



HIGH COURT OF ANDHRA PRADESH

WEDNESDAY ,THE TWENTY SEVENTH DAY OF MARCH
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

PUBLIC INTEREST LITIGATION NO: 249 OF 2018

Between:

1. Old Students Association Regn No.301/1997, Post Graduate college,
Osmania University,
Rep. by its General Secretary
Mr. A Ramakrishna, S/o Late A. V. Krishna Rao, Aged about 48 years,
R/o, Hyderabad, Aadhar Card. 3353 9022 5383, PAN Card No.
AITPR1439B,
Bank Account No. 20152282337, Allahabad Bank, Maruti Nagar Branch,
Hyderabad, Mobile Number. 9849038218.

...PETITIONER(S)

AND:

1. The State of Andhra Pradesh Rep. by its Principal Secretary
Department of School Education
Sri Anjaneya Towers, Road No. 7-104, B-Block, 4th Floor, N.T.T.P.S.
Road, Ibrahim Patnam, Amarawathi, Vijayawada, Krishna Dt. PIN - 521
456. A.P.
2. The State of Andhra Pradesh Rep. by its Principal Secretary,
Department of Home, Sri Anjaneya Towers, Road No. 7-104, B-Block, 4th
Floor, N.T.T.P.S. Road, Ibrahim Patnam, Amarawathi, Vijayawada,
Krishna Dt., PIN - 521 456. A.P.

...RESPONDENTS

Counsel for the Petitioner(s): N HARINATH

Counsel for the Respondents: GP FOR SCHOOL EDUCATION (AP)

The Court made the following: ORDER

IN THE HIGH COURT OF ANDHRA PRADESH
(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY SEVENTH DAY OF MARCH
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR
AND
THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION (PIL) NO: 249 OF 2018

Between:

Old Students Association, Regn No.301/1997, Post Graduate college, Osmania University, Rep. by its General Secretary Mr. A Ramakrishna, S/o Late A. V. Krishna Rao, Aged about 48 years, R/o, Hyderabad.

... PETITIONER

AND

1. The State of Andhra Pradesh, Rep. by its Principal Secretary Department of School Education Sri Anjaneya Towers, Road No. 7-104, B-Block, 4th Floor, N.T.T.P.S. Road, Ibrahim Patnam, Amarawathi, Vijayawada, Krishna Dt. PIN - 521 456. A.P.
2. The State of Andhra Pradesh, Rep. by its Principal Secretary, Department of Home, Sri Anjaneya Towers, Road No. 7-104, B-Block, 4th Floor, N.T.T.P.S. Road, Ibrahim Patnam, Amarawathi, Vijayawada, Krishna Dt., PIN - 521 456. A.P.

... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any order, direction, writ more particularly a writ in the nature of mandamus to the official respondents by declaring their acts of involving school children in rallies and gatherings of any kind as a form of captive audience, as illegal, unconstitutional, immoral.

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents not to involve the school childrens and students in any of the Government rallies, gathering as captive audience henceforth.

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to permit the petitioner to file the additional affidavit along with the additional material papers in the above Writ Petition (PIL) and place the additional facts on record.

Counsel for the Petitioner: SRI N.HARINATH

Counsel for the Respondent No. 1: GP FOR SCHOOL EDUCATION

Counsel for the Respondent No. 2: GP FOR HOME

The Court made the following: ORDER





THE HON'BLE THE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION (PIL) NO.249 OF 2018

ORDER: *(Per Hon'ble Sri Justice M.Satyanarayana Murthy)*

A Registered Old Students Association, Post Graduate College, Osmania University, represented by its General Secretary – Sri A. Ramakrishna filed this writ petition under Article 226 of the Constitution of India, as a public spirited person and resorted to this pro bono litigation seeking writ of Mandamus to the official respondents to declare their acts of involving school children in rallies, gathering of any kind during school timings and on weekends as a form of captive audience, as illegal and unconstitutional.

The petitioner claiming to be a public spirited person having no direct interest in the litigation, filed this petition to protect the rights and interest of school children across the State, alleging that the Government of Andhra Pradesh has belatedly realized the value of public participation in dealing with recurring social problems. Unfortunately it has also grasped the political advantages of mobilizing the public for a good non-political cause and then finally portraying the enthusiastic public response towards said non-political cause as an endorsement of the government's policies and politics, irrespective of how unpopular they may be in reality. Often, a non-political gathering by citizens to raise awareness of any certain social evil or problem is hijacked by the ruling party's workers who promptly give the gathering a political colour. Certain elements of the media are then used to propagate the fallacy that



common people are gathering to support the government's policies, ^{2019:APHC:15841}
no matter how illogical or against the public interest it may be.

The Government of Andhra Pradesh has started a new trend of mobilizing school children for rallies and public marches which are often co-ordinated by the teachers and school staff with the ruling party's workers. These rallies and marches are often conducted during school hours in the middle of the day, which results in school children being required by their teachers and school management to skip classes and march on the roads, chanting slogans and engaging in activities normally done by seasoned political party workers. Often, the school children and teachers have to cope with the extra burden of making up for lost school time, while the government has immorally gained political mileage and media exposure for their policies by using school children as a sort of hired mob and captive audience.

On 14.07.2018 at Pasuvulanka, East Godavari District, Andhra Pradesh, a boat carrying 31 people, mostly students, collided with a bridge under construction, across the Godavari river and capsized. Six female students drowned and after a massive rescue effort by divers from the Indian Navy and other central government agencies 25 children and people were rescued. It has been alleged that the students who were from the government high school at Pasuvulanka, East Godavari District were forced by their school staff and the official respondents to travel to Talavaripalemlanka (which is across the Godavari River) to participate in a government conducted programme called "**Vanam-Manam**" on the same day.

Thus, it is evident from the incident that the students were forced and compelled to participate in the programme by the



official respondents despite the fact that it was a holiday and weather conditions were very bad, which made them to travel by boat, a hazardous venture. The boat which had a capacity of only 15 people, was loaded with 31 people without any life jackets and basic precautions. In fact the boat was operating in complete violation of Government order G.O.Ms.No.667 dated 16.11.2017 issued by the Water Resources Department as admitted by the Collector of East Godavari District. It is further contended that the very fact, demonstrates the callous disregard, the official respondents have for the safety and well-being of students, since there was absolutely no reason for the students to risk their lives and forego a school holiday to merely participate in a government programme termed as "**Vanam Manam**." In their eagerness to please their political masters by ensuring huge turnout of students at political programs, the official respondents seemed to have gambled with the lives of school children and lost with fatal results.

It is further submitted that the State Human Rights Commission of Andhra Pradesh took cognizance of this incident and issued necessary guidelines and therefore, compelling the school going children to participate in the government programmes is illegality and sought the direction referred supra.

The main allegation made in the writ petition is that the school children in Pasuvulanka village were asked to attend the "**Vanam-Manam**" programme as per G.O.Ms.No.71 Environment, Forests, Science and Technology Department, dated 23.07.2016 on Sunday. Pasuvulanka is an island in East Godavari District and to attend the programme as directed by the Government in the G.O.



Ms.No.71 Environment, Forests, Science and Technology Department, dated 23.07.2016, children along with others at the instance of school authorities boarded a boat for travelling. While crossing the river, an untoward incident took place due to overloading of the boat, in the said incident 6 children died due to drowning and the others were saved. Therefore, compelling them to attend such programmes though they are unwilling listeners is a serious violation of Article 21 of the Constitution of India. Article 21 of the Constitution of India guarantees right to life. Right to life includes living with safety, but on account of G.O. Ms.No.71 Environment, Forests, Science and Technology Department, dated 23.07.2016 issued by the Government, children were forced to go to Talavaripalemlanka from Pasuvulanka village at the instance of school teachers and the local politicians, at whose instance children were shifted by the teachers, though the G.O. Ms.No.71 Environment, Forests, Science and Technology Department, dated 23.07.2016 speaks about participation of the children is limited to school premises. But contrary to the guidelines issued in the said G.O., they were taken to Talavaripalemlanka on a Sunday to participate in a programme under the scheme.

The school going children are entitled to enjoy holiday rest on Sunday for their betterment and to attend the other school works. In spite of permitting them to avail Holiday, the school authorities forced them to attend Vanam-Manam programme, which lead to tragic incident of death of six children due to drowning.

Compelling children to attend programmes depriving them to enjoy holiday is nothing but physical and mental harassment. Though there is no provision in the Indian Penal Code, the



Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "the Act") prohibits such harassment both physical and mental.

Section 75 of the Act deals with punishment for cruelty to child. "Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both."

The word "cruelty" is not defined in the Act. The definition of word "cruel" is as follows:

"Wilfully causing pain or suffering to others, or feeling no concern about it."

Definition of cruelty: the quality or state of being cruel.
2 (a) a cruel action (b): inhuman treatment. 3 : marital conduct held (as in a divorce action) to endanger life or health or to cause mental suffering or fear.

In the present petition, school authorities procured the children and neglected them, which resulted in death of six children due to drowning in the river while crossing the river by boat. G.O.Ms.No.667 dated 16.11.2017 issued by the Water Resources Department, deals with loading of persons in boat in excess of its capacity and security measures to be taken by the operator of the boat. But, in the present case, it is evident that no safety measures were taken for transportation of the children in



the boat in contravention of G.O.Ms.No.667 dated 16.11.2017 issued by the Water Resources Department.

If we look at the incident in Human Rights perspective, it would be relevant to mention here the United Nations Convention on the Rights of the Child, 1989, to which our country is one of the signatories, deals with Human Rights of the child.

Article 19 of the Convention obligates State parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Such protective measures should, as appropriate, include, effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Similarly, Article 28 of the Convention obligates State parties, recognize the right of the child to education, and with a view to achieve this right progressively and on the basis of equal opportunity, they shall, in particular make primary education compulsory and available free to all etc.

Article 31 of Convention on Rights of the Child, recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to



participate freely in cultural life and the arts and the parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 37 of the Convention obligates State parties to convention shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.*

Thus, Human Rights convention i.e. United Nations Convention on the Rights of the Child, 1989 obligates the State parties to it to ensure certain human rights of the child, which include right to education, right to rest and leisure and to pass



legislation for protection of the child to avoid torture or other cruel, inhuman or degrading treatment or punishment to the child.

In view of various human rights enumerated in United Nations Convention on the Rights of the Child, permitting the child to enjoy rest, leisure and participation in cultural programmes etc, is recognised as human right. Permitting the children to enjoy rest, leisure on Sunday is in consonance with the right recognised under Article 31 of the United Nations Convention on the Rights of the Child, 1989. Depriving children to enjoy leisure on Sunday while compelling them to participate in the State Government "**Vanam-Manam**" Programme *prima facie* contravention of Articles 31 and 37 of the United Nations Convention on the Rights of the Child, 1989 and Section 75 of the Act.

The major contention urged before this Court by the learned counsel for the petitioner Sri N.Harinath is that the children cannot be compelled for captive audience. The word "captive audience" is not defined in any Act. As per Merriam Webster Dictionary, "captive audience" means a person or people who are unable to leave a place and are thus forced to listen to what is being said.

The High Court of Kerala in "**P.A.Jacob v. The Superintendent of Police, Kottayam**"¹ had an occasion to deal with captive audience. A Single Judge of the High Court of Kerala while dealing with permission to use loud speakers dealt with the aspect of captive audience with reference to fundamental right guaranteed under Article 19 (1) of the Constitution of India.

¹ AIR 1993 Ker 1



The core question before the Court was whether the Constitution guarantees a right to use a sound amplifying device, or whether use of such a device is part of the right to freedom of speech. Freedom of speech and expression are rights cherished by all free societies. That freedom implies not only freedom to express the thought we approve of, but freedom to express the thought, we hate. A debate of ideas is essential in any free society. No one can forbid legitimate efforts to change the mind of society by expression of views, or advocating different persuasions or even by questioning the existing order. J.S. Mill said :

"If we never hear questions, we will forget the answers."

Holmes, J observed that "men may come to believe, even more than they believe the very foundations of their own conduct, that the ultimate good desired is better reached by a free trade in ideas that the best test of truth is the power of thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely may be carried out. That is the theory of our Constitution."

The High Court of Kerala dealt with rights of the parties by using "Amplifying Devices" compelling the neighbours to hear speeches. However in "***Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India***"², the Supreme Court of India highlighted the free speech content of Article 19 and its parameters. The right is not absolute. For that matter, under the First Amendment, restrictions are not alien to the constitutional scheme.

² AIR 1986 SC 515



Thus, it means no one has a natural right to comm^{2019:APHC:15841} aggression on the equal rights of another. In “Breard v. City of Alexandria 341 US 622”, the Court highlighted the rights of the recipient or captive audience:

“Freedom of speech or press, does not mean that one can talk or distribute where, when and how one chooses. Rights of those, other than the advocates, are involved. By adjustment of rights we can have, both liberty of expression and an orderly life.”

Therefore, right to expression though recognised as a right under Article 19 (1) of the Constitution of India, such right cannot be enforced at the cost of others, who are not willing listeners.

In the present facts of the case, while the children were being transported to Talavaripalemlanka from Pasuvulanka, an untoward tragic incident took place in which six children died and some of them drowned, but saved their lives.

Taking advantage of G.O.Ms.No.71 Environment, Forests, Science and Technology Department, dated 23.07.2016 compelled school children or college students to participate in Vanam-Manam Programme by issuing said G.O. is violative of their right of personal liberty protected under Article 21 of the Constitution of India. Since the doctrine of State necessity not in existence in India, the Court is bound to interpret whether such direction to the school children and college students and others amounts to interference with the right of liberty guaranteed under Constitution of India.

When we look at the issue in constitutional perspective, Article 21 of the Constitution of India guaranteed the “**right to life**” as a fundamental right and everyone is entitled to lead life



safely with dignity subject to reasonable restrictions. It is the duty of the State to protect such right of an individual citizen.

Article 21 of the Constitution of India guarantees personal liberty and life. The object of Article 21 of the Constitution of India is to prevent encroachment upon personal liberty by the Executive save in accordance with law, and in conformity with the provisions thereof. There is no doctrine of "State necessity" in India. Before a person is deprived of his life or personal liberty, the procedure established by law must be strictly followed and must not be departed from the disadvantage of the person affected. In each case where a person complains of the deprivation of his life or personal liberty, the Court, in the exercise of its constitutional power of judicial review, has to decide whether there is a law authorizing such deprivation and whether, in the given case, the procedure prescribed by such law is reasonable, fair and just, and not arbitrary, whimsical and fanciful.

What is the meaning of the word "life" as contained in Article 21 of the Constitution of India came up for consideration before the Apex Court in long line of perspective pronouncements and the gist of the interpretation is that right to life enshrined in Article 21 of the Constitution of India is something more than survival or animal existence. It would include the right to live with human dignity. It would include all those aspects of life which go to make a man's life meaningful, complete and worth living, which alone can make it possible to live must be declared to be an integral component of right to live.



The Apex Court expanded the scope of Article 21 of the ^{2019:APHC:15841} Constitution of India and extended its meaning to various aspects including environment, public employment, medical etc.

Here, it is not only the question of deprivation of children from enjoying their rest and leisure on Sunday, but also led to tragic incident of death of six children for failure to take care; to provide necessary equipment while travelling in a boat to cross river. Failure to take appropriate measures by the State i.e. teachers of school run by the State would directly amount to deprivation of liberty of the school going children. In such case, this Court can interfere with the G.O.Ms.No.71 Environment, Forests, Science and Technology Department, dated 23.07.2016 to prevent the deprivation of right to liberty of the school going children, in future.

Article 355 of the Constitution provides that the Government of every State would act in accordance with the provisions of the Constitution. The primary task of the State is to provide security to all citizens without violating human dignity. Powers conferred upon the statutory authorities have to be, perforce, admitted. Nonetheless, the very essence of constitutionalism is also that no organ of the State may arrogate to itself powers beyond what is specified in the Constitution. (Vide: **“GVK Industries Ltd. and Another v. Income Tax Officer and Another³”** and **“Nandini Sundar and Others. v. State of Chhatisgarh⁴”**).

³ (2011) 4 SCC 36

⁴ AIR 2011 SC 2839



In the present facts of the case, G.O.Ms.No.71 Environment, Forests, Science and Technology Department dated 23.07.2016 was issued for launch of "**Mission Haritha Andhra Pradesh**" directing various persons to participate in "**Vanam-Manam**" programme. As per clause 13 of the said G.O. every citizen of Andhra Pradesh shall be involved in the plantation programme implementation. Active participation of people's representatives, government officials, academicians, NGOs, School children, College students, members of DWCRA Groups, SHGs and VSSs, media representatives, proactive involvement of Industries and Corporate enterprises, Paper Mills, CII, FICCI, temples, churches, mosques and other faith based institutions, etc. shall be secured. As per Clause 13 specific instructions were issued to the authorities at the time of launching "**Vanam-Manam**" programme on 29.07.2016 to secure various persons specified in Clause 13 of the G.O. referred supra. When any person like School Children, College students or members of any other groups specified in Clause 13 are not willing to participate in such programme, they cannot be compelled to participate in such Vanam-Manam programme launch. Clause 17 of the said G.O. make it clear that in addition to clause Nos.1 to 16, the District DVM Programme Committee will establish similar Committees at the Division, Mandal, Village, and ULB levels to ensure seamless planning, coordination and monitoring of Vanam-Manam programme implementation. The head of the institution (offices, schools, hospitals, projects, public sector enterprises, etc) will be responsible for implementation of the programme in the premises of the institution. Thus, the head of the institution is responsible for implementation of such programmes, but that does not mean that everyone, who is not



willing to participate in such programmes, shall be asked to participate in such Vanam-Manam programme launch. No person shall be insisted to participate in the programme to hear the speeches of Government Officials and people's representatives etc. which would amount to captive audience, and it is impermissible, more so, the children are entitled to enjoy rest and leisure on Sundays. Having regard to the above, compelling them to participate in the launch of Vanam-Manam programme by making them to travel in a boat crossing the river near Pasuvulanka lake, would amount to violation of human right as per Article 37 of United Nations Convention on the Rights of the Child, 1989 (referred supra). The State is under obligation to act in accordance with the provisions of the Constitution, where it's primary task is to provide security to all citizens without violating human dignity. But the State insisted the school children to participate in such programmes, which would amount to violation of their fundamental right guaranteed under the constitution, so also their human right.

It is the duty of the State to provide necessary protection to the Public even in civil commotion or even in war or peace, the State cannot act catastrophically outside the ordinary law and there is legal remedy for its wrongful acts against its own subjects or even a friendly alien within the State. (Vide: "**H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur and Ors. v. Union of India**"⁵)

⁵ AIR 1971 SC 530



In "**Motilal Padampat Sugar Mills Company Ltd. v. State of U.P. and Ors.**⁶", this Court held that rule of law means, no one, however, high or low is above the law. Everyone is subject to the law fully and completely as any other and the Government is no exception. Therefore, the State authorities are under a legal obligation to act in a manner that is fair and just. It has to act honestly and in good faith. The purpose of the Government is always to serve the country and ensure the public good. (See also: "**D.K. Basu v. State of West Bengal**⁷").

In the present facts of the case instead of ensuring the public good, compelled the children to participate in Vanam-Manam programme, which lead to tragic incident of death of six children due to drowning on account of overloading of the boat by its operator at the instance of the State authorities. As such the State failed in its duty to ensure public good, providing safety measures to the school children and deprived them to enjoy their rest and leisure, violating their human right.

The Constitution does not merely speaks for human right protection. It is evident from the catena of judgments of the Apex Court that it also speaks of preservation and protection of man as well as animals, all creatures, plants, rivers, hills and environment. Our Constitution professes for collective life and collective responsibility on one hand and individual rights and responsibilities on the other hand. (Vide: **Ramlila Maidan Incident v. Home Secretary, Union of India (UOI) and others**⁸)

⁶ AIR 1979 SC 621

⁷ AIR 1997 SC 610

⁸ (2012) 5 SCC 1



If this principle is applied to the present facts of the case, **2019:APHC:15841** issuance of Government Order compelling the Government authorities, school children, college students including the members of other groups to attend “**Vanam-Manam**” programme is nothing but violation of its Constitutional duty though it is for the State to ensure public good in terms of Article 355 of the Constitution of India.

In “**People's Union for Civil Liberties v. Union of India and Another**”⁹ the Apex Court held as follows:

“We do not entertain any doubt that the word 'life' in Article 21 bears the same signification. Is then the word 'personal liberty' to be construed as excluding from its purview an invasion on the part of the police of the sanctity of a man's home and an intrusion into his personal security and his right to sleep which is the normal comfort and a dire necessity for human existence even as an animal? It might not be inappropriate to refer here to the words of the preamble to the Constitution that it is designed to 'assure the dignity of the individual' and therefore of those cherished human values as the means of ensuring his full development and evolution. We are referring to these objectives of the framers merely to draw attention to the concepts underlying the Constitution which would point to such vital words as 'personal liberty' having to be construed in a reasonable manner and to be attributed that sense which would promote and achieve those objectives and by no means to stretch the meaning of the phrase to square with any preconceived notions or doctrinaire constitutional theories.”

The citizens/persons have a right to rest or leisure; to sleep; not to hear and to remain silent. The knock at the door, whether during day or night, as a prelude to a search without authority of law amounts to be police incursion into privacy and violation of fundamental right of a citizen. (Vide: “**Wolf v. Colorado**”¹⁰).

⁹ AIR 1997 SC 568

¹⁰ (1948) 338 US 25



If these principles are applied to the present facts of the case compelling school children and college students to participate in Vanam-Manam programme vide G.O.Ms.No.71 Environment, Forests, Science and Technology Department, dated 23.07.2016 is nothing but incursion on right to leisure; not to hear and to remain silent and nothing but violation of fundamental right of a citizen i.e. school going children. Therefore, compelling any person including School going children or College students by issuing G.O.Ms.No.71 Environment, Forests, Science and Technology Department, dated 23.07.2016 to participate in any programme when they are unwilling listeners is nothing but a captive audience and such orders of the Government violates not only fundamental right of citizens of the Country but also violates human rights of individuals including the children.

Though the death of six children took place in a tragic incident, the petitioner being a public spirited person confined his claim to issue such direction against the respondent – State to prevent captive audience and no compensation is claimed from the State on account of untimely death of six children on the fateful day. Even during argument, learned counsel for the petitioner made it clear that he is not claiming compensation from the respondent for the death of children. Hence, we are not deciding the larger issue of liability of the State to pay compensation on account of death of children that occurred due to negligence of both State and the school management.

Even in **Ramlila Maidan Incident v. Home Secretary, Union of India (UOI) and others** (referred supra), the Supreme Court issued certain directions to the State. Direction Nos.1, 3 and



16 (a) are relevant for the purpose of deciding the present issue? 2019:APHC:15841

They are extracted hereunder:

“(1) In discharge of its judicial functions, the courts do not strike down the law or quash the State action with the aim of obstructing democracy in the name of preserving democratic process, but as a contribution to the governmental system, to make it fair, judicious and transparent. The courts take care of interests which are not sufficiently defended elsewhere and/or of the victims of State action, in exercise of its power of judicial review.

In my considered view, in the facts of the present case, the State and the Police could have avoided this tragic incident by exercising greater restraint, patience and resilience. The orders were passed by the authorities in undue haste and were executed with force and overzealousness, as if an emergent situation existed. The decision to forcibly evict the innocent public sleeping at the Ramlila grounds in the midnight of 4th/5th June, 2011, whether taken by the police independently or in consultation with the Ministry of Home Affairs is amiss and suffers from the element of arbitrariness and abuse of power to some extent. The restriction imposed on the right to freedom of speech and expression was unsupported by cogent reasons and material facts. It was an invasion of the liberties and exercise of fundamental freedoms. The members of the assembly had legal protections available to them even under the provisions of the Code of Criminal Procedure. Thus, the restriction was unreasonable and unwarrantedly executed. The action demonstrated the might of the State and was an assault on the very basic democratic values enshrined in our Constitution. Except in cases of emergency or the situation unexceptionably demanding so, reasonable notice/time for execution of the order or compliance with the directions issued in the order itself or in furtherance thereto is the pre-requisite. It was primarily an error of performance of duty both by the police and Respondent No. 4 but the ultimate sufferer was the public at large.

(3) The State has a duty to ensure fulfillment of the freedom enshrined in our Constitution and so it has a duty to protect itself against certain unlawful actions. It may, therefore, enact laws which would ensure such protection. The rights and the liberties are not absolute in nature and uncontrolled in operation. While placing the two, the rule of justice and fair play requires that State action should neither be unjust nor unfair, lest it attracts the vice of unreasonableness or arbitrariness, resultantly vitiating the law, the procedure and the action taken thereunder.



16 (a) Take disciplinary action against all the erring police officers/personnel who have indulged in brick-batting, have resorted to lathi charge and excessive use of tear gas shells upon the crowd, have exceeded their authority or have acted in a manner not permissible under the prescribed procedures, rules or the standing orders and their actions have an element of criminality. This action shall be taken against the officer/personnel irrespective of what ranks they hold in the hierarchy of police.”

According to guideline No.3 extracted above, it is the duty of the State to ensure fulfillment of the freedom enshrined in our constitution and to protect itself against certain unlawful actions. It may, therefore, enact laws which would ensure such protection. But for one reason or the other, the State issued such direction by G.O.Ms.No.71 Environment, Forests, Science and Technology Department, dated 23.07.2016, contrary to the obligation of the State. In such case, the Apex Court directed the State Government and the Commissioner of Police to register and investigate cases of criminal acts and offences, destruction of private and public property against the police officers/personnel along with those members of the assembly, who threw bricks at the police force causing injuries to the members of the force as well as damage to the property and issued a direction to take disciplinary action against all the erring police officers/personnel who have indulged in brick-batting, have resorted to lathi charge and excessive use of tear gas shells upon the crowd, have exceeded their authority or have acted in a manner not permissible under the prescribed procedures, rules or the standing orders and their actions have an element of criminality.

In the facts of the judgment in **Ramlila Maidan Incident v. Home Secretary, Union of India (UOI) and others** (referred supra) when Baba Ramdev organized a public meeting and the



public who attended the programme were sleeping in Ramlila 2019:APHC:15841
Maidan by entering into only one passage, which is meant both for
entry and exist, and while they were sleeping police used its force
against those persons, which resulted in tragic incident of deaths
and injuries to several persons. In those circumstances, the Apex
Court took a serious view against the act of police officers and
issued such direction and also awarded Rs.5,00,000/-
compensation to the person, who suffered spinal injury in the
incident and Rs.50,000/- to the persons, who suffered grievous
injuries and admitted in the hospital. The same principle can be
applied even to the present facts of the case, but we are not
inclined to award any compensation as the learned counsel for the
petitioner does not want any compensation to be paid to the
bereaved families of deceased children.

It is the common knowledge of everyone that children are
being participated in several programmes on the eve of Republic
day and Independence day being organized by the school and State
Government authorities, but such participation is in compliance of
Article 51-A of Constitution of India. Article 51A (a), (b), (c), (e) and
(f) reads thus:

**51A. Fundamental duties It shall be the duty of every
citizen of India –**

**(a) to abide by the Constitution and respect its ideals
and institutions, the national Flag and the National Anthem;**

**(b) to cherish and follow the noble ideals which inspired
our national struggle for freedom;**

**(c) to uphold and protect the sovereignty, unity and
integrity of India;**

**(e) to promote harmony and the spirit of common
brotherhood amongst all the people of India transcending**



religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

Therefore, we make it clear that participation of the children in such event on the occasion of Republic day and Independence day celebrations or any other day intended for the above purposes, does not amount to violation of fundamental right or human rights guaranteed to the children. But compelling children, who are unwilling to participate in Government programmes, by issuing Government orders, outside the school premises amounts to violation of fundamental right guaranteed under Article 21 of the Constitution of India and rights of the children guaranteed under United Nations Convention on the Rights of the Child, 1989, to which India is a State party and it is under obligation to implement the same.

In view of our foregoing discussion, we direct the respondent
– State

(a) not to compel the children or college students who are not willing to participate in any State programmes, as it amounts to captive audience, except in the events celebrated on Republic day and Independence day or in any event organized in compliance with Article 51-A, clauses (a), (b), (c), (e) and (f) of the Constitution of India.



(b) *If for any reason, the State authorities compel the* APHC:15841

school children or college students or any other children to participate in any programmes other than the programmes referred in clause (a) above, it would amount to violation of fundamental right guaranteed under the Constitution of India and in violation of Article 355 of Constitution of India, so also, violation of human rights of children as per United Nations Convention on the Rights of the Child, 1989 (referred supra).

(c) *If for any reason, any untoward incident takes place due to such participation in future, Government shall pay compensation to such children or their families depending upon the circumstances.*

With the above directions, the writ petition is disposed of. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.

Sd/- M.A. SUBHAN
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

One Fair Copy to the Hon'ble the Acting Chief Justice C. PRAVEEN KUMAR
(For His Lordships Kind Perusal)

One Fair Copy to the Hon'ble Sri. Justice M. SATYNANARAYANA MURTHY
(For His Lordships Kind Perusal)

To,

1. The Principal Secretary Department of School Education, State of Andhra Pradesh, Sri Anjaneya Towers, Road No. 7-104, B-Block, 4th Floor, N.T.T.P.S. Road, Ibrahim Patnam, Amarawathi, Vijayawada, Krishna Dt. PIN - 521 456. A.P.
2. The Principal Secretary, Department of Home, State of Andhra Pradesh, Sri Anjaneya Towers, Road No. 7-104, B-Block, 4th Floor, N.T.T.P.S. Road, Ibrahim Patnam, Amarawathi, Vijayawada, Krishna Dt., PIN - 521 456. A.P.
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PM



HIGH COURT

DATED:27/03/2019

OC

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ORDER

WP(PIL).No.249 of 2018

Rs. 34.50

(23)

Disposing the WP

Without costs.

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