



2024/KER/10257

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

MONDAY, THE 12TH DAY OF FEBRUARY 2024 / 23RD MAGHA, 1945

WP(C) NO. 4231 OF 2024

PETITIONER:

KUMARTHUPADY SHRI BHAGAVATHY TEMPLE
CHANDIROOR, ALAPUZHA -688535 REPRESENTED BY ITS DEVASWOM
PRESIDENT, J R AJITH ,AGED 53 YEARS,S/O RAJU,
DUSSAMPARAMB VEETIL, CHANTHIROOR, AROOR VILLAGE,
CHERTHALA TALUK, ALAPUZHA, PIN - 688535
BY ADV ANJALI MENON

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF HEALTH AND
FAMILY WELFARE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DEPUTY SUPERINTEND OF POLICE
CHERTHALA SUB DIVISION ST MARY'S SCHOOL RD,
KODATHIKAVALA, CHERTHALA ALAPUZHA, PIN - 688524

SMT. VIDYA KURIAKOSE, GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is stated to be a Temple and they say that their annual festival for the year 2024 is being held from 07.02.2024 to 13.02.2024; out of which, the last two days constitute the peak of such festival.

2. The petitioner say that, as part of such, several cultural and programs have been designed and scheduled, for which, it would take them at least time till 12 P.M. to complete; but that this has now been frustrated because, the 2nd respondent - Deputy Superintendent of Police has informed them not to use Public Address System after 10 P.M. They say that, as far as all the other days of the festival are concerned, they have abided by the afore restriction, and that the sole exemption which



they have sought - which they assert is permissible under the statutory Scheme - is for permission to use the Public Address System for another two hours on two specific dates, namely 12.02.2024 and 13.02.2024. They thus pray that the 2nd respondent be directed not to obstruct the festival scheduled in Ext.P1.

3. Smt.Anjali Menon - learned counsel for the petitioner, submitted that the petitioner's Temple is a very old one, with no complaints ever having been made against them from any person of the locality, on account of cultural programs being held. She added that the restriction even for the two days in question for the Public Address System to be used within the Temple premises till 12 P.M., is illegal and unlawful. She thus reiteratingly prayed that the



reliefs sought for in this writ petition be granted.

4. Before I go forward, I must record that hearing the afore submissions when this matter was earlier listed, I had directed the Government to consider an application for exemption made by the petitioner, on the consent of the learned Government Pleader that such had been made and that it can be considered. It transpires that the petitioner was thereafter served with an order rejecting such request and this has been brought on record as Ext.P5.

5. The learned Government Pleader - Smt.Vidya Kuriakose, submitted that the petitioner cannot find fault with 2nd respondent or with the Government, for that matter, because, they have stipulated the time frame as required by the Regulations, which she pointed



out was inflexible, except within the ambit of the specified exemptions, namely if the loud speaker system is used within close premises, namely Auditoriums, Conference Rooms, Community Halls, Banquet Halls or during a public emergency. She referred to Rule 5 of the Noise Pollution (Regulation and Control) Rules, 2000 in substantiation; pointing out that, in this case, what the petitioner is seeking is such an exemption for the Temple premises as a whole, which impermissible. She thus prayed that this writ petitioner be dismissed, relying upon the judgment of the Hon'ble Supreme Court in *Forum for the Prevention of Env'n. And Sound Pollution v. Union of India* [2005 KHC 1853].

6. I have no doubt that, on the provisions of law, the learned Government Pleader is without error.



7. However, when one examines Ext.P5, it is evident that the Government has rejected the request for exemption to the petitioner based on Ext.P6 report of the State Police Chief. The State Police Chief, in turn, has settled his report relying upon another report prepared by the Deputy Police Commissioner, Alappuzha; and it transpires that what is stated therein is that the petitioner - Temple is situated at thickly populated area, where there are persons of different religions and therefore, that the conduct of musical programs during the night creates "possibilities of law and order issues and occurrence of broadly offences also" (sic). The police chief is not referring to noise pollution *per se*, but that the allowing of loud sound during the night would create a law and order issues, though based on mere probabilities



as reported by the Deputy Commissioner of Police, Alappuzha.

8. In such context, the question is whether the petitioner is justified in seeking exemption solely for the purpose of cultural programs; and this has to be examined in the background of the assertions that this Temple has been conducting such programs in the past, without any problem and without any complaints having been made against them. In fact, Smt.Anjali Menon refers to Ext.P6 in corroboration saying that, had there any such complaints in the past, the Deputy Commissioner of Police, Alappuzha, would have referred to that also in this report.

9. There can be little doubt that all the prescriptions relating to the noise and its volume, particularly during the night time, is



to ensure a peaceful community living. The Rules are intended to make sure that no one is prejudiced on account of the choices that a few people make with respect to the conduct or organisation of cultural programs and such other.

10. As rightly pointed out by Smt.Vidya Kuriakose, the Rules stipulate that an exemption can be granted in the night time, which is stipulated to be after 10 P.M., only where the loudspeaker or Public Address System is used in closed premises, namely Auditoriums, Conference Rooms, Community Halls, Banquet Halls or in the case of public emergency. The petitioner says that they are conducting their program within the Temple premises and they undertake before me that they will reduce the volume and decibels to such level that it will not carry beyond the



boundaries of it. If this can be ensured, then I do not see why this Court cannot permit the petitioner, particularly when it is submitted - and which is without contest - that such programs have been allowed in the past even beyond 10 P.M.

11. However, I am of the view that the exemption that this Court can consider for the petitioner is as a special one and in the peculiar circumstances; thus without making it a precedent, but only for one hour, and not two hours as requested by them.

Taking the totality of the afore circumstances, I allow this writ petition and direct the 2nd respondent to permit the petitioner be use their Public Address System; - however, only to such volume and decibel as it will keep within their premises and not travel



beyond - between 10 P.M. and 11 P.M. on 12.02.2024 and 13.02.2024. The said Authority will scrupulously ensure that the volume is to kept to such level which will not create any problem or nuisance for any person outside the boundaries of the Temple; and I reiteratingly clarify that these directions are not to be construed as a precedent and are issued only in the specific factual circumstances presented.

Sd/-

DEVAN RAMACHANDRAN
JUDGE

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APPENDIX OF WP(C) 4231/2024

PETITIONER'S EXHIBITS:

Exhibit-P1	A TRUE COPY OF THE BROCHURE FOR THIRU ULSAVAM 2024
Exhibit-P2	A TRUE COPY OF THE REQUEST SUBMITTED BEFORE THE 2ND RESPONDENT DATED 31-01-2024
Exhibit P3	A TRUE COPY OF THE COMMUNICATION RECEIVED BY THE PETITIONER FROM THE 2ND RESPONDENT
Exhibit P4	A TRUE COPY OF THE APPLICATION SUBMITTED BEFORE THE STATE GOVERNMENT
Exhibit P5	A TRUE COPY OF THE REJECTION ORDER DATED 08.02.2024
Exhibit P6	A TRUE COPY OF THE REPORT OF THE POLICE REFERRED IN EXT P-5