



W.P.No.27398 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM

MR.JUSTICE N.SESHASAYEE

W.P.No.27398 of 2023

Elangovan

... Petitioner

Vs

1.The Secretary,
Home Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Secretary,
Education Department,
Secretariat, Fort St.George,
Chennai-600 009.

3.The Principal,
Thiru.Vi.Ka.Government Arts College,
Thiruvarur.

4.Poondi K.Kalaivanan, M.L.A.

... Respondents



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Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Declaration, to declare the circular dated 12.09.2023 issued by the third respondent at the instance of the fourth respondent as unconstitutional and affront to secularism being basic structure of constitution and consequently, forebear the respondents from conducting, organizing and program on 15.09.2023 or any other subsequent dates on the topic of antisanathanam.

For Petitioner : Mr.G.Karthikeyan, Senior Counsel
Assisted by D.Kamachi

For Respondents : Mr.C.Kathiravan
Special Government Pleader for R1 to R4

ORDER

This petition herein challenges a circular, dated 12.09.2023, issued by the 3rd respondent, the Principal of the Thiru.Vi.Ka.Government Arts College, apparently pursuant to a communication addressed by the 4th respondent, a sitting MLA of the ruling party in this State. In the impugned circular, the 3rd respondent had required the girl-students studying in the college to share their views on the topic '*Opposition to Sanadhana*' on the occasion of commemoration of the birthday of the former Chief Minister and founder of the D.M.K party, late C.N. Annadurai, which falls on 15.09.2023.



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2. Appearing for the petitioner Mr.G.Karthikeyan, the learned Senior Counsel, submitted, that the conduct of the 4th respondent in addressing a communication to the 3rd third respondent on the subject indicated, is in gross breach of his Constitutional duties as a citizen of this country under Article 51A of the Constitution, more particularly, Articles 51A (c), (e) and (f) of the Constitution, as it aims to affect the unity of the country, social harmony and spirit of brotherhood amongst the people of India, and the duty to value and preserve the rich heritage of our composite culture.

3. Mr.C.Kathiravan, the learned Special Government Pleader takes notice for respondents 1 to 4, and he made a statement, on the written instruction of the 3rd respondent, that the circular impugned in this case has been withdrawn.

4. This Court is conscious to the very vociferous, and at time noisy debates on pro and anti *Sanathana Dharma*. It has also broadly understood *Sanathana Dharama* as a set of '*eternal duties*', and that it cannot be traced to one specific literature, but has to be gathered from multiple sources which, either relate to



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Hinduism, or which those who practice the Hindu way of life, have come to accept. It includes the duty to the nation, duty to the King, King's duty to his people, duty to one's parents and Gurus, care for the poor, and whole lot of other duties. If the topic chosen by the impugned circular is now tested on the plane of these duties, it would then mean that all these duties are liable to be destroyed. Should not a citizen love his country? Is he not under a duty to serve his nation? Should not the parents be cared? With genuine concern for what is going round, this Court could not help pondering over it.

5. Somewhere, an idea appears to have gained ground that *Sanadhana Dharma* is all about, and only about, promoting casteism and untouchability. Untouchability in a country of equal citizens, cannot be tolerated, and even if it is seen as permitted somewhere within the principles of '*Sanathana dharma*', it still cannot have a space to stay, since Article 17 of the Constitution has declared that untouchability has been abolished. It is part of the fundamental right. And, under Art. 51A(a), it is the fundamental duty of every citizen to, “*abide by the Constitution and respect its ideals and institutions..*” Therefore, *untouchability*, either within or outside *Sanatana Dharma* can no longer be Constitutional,



though sadly it still exists. Here, Mr. G. Karthikeyan, submitted with considerable

force that nowhere *Sanatana Dharma* either approves or promotes untouchability, and it only insists the practitioners of Hinduism to treat all equally. 'As religious practices move with time, some bad or evil practices may un-noticingly creep into it. They are the weeds required to be removed. But why should the crop be chopped?' - This, in short the essence of the submissions of the learned counsel.

6. This Court is conscious that every citizen has a fundamental right to free speech under Article 19(1)(a) of the Constitution. While right to free speech is inalienable, it is also important to underscore that one is adequately informed, as it adds value to what is spoken. It should not be forgotten that the Constitutional framers have very consciously has not made right to free speech as an absolute right. They have restricted it with Article 19(2). This apart, Article 25 has granted all citizens the fundamental right *inter alia* to practice any religion. Every religion is founded on faith, and faith by nature accommodates irrationality. Therefore, when free speech is exercised in matters pertaining to religion, it is necessary for one to ensure that no one is injured. In other words



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free speech cannot be hate speech, as the Hon'ble Supreme Court has cautioned.

The users of free speech must not ignore to factor these aspects while exercising their right. If this is ignored, the course of any debate will get derailed, and the objective behind it will lose significance.

7. How free speech is seen exercised these days? If the free speech made through the social media is taken as a basis, anyone who has little to do with science, or rocket, or space, will be lecturing on rocket science. While this is also accommodated within the right to free speech, yet it may be helpful to gain some attention, and may not take it beyond. It would be appreciable, if free speech encourages dispassionate, and healthy public debates, and help the society to move forward, along the lines which the Constitution envisages. At the end of the day, every citizen traces his existence to the Constitution, and hence it is his duty to abide by its values, its ethos, and to hold an uncompromising abidance to its spirits. This should not be forgotten. Hope it prevails.

8. Turing to the petition, since the circular in question is withdrawn, nothing



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survives in it. This Court still encourages the College concerned to require the

students on reflect on the evils of untouchability, and how they, as citizens of this

country, can contribute to its elimination. This petition is accordingly stands

disposed. No Costs.

15.09.2023

Anu

Index : Yes / No

Neutral citation : yes/no

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N.SESHASAYEE, J.

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