

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17-06-2020

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Writ Petition No. 8276 of 2020

M. Immanuel
Son of M.R. Manickam
Old No.2/50, New No.6/71
Balaramani 1st Cross Street
Narmangalam, Kovilambakkam
Chennai – 600 129

..Petitioner



Versus

सत्यमेव जयते

1. The Government of India

rep. By the Home Secretary
Ministry of Home Affairs
North Block
New Delhi – 110 001

2. The National Disaster Management Authority

rep. By its Member Secretary
NDMA Bhawan

A-1, Safdarjung Enclave
New Delhi – 110 029

3. The Chief Secretary

Government of Tamil Nadu
Secretariat, St. George Fort
Chennai – 600 009

4. The Government of India

rep. By its Secretary
Ministry of Health and Family Welfare
Nirman Bhavan
New Delhi - 110 011

5. Indian Council for Medical Research

rep. by its Director
V. Ramalingaswamy Bhavan
Absari Nagar
New Delhi - 110 029

..Respondents

Petition filed under Article 226 of The Constitution of India praying for issuing a Writ of Certiorari calling for the records relating to the order bearing No.40-3/2020/DM-1(A) dated 30.05.2020 of the first respondent and consequent G.O. Ms. No.262, Revenue and Disaster (DM-II) Department dated 31.05.2020 of the third respondent and consequently quash the same in so far as it relates to restriction of movement of persons, gatherings of religious, social and political in nature and night curfew as the same are in violation of Article 19 (b) (d), 21, 25 and 14 of The Constitution of India and further excessive of the National Disaster Management Biological Disasters Guidelines, 2008 and National Disaster Management Plan, 2019.

For Petitioner : Mr. K. Sakthivel

For Respondents : Mr. G. Rajagopalan
Additional Solicitor General
assisted by
Mr. S. Janarthanan, SPC for RR1, 2 and 4

Mr. S.R. Rajagopal
Additional Advocate General
assisted by
Mr. V. Jayaprakash Narayanan, Govt. Pleader
Mr. V. Shanmuga Sundar, Special Govt. Pleader
for respondent No.3

Ms. Mala for R5

ORDER

The petitioner has come forward with this writ petition seeking to quash the order bearing No.40-3/2020/DM-1(A) dated 30.05.2020 issued by the first respondent and the consequent order passed by the third respondent in G.O. Ms. No.262, Revenue and Disaster (DM-II) Department dated 31.05.2020 in so far as they relates to restriction of movement of persons, gatherings of religious, social and political in nature and night curfew as they are in violation of Article 19 (b) (d), 21, 25 and 14 of The Constitution of India and further excessive of the National Disaster Management Biological Disasters Guidelines, 2008 and National Disaster Management Plan, 2019.

2. Today, this writ petition is taken up for hearing through Video-

<http://www.judis.nic.in> conferencing and we have heard the counsel on either side.

3. The learned counsel for the petitioner submitted that the petitioner is the Secretary of a registered political party in the State of Tamil Nadu by name Tamizhaga Murpokku Makkal Katchi. According to the counsel for the petitioner, the respondents imposed a Nation wide lockdown purportedly to prevent the spread of COVID-19 and such lockdown was imposed initially for 21 days from 24.03.2020, which was subsequently extended from time to time. The lockdown was lastly extended on 31.05.2020 and it is in force in the State. It is his contention that the imposition of lockdown had deprived the petitioner of his meager livelihood and made him starve even for bare essentials. It is also his contention that the lockdown imposed by the respondents had adversely affected the fundamental right of the petitioner's free movement within the State apart from infringing his political as well as religious right. The counsel for the petitioner invited our attention to the affidavit filed in support of the writ petition wherein elaborate narration has been made with respect to the restrictions imposed at the time when the lockdown was imposed in the State on 24.03.2020 and the subsequent relaxations announced and contended that the respondents are not certain as to how long the lockdown would continue. The counsel for the petitioner also states that Epidemiologists all over the world have stated that lockdown is not the solution to Covid 19 but adopting stringent preventive care such as wearing mask and maintaining

social distance would be sufficient. Furthermore, inspite of the imposition of the lockdown, the number of people infected with Covid-19 has seen a surge and therefore, nothing useful could be achieved by imposing the lockdown. Above all, it is stated that the third respondent has merely followed the directions of the first and second respondents in extending the lockdown without independently taking note of the ground realities. That apart, the third respondent is said to have consulted an expert committee, but such committee does not have proper representation of the Epidemiologists, rather it consists only medical experts involved in treating patients. In essence, it is his submission that The National Disaster Management Biological Disasters Guidelines, 2008 or the National Disaster Management Plan, 2019 did not contemplate imposing lock down or restriction of movement of citizens. When the respondents have announced certain relaxations for opening transportation and other business establishments, there is no reason why the same yardstick should not be adopted in opening of places of worship etc., It is the contention of the counsel for the petitioner that the lock down imposed by the respondents had resulted in adversely affecting the temporary workers and daily wage earners. Therefore, the counsel for the petitioner would contend that the respondents have arbitrarily exercised their powers to impose a lock down and it had infringed the fundamental rights guaranteed to the

petitioner under Article 19 (b) and (d), 21, 25 and 14 of the Constitution of India. Therefore, he prays for quashing the orders passed by the respondents referred to above.

4. Per contra, the learned Additional Solicitor General would submit that the World Health Organisation had declared Covid-19 epidemic as a Pandemic. On the basis of the guidelines given by the World Health Organisation and after consulting the experts in the field, the respondents 1 and 2 have thought it fit to impose a nation wide lockdown in exercise of the power conferred under Section 8 (2) (ii) of the Disaster Management Act, 2006 and 10 (2) (i) of The Disaster Management Act. The imposition of lockdown is imperative to save the lives of the citizens at large from the pandemic. The Central Government has a statutory obligation to protect its citizens in times of a crisis of this nature and volume. Thus, it is contended that the nation wide lockdown has become imperative to save the lives of the citizens and there is no arbitrariness involved in passing the order dated 30.05.2020 by the first respondent which is impugned in this writ petition. The learned Additional Solicitor General therefore prayed for dismissal of the writ petition.

5. Mr. S.R. Rajagopal, learned Additional Advocate General would contend that the present writ petition is not maintainable at the instance of the petitioner. The present petition has been filed as a Public Interest Litigation inspite of the dismissal of two other petitions, styled as Public Interest Litigation, by the co-ordinate Bench of this Honourable Court. He had invited our attention to the order dated 15.05.2020 passed in WP No. 7655 of 2020 and order dated 18.05.2020 passed in WP No. 7602 of 2020. In both the aforesaid writ petition, a Mandamus was sought for to reopen the temple, mosque, churches and other religious shrines *inter alia* allowing people to offer prayer, preach and profess as per their custom by maintaining social distancing and other reasonable restrictions prescribed to contain corona virus spread. In the aforesaid orders, this Court dismissed the writ petition by holding that in the event of permission being accorded to open the places of religious worship, there will be a huge crowd. It was specifically held that even though the petitioner in WP No. 7602 of 2020 claims to be a social activist, he has not come forward with any solution as to the maintenance of social distancing norms by the persons who come to the place of religious worship. Similarly, in the present case, it is the contention of the petitioner that the lockdown is unnecessary and it has not curbed the spread of virus. Such a contention of the petitioner is without any basis. In a grave situation of

this magnitude, it is for the administrators to decide and take steps to curb the pandemic by consulting the experts in the field. The need to maintain social distancing and a ban on public gatherings has now become a global norm in many countries and the State cannot be an exception. He has also stated that several States have invoked the provisions of The Epidemic Diseases Act, 1987 and The Disaster Management Act, 2005 to impose the lockdown. The learned Additional Advocate General also placed reliance on the decision of the Honourable Supreme Court in the case of **(Janata Dal vs. H.S. Chowdhary and others)** reported in **(1992) 4 Supreme Court Cases 305** wherein it was held that even though Public Interest Litigation is a potent tool for the poor and downtrodden to approach the Court for genuine relief, the Court should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervenor without any interest or concern except for personal gain or private profit or other oblique consideration. By placing reliance on the aforesaid Judgment, the learned Additional Advocate General would contend that the petitioner has no genuine public interest to be ventilated through this writ petition. The present writ petition has been filed not in public interest and therefore, he prayed for dismissal of the writ petition with costs.

6. At the outset, we wish to emphasize that the entire world is witnessing an extraordinary situation whereby the livelihood of several citizens were affected due to the burgeoning spread of the Pandemic - Covid-19. Even though efforts are being taken on a war-footing, its rapid spread could not be curtailed with ease. It is also to be stated that the State had a statutory as well as vicarious liability to protect its citizens. It is in this direction that the respondents have passed orders imposing lockdown and restricted the movement of the citizens. While so, the question of infringement of fundamental right will not arise. It is reiterated that imposition of lockdown is one of the measures taken by the respondents in the larger interest of its Citizens and to ensure that their health and life are not jeopardised in any manner. The lock down, according to the respondents, is the panacea for all the woes confronted by the Country at the moment. The object of the lock down is only to curtail the spread of the virus in all earnestness. Even according to the petitioner, the restrictions imposed by the respondents during the first phase of lock down have been by and large relaxed in the successive lock down keeping in mind the larger interest of the public. While so, the contention of the petitioner that the lock down had impaired his fundamental rights guaranteed under Articles 19 (b), (d), 21, 25 and 14 cannot be countenanced.

7. The learned counsel for the petitioner harped upon by contending that there is no provisions in The Epidemic Diseases Act, 1897 or The Disaster Management Act, 2005 to impose a lockdown and therefore, the orders, which are impugned in this writ petition, have been passed without any authority of law besides being arbitrary. We are unable to accept such submission of the counsel for the petitioner. Section 2 of The Epidemic Diseases Act, 1897 confers power upon the State Government to take special measures and prescribe regulations as to dangerous epidemic disease. Section 2 (d) of the said Act defines "disaster" which includes catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area. Similarly, Chapter V of the Disaster Management Act, 2005 deals with measures by the Government for disaster Management. Section 35 (2) (d) of The Disaster Management Act specifically provides that the Central Government shall take measures to ensure that the Ministries or Departments of the Government of India take necessary measures for preparedness to promptly and effectively respond to any threatening disaster situation or disaster. Further Section 35 (2)

(i) provides that the Central Government shall take measures as it deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act. Therefore, it is not as if the respondents have imposed the lockdown without any authority of law. The power to impose the lockdown is very much available under the aforesaid Acts. The lockdown is one of the measures taken up by the respondents to curb and restrict the spread of the pandemic. Therefore, the imposition of the lockdown as a measure of curtailing the spread of the pandemic by the respondents cannot be said to be arbitrary.

8. In any event, we are of the view that the imposition of lock down or relaxing the lock down is a matter to be decided by the instrumentalities of the Government by taking note of various factors and the ground realities. This Court cannot, in exercise of power under Article 226 of The Constitution of India, interfere with the decision taken by the respondents in an effort to curb the pandemic. The contentions raised by the petitioner in this writ petition, therefore, deserves only to be rejected as having no merits. The writ petitioner, in our opinion, has filed this writ petition not in any public interest, but otherwise. It is needless to mention that when already similar writ petitions filed as public interest litigation have been dismissed by a coordinate

bench of this Court, the present writ petition is not warranted. The petitioner ought not to have filed the present writ petition styled as a Public Interest Litigation consuming much of our time. We therefore hold that the present writ petition has to be dismissed with exemplary costs.

9. In the light of our above conclusion, we dismiss the writ petition with costs of Rs.50,000/- (Rupees Fifty Thousand Only) payable by the petitioner to the Honourable Chief Justice Relief Fund. Such amount is payable within a period of four weeks from the date of this order. Office is directed to post this writ petition after four weeks for reporting compliance. Connected WMP No. 9915 of 2020 stands closed.

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

17.06.2020

Internet : Yes / No

Index : Yes / No

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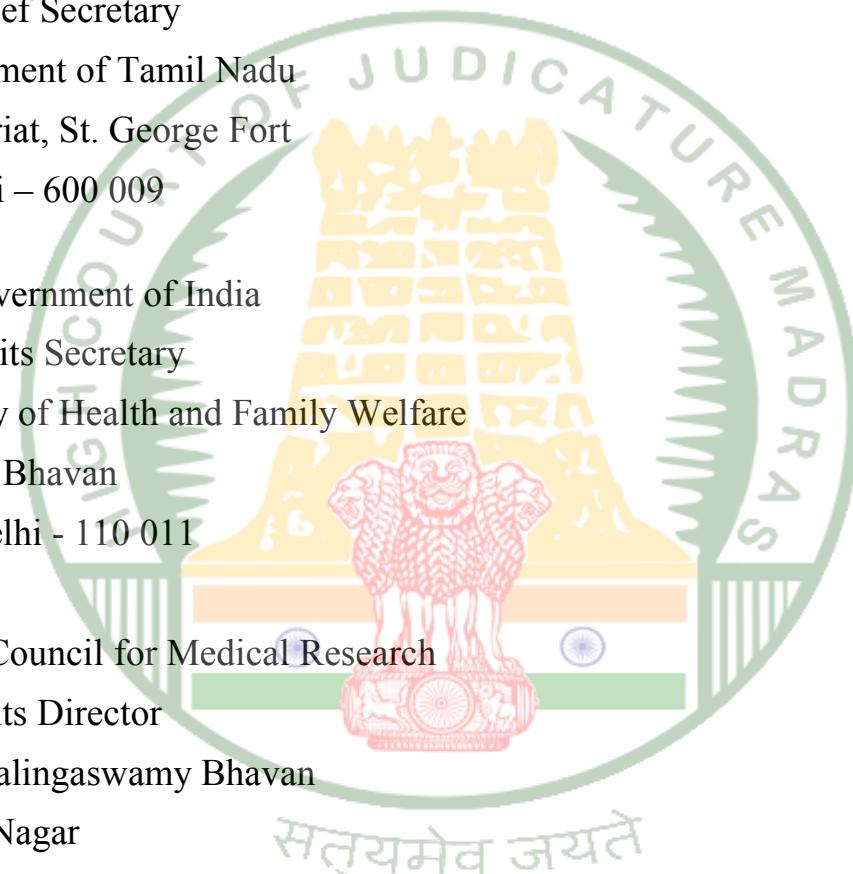
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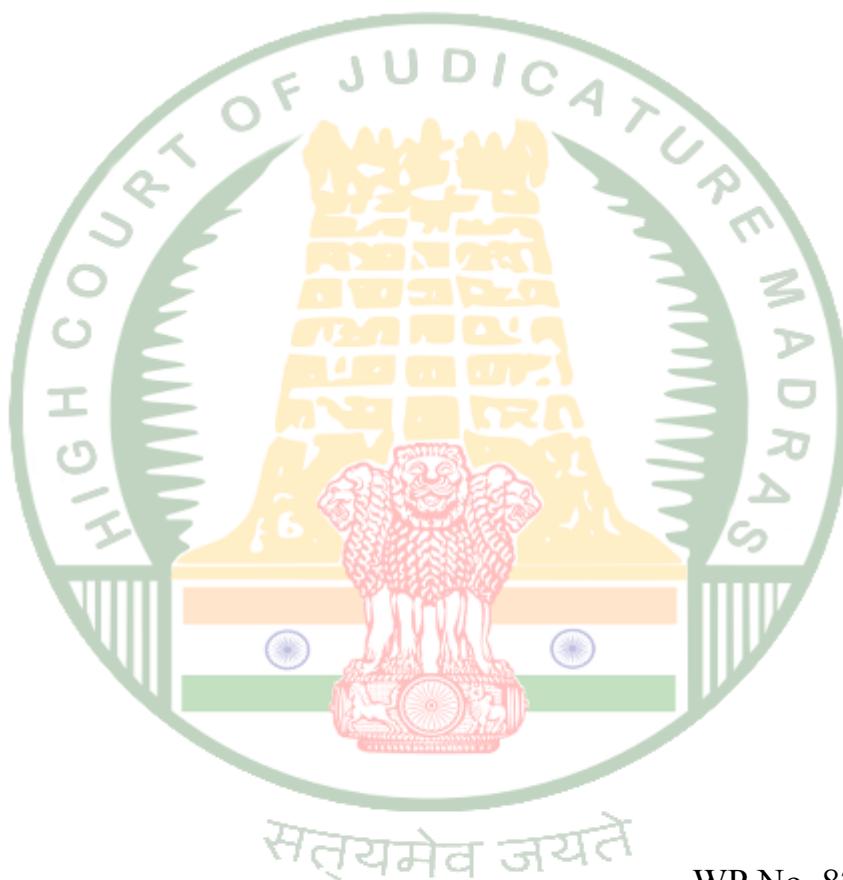
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