

W.P(MD)No.9603 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 15.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.9603 of 2024

Thameem Sindha Madar

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District, Tirunelveli.

2.The Revenue Divisional Officer,
Nanguneri, Tirunelveli District.

3.The Tahsildar, Nanguneri Taluk,
Tirunelveli District.

4.The Inspector of Police,
Ervadi Police Station,
Tirunelveli District.

5.G.Saffi

6.Peer Mohideen

7.P.Mohamed Sirajudeen

... Respondents

(7th respondent is impleaded vide
order dated 15.07.2024)



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Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to forbear the respondents from interfering with the right of the petitioner to conduct ten days of Muharram ceremonies with the beat of drums during flag hoisting on the first day and beat of drums during santhanakoodu and kuthirai pancha processions on the seventh and eight days within the 4 Mohallas of the Ervadi town.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.K.Balasubramani,
Special Government Pleader for R1 to R3

Mr.Albert James,
Government Advocate (crl.side) for R4

Mr.T.Lajapathi Roy, Senior Counsel
for Mr.T.Seeni Syed Amma for R5

No appearance for R6

Mr.S.Balaji for R7

ORDER

Heard both sides.



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2. In Ervadi Town in Tirunelveli District, there is a Muslim shrine in memory of Saints Hasan and Husain. It is known as Ervadi Dargha. Apart from this mosque, there are six other mosques in the town. Out of them, two subscribe to Thowheed Jamath principles. The stand of Thowheed group is that Islam should be practised in its pure and original form free from any other corrupting influence. They take exception to the manner of celebration of the annual Muharram Santhanakoodu festival of Ervadi Dargha. According to them, playing of music, conducting procession and rituals such as “Kuthirai pancha” ought not to be permitted. In view of the objections raised by them, the Dargha management could not conduct their festival in the traditional mode. Seeking to restrain the respondents from interfering with their right to conduct the Muharram festival in the customary fashion, this writ petition has been filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to grant relief as prayed

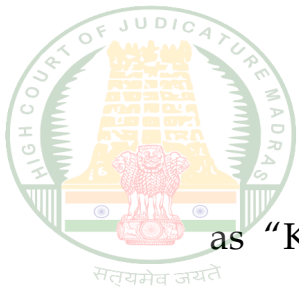


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for. He placed reliance on the order dated 30.04.2021 made in
WEB COM WA Nos.743 and 2064 of 2019 in support of his contention that
there cannot be any prohibition of the right to conduct religious
processions.

4.The learned Special Government Pleader appearing for the
revenue authorities submitted that there has been severe
opposition from the adherents of Thowheed Jamath and that the
writ petitions filed by the petitioners during the previous years
suffered dismissals and that therefore, a departure need not be
made.

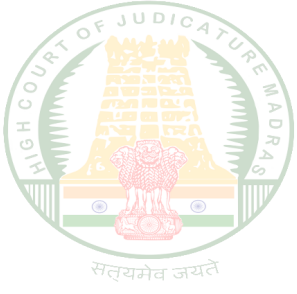
5.The learned Government counsel appearing for the
jurisdictional police submitted that the Muharram festival was
conducted without any obstruction or objection for several
decades. General public irrespective of communities and religion
used to take part. Only in the year 2011, objection was raised by
the Thowheed group. Certain unpleasant incidents took place.
FIRs were registered. Peace committee meetings were convened
almost every year. It was decided that objectionable events such



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as “Kuthirai Pancha”, “Santhanakoodu Procession” etc., would not be conducted. There was consensus for conducting only four events. The police have been granting permission in line with the said decision. In the year 2019, again, four criminal cases were registered. As on date, no criminal case is pending. Either they ended in acquittal or were closed as “Mistake of Fact”. The jurisdictional police have stated that based on the order to be passed by the High Court, they are ready to provide protection to ensure that there is no breach of public peace.

6.The learned Senior Counsel appearing for the fifth respondent and the learned counsel for the impleaded respondent submit that this writ petition is not maintainable in view of the orders passed during the earlier years. Orders totalling nine have been enclosed in the typed set of papers. The learned Senior Counsel would contend that the petitioner must obtain relief only in the jurisdictional civil court. He strongly objected to grant of relief in favour of the writ petitioner.



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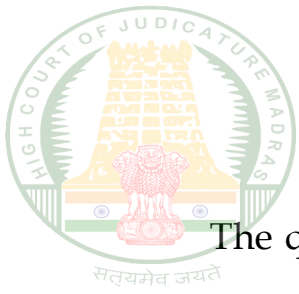
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7.I carefully considered the rival contentions and went through the materials on record. The annual Muharram festival has already commenced and it is due to conclude on 17.07.2024. The contentious aspects are three, a) beat of drums b) “Kuthirai Pancha” ritual and c) “Santhanakoodu” procession.

8.“Kuthirai Pancha” event is nothing but taking a young boy mounted on a horse in procession. “Kuthirai” is Tamil word for horse. I take judicial notice of the fact that in villages, Hindus follow a custom called “Puravi Eduppu”. “Puravi” is again another Tamil word for horse. This custom appears to be region-related rather than religion-centered.

9.“Santhanakoodu” has been defined in Cre-A Dictionary of Contemporary Tamil as follows :

“முஸ்லீம் மகான்களுக்காக நடத்தப்படும் திருவிழாவில் சிறு தேரின் நடுவில் வைத்து எடுத்துச்செல்லும் சந்தனக்குடம்; small pot filled with sandal paste kept in a chariot taken out in procession in honour of Muslim saints”.



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The question that calls for consideration is whether the petitioner is entitled to conduct the festival in customary mode without interference at the hands of persons owing allegiance to Thowheed Jamath.

10. That the petitioner and others associated with him have the fundamental right to conduct the Muharram festival in the customary mode is axiomatic. Article 25 and Article 19(1)(b) and (d) of the Constitution of India provide them this guarantee. Article 25(1) of the Constitution declares that subject to public order, morality and health and the other provisions of Part III, all persons are equally entitled to freedom of conscience and the right to freely profess and practise religion. The Seven Judges Bench of the Hon'ble Supreme Court in the *Commissioner, Hindu Religious Endowments, Madras v. Sri Shirur Mutt* (AIR 1954 SC 282) held that what has been guaranteed was freedom not only to entertain such religious belief as may be approved of by one's judgment and conscience but also to exhibit his belief in such outward acts as he thinks proper. Religion is a matter of faith with individuals and communities.



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11. Religious beliefs and practices cannot be reduced into mono categories. Perceptions are bound to differ. That is why, there are different schools of philosophical thought. Admittedly, there are two principal sects, namely, Shia and Sunni. But they are not all. There is the rich and sublime Sufi tradition. They stand for syncretic culture. They do not stick to the rigid rules of orthodoxy. Their accent is more on love and harmony. Jalaluddin Rumi and his work “Masnavi” come to mind. He was the greatest dervish who believed in dancing one's way to God. There are hundreds of classical musicians who are at the same time pious Muslims.

12. Islam was founded in the 7th Century in the middle east. It has spread to several parts of the world ever since. Thowheed Jamath would want Muslims everywhere to practice Islam as in Saudi Arabia. In fact, they would go back to the times of the Prophet Himself. They are not comfortable with the practices acquiring local color and gloss.



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13.I cannot help taking a detour. Raja Rao is one of our greatest writers in English. He is part of the trinity, the other two being R.K.Narayan and Mulk Raj Anand. Raja Rao's Novel “Kanthapura” is more known for its immortal foreword. He wrote thus :

“One has to convey in a language that is not one's own the spirit that is one's own. One has to convey the various shades and omissions of a certain thought-movement that looks maltreated in an alien language. I use the word ‘alien \ yet English is not really an alien language to us. It is the language of our intellectual make-up—like Sanskrit or Persian was before—but not of our emotional make-up. We are all instinctively bilingual, many of us writing in our own language and in English. We cannot write like the English. We should not. We cannot write only as Indians. We have grown to look at the large world as part of us. Our method of expression therefore has to be a dialect which will some day prove to be as distinctive and colourful as the Irish or the American. Time alone will justify it.

After language the next problem is that of style. The tempo of Indian life must be infused into our English expression, even as the tempo of American or Irish life has gone into the making of theirs. We, in India, think quickly, we talk quickly, and when we move we move quickly. There must be



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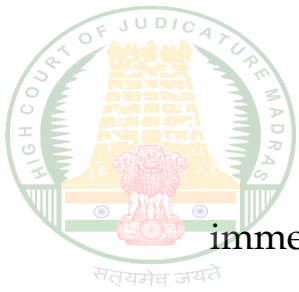


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something in the sun of India that makes us rush and tumble and run on. And our paths are paths interminable. The Mahabharatha has 214,778 verses and the Ramayana 48,000. Puranas there are endless and innumerable. We have neither punctuation nor the treacherous ‘ats * and ‘ons * to bother us—we tell one interminable tale. Episode follows episode, and when our thoughts stop our breath stops, and we move on to another thought. This was and still is the ordinary style of our story-telling.”

If language will not be the same everywhere, religion also cannot be otherwise. Mathematics alone will be the same all over. There is something universal about it. There is nothing Mathematical about religion though there can be a set of universal values. Religion will acquire different shades and flavors based on one's lived experience. The people in Ervadi believe in Music, Beat of Drums and Horse and Chariot Processions. To expect them to conform to Saudi Arabian practice is nothing short of Talibanic outlook.

14.The Dargha dedicated to Hasan and Husain is several centuries old. The Muharram festival is being observed since time



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immemorial. One can take judicial notice of the fact that beat of drums is an intrinsic part of religious and social events in this part of the country. Tinnevely District Gazetteer (1916) contains an interesting remark on how Muslim practices resemble Hindu customs. The following reference from the Gazetteer is relevant :

“ “taboots”, wooden frames adorned with coloured paper and tinsel in which offerings of sandal dedicated to saints are carried in procession, is an almost exact imitation of the ordinary “chapram” ritual of the Hindus. Examples are to be found in the district of a curious kinship in religious feeling between Muhammadans and Hindus. The mosque at Pottalpudur attracts, it is said, more Hindu worshippers than Muhammadans; attached to the Attankarai mosque near the mouth of the Nambiyar (in the extreme south of the Nanguneri taluk) is the tomb of a Muhammadan saint to which Hindus make offerings in fulfilment of vows; at Melappalaiyam, a suburb of Palamcotta, there is a tomb similarly respected by Hindus.

I also take judicial notice of the fact that Santhanakoodu festivals are celebrated by several mosques in Tamil Nadu. This has been



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going on for over centuries. The conducting of procession accompanied by beat of drums and music has offended the fundamentalist sensibilities of Thowheed group. Though not able to outnumber the petitioner's group, they have mustered sufficient strength to give an impression that if the Muharram festival is conducted in the customary mode, there would be breach of public order. The District Administration caved in. That is how, for the last fourteen years, customs such as Kuthirai Pancha and Santhanakoodu could not be observed.

15.It is true that every attempt made by the petitioner's group during the previous years ended in failure. All the earlier orders have been enclosed by the fifth respondent. Ironically, I have also passed one such order denying relief to the petitioner.

When I proclaim that there should be continuation of customs and there need not be any departure, can I depart from the pattern of dismissals? This is an inconvenient question and I will endeavour to answer with conviction.



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16.The petitioner and his associates have the fundamental right to conduct their religious procession. This right stands protected by Article 19(1)(b) and (d) of the Constitution of India. This right has been exercised by the petitioner's forefathers over centuries. It is not open to Thowheed Jamath to dictate to the petitioner's group as to how they should conduct the festival. Thowheed Jamath has no right to prevent the petitioner's group from going on a religious procession. It is unfortunate that the District Administration chose to succumb to the threats held out by the fundamentalist elements. If one's fundamental rights are under threat, the duty of the administration is to uphold the rights and put down those interfering with the exercise of the rights. Fundamental rights shall take precedence over fundamentalist forces. If the District Administration is to take the easy and lazy option of prohibiting the exercise of the right by citing law and order issues, it would betray their impotence. I am conscious that this is not a politically correct expression. In fact, the Hon'ble Supreme Court has recently brought out a handbook advising Judges to refrain from use of inappropriate words and



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expressions. I have however employed it for two reasons. Justice

K.M.Joseph while hearing a case involving hate speech, castigated

the State by using this word. And a century back, Justice Phillips

in *Venkata Subbaya v. Muhammad Falauddin Khaji*, 1926 SCC

OnLine Mad 524 had employed the very same expression. The

entire order deserves to be extracted verbatim :

“1. It appears that for some years past there has been considerable friction between the Hindu and Muhammadan inhabitants of Nellore. This was due to the objections taken by the Muhammadans to music being played outside their mosques while the Hindus were taking religious processions through the streets. In 1917 the then District Magistrate considered the question and advised the Hindus to file a suit to establish their rights. They accordingly filed a suit in the Munsif's Court in the same year and obtained a decree on 2nd October, 1918. That decree was subsequently confirmed by the District Judge on appeal. In this decree their right to take procession with music outside the mosques was declared, subject to certain conditions as to time. Accordingly in 1919, a procession was taken but owing to the action of some of the Muhammadans there was a riot and three persons were killed and other injuries inflicted.

2. Since that time, no procession has been taken by the Hindus, apparently because they were afraid to do so without special permission from the Magistracy and the Magistracy has declined to give that permission. An order has now been passed by the Sub-divisional Magistrate under Section 144 of the Cr PC, forbidding the



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Hindus to conduct a procession on 13th January, 1926. The application for leave to take the procession was made so early as October 1925. The Sub-divisional Magistrate, while recognising no doubt the rights of the Hindus to take the procession, held that the likelihood of rioting and bloodshed was too great to allow them to exercise their lawful rights. This seems to me to be a confession of impotence on the part of the authorities. The District Magistrate is undoubtedly the person who is to look after the peace of his district and naturally in cases of sudden emergency it may be necessary to restrict a person from exercising a perfectly lawful right. But it should not be necessary to prevent that person not only in a particular occasion in the near future but for all time from exercising that right because it would be too much trouble to render him adequate protection against persons who intend to disobey the law.

3. Any interruption of the procession by the Muhammadans so long as it is conducted in accordance with the decree of the civil Court is undoubtedly an infraction of the law and for the Government to state that they are not prepared to prevent the infraction of the law and to restrain law-breakers from interfering with lawful rights is practically to abdicate all authority. Orders under Section 144 of the Cr PC, are certainly not intended to be used as a means of depriving the citizens of lawful rights which have been declared by competent Courts. In the present case the procession that is sought to be taken is fixed for the 13th January, 1926, and consequently it would now be very difficult for the authorities to take adequate steps to prevent any interference with the procession. I do not therefore propose to set aside the present order as it is too late in the day. But I am far from saying that a similar order should be passed hereafter. If the Hindus



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apply again to take procession and give reasonable notice to the authorities that they propose to do so I think it would be incumbent on the authorities to take such action as will protect the rights of the Hindus. The Muhammadans may have to be bound over to keep the peace or it may be necessary to introduce armed force to compel them to do so. But whatever may be necessary should be done in order to protect the rights of the Hindus who, I may say, have been very careful not to exceed their rights and have even offered to pay the extra cost incurred by the Government in protecting their rights.

4. While therefore I cannot set aside this order at the present moment owing to the fact that there is no time to take steps to protect a breach of the peace I have expressed my views as to what should be the procedure hereafter. If the time had not been so short, I should have set aside the present order.

5. *Petition dismissed.*”

17. I wondered if I too like Justice Phillips dismiss the writ petition saying there is no time to make proper arrangements. I would be guilty of injustice if I do so. This writ petition was filed in April itself. The petitioner did not come at the last moment. More than anything else, the jurisdictional police have informed the court in writing that they are ready to make appropriate arrangements to ensure the smooth conduct of the event and to



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enforce the order of this Court. When the police are confident and

WEB COPY sanguine, the judiciary should not suffer from diffidence. Since

the petitioner and his fellow believers are having the fundamental

right guaranteed by the Constitution, it is the court's duty to

uphold the same. Unlike the previous years when the police

waved the red flag, they are ready to assist the petitioner if the

court gives the green signal. This is another major reason why a

different approach is warranted this time.

18.I have still not overcome the precedential impediments.

The order dated 02.12.2011 in CrI OP(MD)No.15843 of 2011 and

the order dated 20.11.2012 in WP(MD)No.14762 of 2012 are based

on the resolutions passed in peace committee meetings. It is well

settled that peace committee meetings are not traceable to any

statutory provisions. The resolutions passed therein are not

legally enforceable. Breach of resolutions passed in peace

committee meetings will not invite any legal or penal

consequences. Those orders are therefore clearly distinguishable.

WP(MD)No.17352 of 2014 was filed by the petitioner's group



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challenging the rejection order passed by the jurisdictional Deputy Superintendent of Police. It was dismissed on 31.10.2014 since the police took the stand that there would be law and order problems.

Challenging the dismissal order, WA(MD)No.1328 of 2016 was filed. The Hon'ble First Bench dismissed the writ appeal on the ground that the matter had become infructuous. Liberty was given to agitate the matter afresh in accordance with law if any fresh cause of action arose. WP(MD)No.20147 of 2019 filed by the petitioner's group was dismissed on 18.10.2019 with certain adverse observations and relegating the petitioner to go before the civil court. I followed the said order while disposing of WP(MD)No.16342 of 2022. To the same effect is the latest order dated 27.07.2023 made in WP(MD)No.14124 of 2023. A mere look at the order dated 18.10.2019 in WP(MD)No.20147 of 2019 reveals that it questioned the rejection order passed by the jurisdictional DSP. The prayers in WP(MD)No.16342 of 2022 and WP(MD)No. 14124 of 2023 are for the respective years 2022 and 2023. No binding proposition of law has been laid down in any of the orders relied on by the private respondents.



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WEB COPY 19. There has been a march of law. The Hon'ble Supreme Court (5 Judges Bench) held in *Kaushal Kishor v. State of UP* (2023) 4 SCC 1 that a fundamental right under Article 19 can be enforced even against persons other than the State or its instrumentalities. Article 19 right is capable of horizontal application and enforcement. Right to religious procession is an Article 19 right. It can be enforced against Thowheed Jamath. The District Administration is obliged to do everything needful to protect the exercise of the said right. All the judgments starring at my face have not factored this aspect of the matter. Kaushal Kishor was delivered only in January 2023. Only one order relied on by the respondents is post-Kaushal Kishor. Since it does not take note of the same, it is distinguishable. In any event, the issue deserves to be set at rest in view of the decision of the Hon'ble Division Bench rendered in WA Nos.743 and 2064 of 2019 on 30.04.2021. Paragraph 26 of the said order declares as follows :

“26.....

1. Once it has been declared by the authorities as roads or streets as per Section 180-A of the District



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Municipalities Act, the roads and streets which are "secular", should be used as roads by all the people irrespective of their religion, caste or creed.

2.Any procession including religious procession shall be conducted through all the roads and streets without any restriction.

3.Any procession including religious procession cannot be prohibited or curtailed merely because another religious group is residing or doing business in the area predominantly.

4.There cannot be a prohibition for any procession including religious processions through roads by the District administration or police authorities and there can be only regulation by the police or other Government authorities to see that no untoward incident occurs or any law and order problem arises.

5.Every religious group has got fundamental right to take out religious procession through all the roads without insulting the other religious sentiments and without raising any slogans against other religious groups, affecting their sentiments, public law and order.

6.Merely because there is one place of worship belonging to other religious group, the same cannot be



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a ground to decline/deny permission to conduct procession including religious procession of other religions to go through those roads or streets.

7.The presence of religious structures/places of worship cannot take away the right of other religious groups who have been enjoying all the rights including the conduct of religious procession for the past many years....”

20.I can understand if the dispute is within the petitioner's group. In that event, I might have asked the petitioner to go before the civil court. That is not the case here. The private respondents and the members of the Thowheed Jamath are not even members of the petitioner's Jamath. Thowheed Jamath has its own mosques. In fact, the Thowheed group does not believe in the concept of Dargha. Those who go to Dargha offer worship in memory of saints seeking their intercession. The Thowheed group believes in direct hotline with the divine. The Thowheed group is entitled to hold on to their own beliefs. Problem arises when they prevent others from practicing their version of Islam. If the



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Thowheed Jamath persons dislike Santhanakoodu procession or

WEB CO Kuthirai Pancha, let them not take part. Let them stay indoors.

21.This writ petition is allowed. No costs.

15.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SKM

To

- 1.The District Collector,
Tirunelveli District, Tirunelveli.
- 2.The Revenue Divisional Officer,
Nanguneri, Tirunelveli District.
- 3.The Tahsildar, Nanguneri Taluk,
Tirunelveli District.
- 4.The Inspector of Police,
Ervadi Police Station,
Tirunelveli District.



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G.R.SWAMINATHAN, J.

SKM

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