

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.05.2022

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Writ Petition No.12918 of 2022
and W.M.P.Nos.12418 & 12419 of 2022

P.R.Srinivasan
Hereditary
Trustee
Arulmighu Abheeshta Varadharaja Swamy Temple
Dharmapuri District.

.... Petitioner

-Vs-

- 1.The Commissioner
H.R.& C.E.,
Department Chennai –
600 034.
- 2.The Joint Commissioner
H.R.&C.E., Department
Salem.
- 3.The Assistant
Commissioner H.R.&C.E.,
Department Dharmapuri
District.
- 4.The Assistant Engineer
TANGEDCO,
Paparapatti
Pennagaram Taluk,
Dharmapuri District.
- 5.The Inspector
H.R.&C.E.,
Department
Pennagaram Taluk
Dharmapuri District.

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records of the 5th respondent leading to pass the impugned order dated 13.05.2022 and quash the same.

For Petitioner : Mr.V.Raghavachari
for Mr.M.Narayanaswamy

For Respondents : Mr.R.Shunmugasundaram
Advocate General
Assisted by
Mr.Muthukumar
State Government Pleader

ORDER

'Our village will face divine wrath if the proposed Rath festival is not held tomorrow' – This fervent prayer of the writ petitioner made the Court to hold an emergent sitting from Nagercoil and conduct the case through Whatsapp.

2. The writ petitioner is the Hereditary Trustee of Arulmighu Abheeshta Varadarajaswamy Temple, Pappalapatti Agraharam, Pennagaram Taluk, Dharmapuri District. His case is that every year the temple has been celebrating its car festival. The procession starts from the temple and runs through the four streets around the temple.

3. The procession takes about four hours and the distance covered is around half a kilometre. There are some eighty houses situated. This festival was being held year after year for the last eight decades without any break till the outbreak of Covid. Due to

the restrictions imposed by the Administration, for the last two years the event could not be held. Following the lifting of restrictions, steps were taken to resume the holding of the festival. The petitioner wrote to the various Departments. A co-ordination meeting was also held. All the arrangements have been made. At this juncture, the 5th respondent put spokes in the chariot wheels by issuing the impugned communication on 13.05.2022 instructing the Fit Person as well as the hereditary trustee not to hold the car festival. Certain reasons have been set out therein. This necessitated the filing of the present writ petition. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the same and allow the writ petition.

4. Mr.R.Shunmugasundaram, learned Advocate General assisted by Mr.Muthukumar, learned State Government Pleader appeared for the respondents. I am happy to record that the learned Advocate General did not adopt an adversarial stand. He stated that the Government does not oppose the holding of the event. Their sole concern is the safety of the members of the general public. He submitted to the Court that on account of failure to adhere to safety standards, tragedy struck in a similar procession in Thanjavur District recently. He emphasized that such accidents should not recur. According to him, after the defects pointed out in the impugned communication are rectified, the procession can very well be conducted and the State may not have any objection.

5. I carefully considered the rival contentions and went through the materials on record. The impugned communication had been issued by the Inspector, H.R.&C.E., Department, Pennagaram Taluk, Dharmapuri District. An Inspector is not one of the authorities listed in section 8 of The Tamil Nadu H.R.&C.E.Act,1959. No statutory provision empowers him to issue the impugned communication either to the Fit Person or to the hereditary trustee. It is absolutely without jurisdiction and hence quashed. Since the stand of the respondents is evident, I do not stop here and I am inclined to mould the relief.

6. Car festival (தேர் திருவிழா) is one of the important features of many of the temples in Tamil Nadu. We are familiar with the expression "தேரோடும் வீதி" ie., the street through which the temple chariot passes. Year after year such Car festivals are held. They serve a vital social function also as people cutting across all sections and castes participate and mingle together while pulling the chariot. In any temple, there will be two idols. One is called 'Moolavar', usually made of stone and is permanently fixed inside the sanctum sanctorum. On the other hand, 'Utsavar' idol is made of metal and meant to be taken in procession. We can conceive of certain categories of people such as very old or severely physically challenged, who are not in a position to visit the temple and offer their worship. To facilitate worship by them also, the deity comes out into the open. It is stated that on such occasions, the power of 'Moolavar' is transferred to the 'Utsavar'. In fact during such festival occasions, worship is made more to the 'Utsavar' than to the 'Moolavar'. This is sufficient to highlight the importance of such festivals.

7. The H.R.&C.E., Department has to facilitate the holding of such customarily held events. It is true that on such occasions, certain fatal accidents had taken place. After one such occurrence, the Government of Tamil Nadu issued G.O.Ms.No.413 dated 06.12.2012 setting out as many as 46 safety norms. If only the organizers of temple car festivals strictly adhere to the safety norms and conditions laid down in the said G.O., one can be assured that no mishap will ever occur. I am reminded of Atul Gawande's "The Checklist Manifesto" which talks about how to get things right. The aforesaid Government Order adopts the said paradigm. It is however obvious that the instructions set out in the said G.O., remain only on paper. Otherwise, the recent Thanjavur tragedy would not have occurred.

8. The Honourable Supreme Court in **Sarika Vs Shri Mahakaleshwar Mandir Committee (2018) 17 SCC 112** held that there is a constitutional obligation to preserve the religious practices of all religion. When there is a large gathering of persons during festival times, the state has the obligation to provide the basic amenities to the pilgrims. It is the bounden duty of the government to make proper arrangements and to sanction the amount without fear of violation of the concept of secularism. Respectfully following the aforesaid ratio, I hold that it is the duty of the HR&CE department as well as the state government and the local administration to put in place all the necessary arrangements so that the customary religious festivals are smoothly conducted. Any power is coupled with duty. If the Government, through the HR & CE Department wants to have control and supervision over temple administration, it has the twin duty of ensuring that

the traditional festivals are held to ensuring that safety standards are adhered to. The local body has to maintain the roads in a pucca condition. TANGEDCO must disconnect the electricity supply. The authorities under the HR&CE Act are obliged to ensure that the safety norms laid down in the aforesaid G.O. are met. In this case, I am more than satisfied after going through the materials on record that the basic safety norms have already been taken into account. The Junior Engineer, PWD has already issued the structural stability certificate. In the co-ordination meeting, certain decisions have already been taken and green signal was also given. It is submitted by the learned counsel for the petitioner that only Low Tension (LT) lines are running and there is no running of High Tension (HT) lines. In any event, the petitioner gives an undertaking that every possible step will be taken and fool proof arrangement made to ensure that no mishap occurs. I record the said undertaking. It is also seen that the road width is sufficient for the chariot to move. The TANGEDCO is directed to disconnect the supply of electricity during the procession time. The respondents will ensure that the proposed car festival is held without any mishap tomorrow.

9. With the above directions, this writ petition is allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

15.05.2022

Index : Yes/No
Internet :
Yes/No KST

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G.R.SWAMINATHAN, J.

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