

SYNOPSIS

The present Writ Petition under Article 32 of the Constitution of India is being filed by the Petitioner seeking a direction to the Union of India to produce the body of Dr. Farooq Abdullah, former Chief Minister of Jammu and Kashmir before this Honourable Court and set him liberty so as to enable him to attend a conference being organised by him in Chennai, Tamil Nadu on 15.09.2019.

The Petitioner has been is an incumbent Member of Parliament (Rajya Sabha) from Tamil Nadu, and as well as the founder and General Secretary of the Marumalarchi Dravida Munnetra Kazhagam (MDMK) party. For several years, the Petitioner has been organising a conference in Chennai district of Tamil Nadu for leaders from across the country on the occasion of the birthday of Thiru. C.N. Annadurai, former Chief Minister of Tamil Nadu in the spirit of peaceful democratic debate and discussion so as to strengthen the unity and integrity of India.

The upcoming edition of the conference is to be held on 15.09.2019, and Dr. Farooq Abdullah, former Chief Minister of Jammu and Kashmir, was invited to grace the occasion, and he had agreed to attend. He had attended the previous editions of the Conference also. However, on or around 05.08.2019, Dr. Farooq Abdullah was placed under detention in Srinagar. Despite his efforts the Petitioner was unable to contact him.

The Petitioner vide letter dated 29.08.2019 sought permission of the authorities to allow Dr. Farooq Abdullah to travel to Chennai, Tamil Nadu in order to attend the conference in the interest of freedom of speech and in the spirit of encouraging democratic participation. However, the Respondents have failed to reply to the letter/ representation, which by implication is a denial of permission.

The actions of the Respondents are completely illegal and arbitrary and violative of the right to protection of life and personal liberty, right to protection from arrest and detention and also against right to free speech and expression which is the cornerstone of a democratic nation. The right to free speech and expression is considered to have paramount importance in a democracy as it allows its citizens to effectively take part in the governance of the country. This Hon'ble Court has held in the past that any reasonable restrictions on the right to freedom of speech and expression should be very narrowly tailored and interpreted in order to maintain the spirit of democracy.

Therefore, the refusal of the Respondents to allow Dr. Farooq Abdullah to attend the peaceful and democratic conference organised by the Petitioner is illegal and arbitrary and violative of Articles 21, 22 and 19(1)(a) of the Constitution of India. Hence this petition.

LIST OF DATES

- 15.09.2018 Petitioner hosted the annual conference on the occasion of the birthday of Thiru. C.N. Annadurai, former Chief Minister of Tamil Nadu in the spirit of peaceful democratic debate and discussion so as to strengthen the unity and integrity of India. It was attended by several national leaders, including Dr. Farooq Abdullah. Dr. Abdullah also agreed to attend the next edition of the conference, to be held on 15.09.2019
- 04.08.2019 The Petitioner spoke to Dr. Abdullah and invited him to participate in his annual conference and the same was accepted by Mr. Abdullah
- 05.08.2019 or Dr. Abdullah was placed under detention in thereafter Srinagar. The Petitioner attempted to contact Mr. Abdullah but no such contact could be made.
- 29.08.2019 The Petitioner wrote to the Respondents seeking permission to allow Dr. Abdullah to travel to Chennai in order to attend the conference in the interest of freedom of speech and in the spirit of encouraging

democratic participation

15.09.2019

The Petitioner's conference in Chennai is scheduled to take place, and no response has been received on the Petitioner's representation, which by necessary implication is a denial/ rejection of the representation. Hence this petition is filed.

IN THE HON'BLE SUPREME COURT OF INDIA

ORIGINAL WRIT JURISDICTION

[Order XXXVIII of SCR, 2013]

WRIT PETITION (CIVIL) NO. OF 2019

(Under Article 32 of the Constitution of India)

IN THE MATTER OF

Vaiko,
S/o. Vaiyapuri
Residing at No. 20, 4th Street,
11th Main Road, Anna Nagar,
Chennai 600040

...Petitioner

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Home Affairs,
North Block,
New Delhi – 110001

2. State of Jammu and Kashmir
Through its Secretary
Home Department,
Civil Secretariat,
Srinagar,
Jammu and Kashmir –
190001

...Respondents

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

TO,

THE HON'BLE CHIEF JUSTICE
AND OTHER COMPANION JUSTICES OF
THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

1. The Petitioner is approaching this Hon'ble Court under Article 32 of the Constitution of India seeking a direction to the Respondents to allow Dr. Farooq Abdullah, former Chief Minister of Jammu and Kashmir to attend the conference being organised by the Petitioner in Chennai, Tamil Nadu on 15.09.2019, under the facts and circumstances narrated below.
2. The Petitioner is an incumbent Member of Parliament (Rajya Sabha) from Tamil Nadu, and as well as the founder and General Secretary of the Marumalarchi Dravida Munnetra Kazhagam (MDMK) party. The Petitioner has also been a two term Member of Parliament (Lok Sabha) from the Sivakasi constituency between 1998-1999 and again between 1999-2004, and a Member of Parliament (Rajya Sabha) between 1978-96. The Petitioner has a long history of public service and democratic participation.
3. That the Respondent No.1 is The Union of India, through the Ministry of Home Affairs. The respondent No. 2 is State of Jammu and Kashmir through its Home Department which is responsible for maintenance of law and order in the state. The parties therefore, are amenable to the writ jurisdiction of this Hon'ble Court under Article 32 of The Constitution of India.
4. The Petitioner annually organises a conference in Chennai district of Tamil Nadu on the occasion of the birth anniversary of Thiru. C.N. Anna Durai, also known as Arignar Anna, former Chief Minister of Tamil Nadu. The conference has over the years achieved

great renown for bringing together leaders from across party lines and fostering a spirit of peaceful democratic debate and discussion. This year the conference is to be held on 15.09.2019 and counts amongst its invitees, leaders from across India including Prof. Ramasamy Deputy CM of Penang, Malaysia, Thiru. Dhinesh Trivedi Former Union Minister, M.K.Stalin President DMK Leader of Opposition in Tamil Nadu Legislative Assembly, Thiru. Yaswanth Sinha Former Finance Minister. True copy of the programme for the conference is attached herewith as **Annexure P-1 pages...to.....** .

5. The petitioner is a close friend of Dr. Farook Abdullah for the past 40 years. He is in close touch with the petitioner throughout. On 04.08.2019, the Petitioner had spoken to Dr. Abdullah on the telephone and invited Dr. Abdullah to also attend the upcoming Conference on 15.09.2019, and Dr. Abdullah had verbally communicated that he would be glad to attend. Thereafter on 05.08.2019, Dr. Abdullah along with other political leaders of Jammu & Kashmir has been placed under wrongful detention in the context of the issuance of the Constitution (Application to Jammu and Kashmir) Order, 2019 and the passing of the Jammu and Kashmir Reorganisation Act, 2019. Since then all efforts by the Petitioner to contact Dr. Abdullah have been of no avail. The Petitioner has only heard of Dr. Abdullah's condition through reports in the news media.
6. The Conferences are being organized for more than 20 years now and several political dignitaries cutting across party lines have

attended the earlier conferences. Dr. Farooq Abdullah, former Chief Minister of Jammu & Kashmir and chairman of the Jammu & Kashmir National Conference party, is a long-standing friend of the Petitioner right from the start of their political careers. He too has been attending the previous editions of the Conference including the most recent one on 15.09.2018 and has also attended other events organised by the MDMK Party.

7. That the Petitioner vide letter dated 29.08.2019 sought permission of the authorities to allow Dr. Abdullah to travel to Chennai in order to attend the conference in the interest of freedom of speech and in the spirit of encouraging democratic participation. True copy of the letter dated 29.08.2019 is attached herewith as **Annexure P-2 pages...to.....** No response has been received to this letter/ representation.
8. The rights conferred on Dr. Farook Adullah and the peoples of Jammu & Kashmir under Article 19, 21 22, of the Constution of India and have been deprived of on account of illegal detention without any authority of law. It is needless to state the fundamental rights enstrained Part III of Constitution of India were held to be not available by majority judgment in **ADM Jabalpur Vs Shivkhant Shukla reported in 1976 supreme court 1207** was overruled by larger bench of this Hon'ble court in **Justice K.S. Putta Samy (Retd.) and another Vs UOI and others in 2018 SCC** . In the absence of any order promulgating emergency in state of Jammu Kashmir , the State of emergency is prevailing were no citizen is allow to freely are speak out nor allowed to excise any of the rights guaranteed under Part III of Constitution of India.

9. Under these circumstances, the Petitioner has been constrained to approach this Hon'ble Court under Article 32 of the Constitution of India, inter alia on the following grounds amongst others and without prejudice to one another:

GROUNDS

- A. That the Respondents have failed to respond to the Petitioner's letter dated 29.08.2019, which by implication amounts to rejecting the representation to permit Dr. Abdullah to attend the Conference, without assigning any reason whatsoever.
- B. That Part III of the Constitution guarantees all citizens the fundamental right to free speech and expression, as well as the right to life and liberty as these are considered to be essential requirements for sustaining a healthy and vibrant democratic nation. The fundamental right to freedom of speech and expression is considered to be of paramount importance in a democracy as it allows the citizens living in the country to effectively participate in the social and political processes of the state.
- C. That the Petitioner's conference is an embodiment of this right to free speech and expression which is enshrined under Article 19(1)(a) of the Constitution of India, as it fosters a spirit of democratic debate and inquiry in a respectful and peaceful environment.
- D. That no incidents of violence or disturbance can be linked to any past edition of the Petitioner's conference, as all statements made there were in the spirit of sustaining democratic discussion, and the very purpose of the conference is to strengthen the unity and integrity of

the nation.

- E. That by placing Dr. Abdullah in wrongful detention without any authority of law and not allowing him to attend the Petitioner's conference the primary fundamental right of protection of life and liberty guaranteed by the Constitution of India has been deprived.
- F. That by not allowing Dr. Abdullah to attend the Petitioner's conference and express his views in a democratically sanctioned manner, the right to an individual's right to speech and expression is being unreasonably and illegally curtailed by the Respondents.
- G. That in not allowing Dr. Abdullah to present his views at the Petitioner's conference, the 'marketplace of ideas' and free thought and expression that is essential for the functioning of a healthy democracy is being illegally reduced by the actions of the Respondents;
- H. That the denial of permission is a violation of the rights of the Petitioner under Article 19(1)(a) to host the conference as well as the rights of Dr. Abdullah to attend the conference.
- I. That the protection accorded to citizens of India including Dr. Abdullah by Article 22 of Constitution of India granting protection against illegal arrest and detention has been endangered by the arbitrary actions of the Respondents.
- J. That the fundamental rights enshrined Part III of Constitution of India were held to be not available by a majority judgment **ADM Jabalpur Vs Shivkhant Shukla reported in 1976 supreme court 1207**

was overruled by larger bench of this Hon'ble court in **Justice K.S. Putta Samy (Retd.) and another Vs UOI and others in 2018 SCC** In the absence of any order promulgating emergency in state of Jammu & Kashmir, the State of emergency is prevailing were no citizen is allowed to freely are speak out nor allowed to excise any of the rights guaranteed under Part III of Constitution of India.

- K. That the representation made to the Respondents by the Petitioner was not considered by them at all and a blanket rejection was issued, without even taking into account the peaceful and democratic purpose and goals of the conference organized by the Petitioner.
 - L. That the Respondents have imposed an 'undeclared emergency' in the State of Jammu and Kashmir and have placed an entire state in lockdown for the past one month and has further dealt a body-blow by arresting democratically elected representatives who were instrumental in strengthening democracy in the state.
 - M. That this is a 'conflict between power and liberty' and the constitutional courts of the land ought to act as a 'check and balance' when the executive illegally usurps fundamental rights of lakhs of citizens instead of shielding the executive under the false pretext of national security and integrity.
 - N. This is a fit case for the kind intervention of this Hon'ble Court on an urgent basis exercising its extraordinary writ jurisdiction.
10. The Petitioner have no other alternate or efficacious remedy available but to approach this Hon'ble Court since the respondents are acting in complete contradiction to the letter and spirit of Article 19(1)(a) of

the Constitution of India.

11. The Petitioner has not filled any other petition before this Hon'ble Court or any other Court seeking the same or similar relief.
12. The Petitioner has approached the Court bona fide and without undue delay.

PRAYER

In light of the above facts and circumstances of the case, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (i) Pass writ, order / direction under article 32 of the Constitution of India directing the Respondents to produce the body of Dr. Farooq Abdullah, former Chief Minister of Jammu and Kashmir before this Honourable Court and set him at liberty and permit him to attend the conference being organised by the Petitioner in Chennai, Tamil Nadu on 15.09.2019; and
- (ii) Pass any writ, direction or order, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

Date: 11.09.2019
New Delhi

Drown by:- G. Ananda Selvam

Filed by:- Ms. Lakshmi Ramamurthy

ADVOCATE FOR THE PETITIONER

