the year 1949. The Petitioner party is the principal opposition party in the legislative assembly of Tamil Nadu and playing a constructive role in safeguarding the interests of the people of the State. According to the petitioner, the World Health Organisation (WHO) declared the recent COVID-19 epidemic affecting 114 Countries in the World, including India, as a Public Health Emergency of International Concern (PHEIC) and has also characterised it as a controllable pandemic. Pursuant to the WHO warning, the Country has observed one day self-imposed quarantine on 22.03.2020 and on 23.03.2020, the second respondent, invoking the powers under Section 2 of the Epidemic Disease Act, 1897, issued G.O.Ms. No.152, dated 23.03.2020 imposing restrictions within the territorial jurisdiction of the State of Tamil Nadu from 24.03.2020 to 01.04.2020. However, during such lock down, the State permitted commercial and private establishments dealing with food and other essential commodities to function. However, home delivery of food items through aggregators like Swiggy, Zomato, Uber Eats etc., were prohibited.

3. It is the further case of the petitioner party that the Government subsequently passed various orders extending the period of lock down for 21

days from 25.03.2020. However, on 27.03.2020, orders were issued permitting the delivery of food items through aggregators like Swiggy, Zomato, Uber Eats etc., fixing the time of operation between 7 am to 9.30 am and 12.00 noon to 2.30 pm from 29.03.2020, thus the delivery of cooked food was allowed by the State. As the lock down was in force from 25.03.2020, many of the people belonging to lower strata of the society, back ward and oppressed classes, migrant workers, labourers, workers in the unorganised sectors were badly hit as they could not eke out their livelihood and consequently, they were made to starve. It is in this context, the petitioner party had undertaken various philanthropic measures such as distribution of food to the needy, personal preventive equipment such as hand gloves, sanitizers etc., through their party workers. Further, tens of thousands of people requested the petitioner party to supply daily rations, food, medicines etc., Therefore, the petitioner party had distributed food, groceries, vegetables etc., While so, according to the petitioner party, the restrictions imposed by the State to obtain prior permission from the District authorities concerned before effecting distribution of food to the poor and needy is unwarranted as it is causing immense hardship to them and therefore the present writ petition is filed.

4. Mr. Wilson, learned Senior counsel for the petitioner would vehemently contend that the restrictions imposed by the State in effecting distribution of food, groceries and vegetable to the poor and needy is unreasonable, arbitrary and illegal. It is his contention that the petitioner party, during the distribution of food and other essential items have always maintained social distancing norms and will continue to do so. Further, during such distribution of food by the petitioner party, the local police always maintained a vigil and there was no occasion for the petitioner party to flout any of the norms. At the same time, obtaining prior permission from the District authority before effecting distribution of food is unwarranted, especially when there were several people who are starving due to non-availability of food. It is his contention that timely serving of food and other essential commodities is one of the inevitable measures undertaken by the petitioner party and any restriction in the guise of regulating the distribution of food by the State has to be interfered with by this Court.

5. Opposing the prayer sought for by the petitioner party, the learned Advocate General would contend that the State is fighting against an invisible enemy and taking several measures to curb the spread of the disease any further. The learned Advocate General cited several instances where the

organisers gather huge crowd during the distribution of food and other items and submitted that there is every likelihood that such crowd could lead to spread of the disease. Therefore, the Government thought it fit to impose certain restrictions or regulations in the matter of distribution of food and it cannot be construed as the one to prevent the distribution of food to the poor and needy. The restrictions imposed by the State has to be scrupulously followed by every one so that the spread of the disease can be curtailed. Even if one person in the crowd is infected with the virus, he or she can inflict several others and in such event, the Government will find it very difficult to quarantine each and every one in their effort to curb the disease. In that event, it is the State which has to be made vicariously liable for the spread of the disease and the organisers who served food cannot be made liable. The learned Advocate General also would contend that the charitable activities done by the philanthropists during the natural calamity witnessed by the State earlier in the form of flood and cyclone have not been curbed or curtailed in any manner. However, taking note of the magnitude of the spread of the Virus, certain stringent measures are inevitable in the present situation. The learned Advocate General also would contend that the Government, in the best interest of the citizens as a whole has imposed certain restrictions with an avowed object of preventing the further spread of the virus. If the distribution

of food goes unregulated or unrestricted, it is likely that the virus will spread from one person to another like a wild fire and in such event, the very purpose and object of lock down imposed by the Government will be defeated. Thus, it is submitted by the learned Advocate General that the restrictions imposed by the State are reasonable and he prayed for dismissal of this writ petition.

6. We have heard the learned Senior counsel for the petitioner and the learned Advocate General appearing for the respondents.

7. The State is witnessing an unprecedented situation due to spread of a malevolent disease called COVID-19 - Corona Virus. In order to curb the spread of such disease, the State Government, as directed by the Central Government, has imposed a lock down by invoking Section 2 of the Epidemic Disease Act, 1897. Due to such lock down, it is no doubt true that number of citizens could not eke out their livelihood by stepping out of their home. Several thousands were rendered jobless, particularly the daily wage earners, contract labourers, migrant workers etc., are the worst affected. The citizens who are living below the poverty line find it difficult to get a square meal a day. In this grim situation, public spirited persons have taken up the task of feeding the poor by engaging them in charitable activities. It is no doubt true

that the Government cannot feed the entire masses during this extreme situation and the support of the Volunteers, Non-governmental Organisation, individuals is inevitable. However, the Government apprehends that such poor feeding or distribution of food packets should not defeat the very object of the lock down imposed by the Government as a measure of combating the dreaded virus. It is in this direction that a press release dated 12.04.2020 was issued by the fifth respondent by which certain regulatory measures were issued. As per the press statement, the political parties or charitable organisations should not distribute food, groceries, vegetables or other such items to the public directly and it has to be handed over to the Corporation Commissioner or President or Executive Officers or Block Development Officer of the Town Panchayats. Such a condition, according to the petitioner, is unreasonable, arbitrary and illegal.

8. It is the contention of the learned Senior counsel for the petitioner that the petitioner party is ready and willing to intimate the local police or authorities about the distribution of the food, grocery or vegetables in advance, however, the requirement to obtain prior permission from the authorities concerned is not necessary. This is countered by the learned Advocate General appearing for the State by contending that the State has a vicarious

responsibility to prevent the spread of Virus. According to the learned Advocate General, the State is not preventing any individual or group of individuals from distributing food, vegetables or groceries, but it has to be regulated by requiring the individual or group of individuals from adhering to certain norms to ensure that there is no further spread of the Virus. It is also his contention that if there is no regulation and the distribution of food, vegetables and groceries goes unchecked or unregulated, certainly, the huge crowd that gathers for receipt of the freebies will be prone to spread of virus. Therefore, the learned Advocate General justifies the conditions imposed by the State with an intention to regulate the distribution of freebies and they are not meant to prevent it.

9. Having considered the above submissions, we are of the view that in the course of distribution of food or other items, the State is wholly justified in imposing certain conditions. We also do not see any irrationality or arbitrariness in requiring the individual or group of individuals from seeking prior permission from the authorities concerned. At the same time, the requirement to handover the food items to the Commissioner or other instrumentalities of the Government is not well founded. Having regard to the magnitude of the situation, which the State is presently combating, it is very

much essential that the organisers or the beneficiaries must strictly adhere to certain norms with a view to regulate the distribution of food and other items. Such a condition was issued only to ensure that there will not be any further spread of the malevolent disease. In the light of the above, we issue the following directions:-

- (i) The petitioner organisation or other similar organisation, non-governmental organisations, individuals or group of individuals shall intimate the District authorities concerned, as already notified by the government, 48 hours in advance prior to distribution of food and other materials to the poor
- (ii) As far as distribution of food is concerned, on receipt of such intimation, the Food Safety Officer concerned shall cause an inspection of the place where the food is likely to be distributed with respect to the health condition of the person (s) who is/are engaged in preparation of the food as well as the quality of the food to be served. After the Food Safety Officer is satisfied with the above norms, the petitioner party can proceed with the distribution of food
- (iii) It is made clear that the preparation and distribution of food has to be effected within the zone, in respect of Corporation limits and within the police Station limits in rural areas. However, there shall not be any distribution of food within the areas earmarked as 'hot spots' by the Government.

(iv) It is further made clear that the distribution of the food has to be completed within a time to be specified. However, in case, if the distribution of food could not be completed within the time, the District authorities can consider extending the time on their discretion by one or two hours.

(v) The place where the food is likely to be served has to be sanitised by the authorities concerned prior to effecting distribution so that it will be fit for such distribution of food

(vi) The State can deploy police officials to regulate the recipient of food

(vii) The State shall permit three organisers, excluding the driver, who organise the distribution of food, along with an elected representative, to be present at the venue

(viii) More than three persons shall not travel in one vehicle to carry the food items to the place of distribution and they shall strictly adhere to the preventive measures announced by the Government in exercise of powers under Section 144 of the Code of Criminal Procedure.

(ix) The petitioner organisation or other similar organisation, non-governmental organisations, individuals or group of individuals shall strictly ensure that social distancing norm is followed during distribution of food and there is no deviation, whatsoever

(x) It is well open to the District authorities to impose such other condition (s) that may be reasonable to ensure that the distribution of food is effected without deviation of any of the norms.

10. Subject to the above observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(R.P.S.J.,) (R.P.A.J.,)

16.04.2020

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