

W.P(MD)No.7978 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7978 of 2014

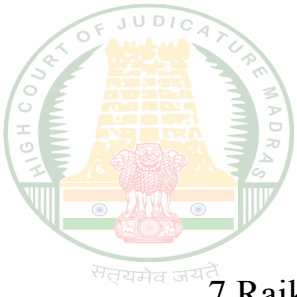
S.A.Syed Shaik Alaudeen

... Petitioner

Vs.

- 1.State Represented by its Secretary,
Home Department, Secretariat,
Fort.St.George, Chennai.
- 2.The Director General of Police,
Directorate, Beach Road,
Chennai.
- 3.The Superintendent of Police,
O/o.the Superintendent of Police,
Ramanathapuram.
- 4.The District Collector,
Collectorate Complex,
Ramanathapuram.
- 5.Velladurai,
Addl. Superintendent of Police,
Ramanathapuram.
- 6.Annamalai Alwar,
Deputy Superintendent of Police,
Ramanathapuram.

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- 7.Rajkumar Samuvel,
Inspector of Police,
Devipattinam Police Station,
I/o Kenikarai Police Station,
Ramanathapuram.
- 8.Rajamani,
Inspector of Police,
Prohibition and Excise Wing,
Kamuthi Taluk Police Station,
Ramanathapuram District.
- 9.Durai,
Inspector of Police,
Sikkal Police Station,
Ramanathapuram District.
- 10.Kottaichami,
Sub Inspector of Police,
Uthirakosamangai Police Station,
Ramanathapuram District.
- 11.Arumugatharasan,
Sub Inspector of Police,
Keelakarai Police Station,
Ramanathapuram District.
- 12.Muthuchelvam,
Sub Inspector of Police,
Devipattinam Police Station,
Ramanathapuram District.
- 13.Lingam,
SP Sub Inspector,
O/o. Superintendent of Police,
Ramanathapuram.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents No.1 to 4 to pay the adequate compensation of Rs.3,00,000/- to petitioner for the grievous injuries caused at the hands of the respondents No.5 to 13 along with unknown named identified 3 police constables numbered with RMD 1287, RMD 1549 and RMD 1771 police committed atrocities against the petitioner as they illegally resorted assault and brutally attacked during the Unity March taken out by the members of popular Front of India with the prior permission of the respondents No.3 and 5 and the same may be recovered from the salary of the Respondents No.5 to 13 if they so advised.

For Petitioner : Mr.Henri Tiphagne

For Respondents : Mr.Baskaran,
Addl. Advocate General,
Assisted by Mr.S.Shanmugavel,
Addl. Government Pleader for R1 to R4.
Mr.George Paul Anto for R5 to R7 & R9 to R13

ORDER

Any victim of police atrocity is entitled to claim damages against the State by invoking Article 226 of the Constitution of India. This can be taken as too well settled a proposition. The claimant must establish the following facts:-

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(a) there was an illegal action by the police or an excessive use of force which cannot be said to be in good faith.

(b) the victim suffered injury as a result and he / she was not at fault

However, the materials placed before the Court must be fairly indisputable. While any individual having claim can seek remedy before the Human Rights Commission or the department or the jurisdictional Civil Court, to secure redress in writ proceeding, the aforesaid conditions must be satisfied.

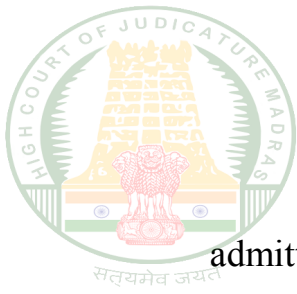
2.The case of the petitioner is as follows:-

The petitioner is a practicing lawyer. He is a political activist too. He was associated with Popular Front of India. The said organization proposed to hold a public meeting and rally on 17.02.2014 at Ramanathapuram. While the jurisdictional police did not have any objection for PFI to hold the public meeting, their request for conducting procession was denied. However, the issue was reconsidered and the Additional Superintendent of Police, Ramanathapuram / fifth respondent



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herein vide proceedings dated 16.02.2014 granted permission to conduct procession from Chinnakadai Junction to Santhaipeitai Thidal which was the venue of the meeting. Certain restrictions were also stipulated. Since the organizers had requested that the legal team may also be present on the occasion, the petitioner and few other advocates were present. The bandobast team was headed by the fifth respondent. Even though the assembly of PFI volunteers was peaceful, the fifth respondent behaved in a provocative manner. He imposed unreasonable restrictions. According to the petitioner, the private respondents had conspired to create commotion. The fifth respondent suddenly ordered his subordinates to attack the persons who had assembled. The police lathi-charged them. The petitioner was one of the persons who also bore the brunt of the attack. The fifth respondent involved certain private individuals belonging to certain fundamentalist organizations. The police pelted stones. The petitioner suffered bloody and grievous injuries. He was rushed to Government Hospital, Ramanathapuram. He was then referred to the Government Rajaji Hospital, Madurai. Since his condition was bad, he got himself admitted to a private hospital (Saravana Multi-Speciality Private Hospital, Madurai) for further treatment. He was



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admitted as in-patient on 18.02.2014 and discharged on 26.02.2014.

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Seeking compensation for the injuries suffered by him, the present writ petition came to be filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. A voluminous typed set of papers was filed and I was taken through the materials enclosed therein. Reliance was placed on the enquiry report submitted by the then Inspector General of Police, SID, CB-CID, Chennai. My attention was drawn to the statements of witnesses and documents annexed to the said report. The learned counsel for the petitioner contended that the jurisdictional police were very much aware that the members of PFI proposed to commence their march not from Chinnakadai Junction but from Pallivasal. There was absolutely no provocation from the participants of the proposed rally. They had peacefully assembled. The learned counsel contended that the police had already been intimated about what the organizers intended to do. The police could not have taken exception to the attempt on the part of the processionists to march. Whether the processionists walk or march could

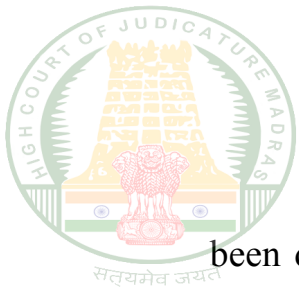


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not have been the concern of the police. It is true that the petitioner had sought relief only for himself. But the gaze of the Court need not be confined to the writ petitioner alone. It can extend its vision to the entire incident. The photographs enclosed in the typed set of papers would indicate that a number of persons had suffered various types of injuries. The Writ Court ought not to turn a Nelson's eye to what had happened. He strongly pressed for granting relief as prayed for.

4.The third respondent had filed a detailed counter affidavit and the learned Additional Advocate General took me through its contents. The fifth respondent who was the Additional Superintendent of Police, Ramanathapuram had been named in person. The fifth respondent and the other private respondents have adopted the stand of the third respondent. The learned Additional Advocate General submitted that no case for grant of relief has been made out. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. The parameters for granting relief in such cases has



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been delineated at the very outset. PFI is now a banned organization.

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The ban order imposed on PFI has since been confirmed by the UAPA Tribunal. The involvement of some of the PFI members in the murderous attack on Prof.Thomas of Kerala is well known. For an imaginary act of blasphemy alleged to have committed by the professor, his palm was chopped off. The professor's wife went into depression and later committed suicide. Of course during 2014, PFI was not a proscribed movement. One can take judicial notice of the fact that PFI was having radical Wahhabi elements on its rolls.

6.I am constrained to make these observations because the learned counsel for the petitioner relied on the decision rendered by the Hon'ble Division Bench of the High Court of Gujarat in Writ Petition (PIL) No.170 of 2012 (Suo Motu Vs. Secretary to Government of Gujarat). The Hon'ble High Court (J.B.Pardiwala,J as His Lordship then was) in the said case had held that in dealing with unlawful assemblies, the police force should exercise the greatest self-restraint even at the cost of some suffering to them. In fact, the learned counsel for the petitioner drew my attention to the relevant provisions of the Police Standing



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Orders which prescribe a particular sequence of steps before resorting to lathi-charge or firing. It is true that Chapter XXXIX of the Police Standing Orders refers to raising of riot flag, bugle call with long blast and warning through mega phone before employing force. No doubt such provisions are there in the Police Standing Orders. But it may not be possible or pragmatic to adopt such approach under all circumstances. It is not fair to expect to be at the receiving end at all times. They are very much entitled to take every preventive step to pre-empt the members of unlawful assembly from causing injury to the police force or damage to properties. The Hon'ble Gujarat High Court was dealing with a different fact-situation altogether. In that case, the police had brutally dealt with the members of Dalit community who had assembled peacefully to protest the killing of their community leader. The police had indulged in excessive use of force. Even elderly women were not spared. The entire action had been graphically captured in video. The Judges viewed it and their judicial conscience was shocked. Decision rendered in such a context cannot be cited as an authority in a case involving PFI members.

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7.It is beyond dispute that the police had originally said “No” to the request for conducting procession. PFI had termed the procession as “Unity march”. The intelligence report suggested that it would result in disunity. In Ramananthapuram, there is sizeable Muslim population. It is well known for its communal peace, harmony and amity. Our Late President Dr.A.P.J.Abdul Kalam hailed from the said district. The police felt that permitting PFI to conduct procession would disrupt communal harmony. But the issue was reconsidered and the fifth respondent granted permission to PFI to conduct a shorter procession from Chinnakadai Junction to the venue of the meeting. PFI, on the other hand, wanted a longer route. They requested the police to permit them to commence their procession from Kumariah Kovil Junction. The police had firmly rejected the said request.

8.The bandobast plan prepared by the administration indicated that the police anticipated that PFI would not adhere to police conditions and that they would commence their march from Kumariah Kovil Junction. But on 17.02.2014, the members of PFI numbering around 1300 assembled not at Kumariah Kovil Junction but at Pallivasal which was



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still farther away. The Pallivasal was located in Ramanathapuram – Rameshwaram Highway. A section of the assembly was dressed in their organizational uniform. The processionists made it clear that they would march to the accompaniment of musical band. No exception could have been taken to this had the starting point was from the permitted venue. It is not for the police to tell the members of a peaceful assembly that they should not be in their uniform. The Hon'ble Apex Court in *Aadhaar* case had held that the right to wear an apparel of one's choice falls in the realm of privacy. Likewise, one can walk in a procession or one can march. So long as the gestures are not offensive or provocative in nature, exception could not have been taken to “march as such”. Music is a part of our culture. Therefore, musical band can very well accompany a procession. I thought music was taboo to Wahhabi elements and I find it strange that PFI insisted on the music band accompanying their procession.

9.The core issue is the act of assembling outside the Pallivasal in large numbers and that too on the highway. The police had not permitted PFI to commence their procession from the said site at all. They were

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taken by surprise. The team headed by the fifth respondent rushed to the spot. The members of the assembly ought to have straightaway courted arrest in a peaceful manner. Instead, according to the police, what they did was to exhibit defiance. Rule of law applies not only to officials and the state machinery but also to private individuals. The organizers knew that they had been permitted to commence their procession only from Chinnakadai Junction. They had not been permitted to assemble at any other site on the said date. If PFI felt aggrieved, the only course open to them was to challenge the order passed by the police by filing a writ petition before the High Court. They could not have on their own decided that they would commence their march from the Pallivasal. The conduct of the organizers was clearly illegal and the assembly that was formed outside the Pallivasal on the said date was unlawful.

10. There is controversy as to whether the members of the unlawful assembly attacked the police. The fact remains that Crime No.67 of 2014 was registered against them on the file of Kenikarai Police Station. The FIR was quashed by the High Court (His Lordship Mr. Justice G.M. Akbar Ali) vide order dated 19.11.2014 in Crl.O.P.(MD)No.5831 of 2014. The



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State filed appeal before the Hon'ble Supreme Court and the order of the High Court was reversed in Crl.A.No.1699 of 2019 on 18.11.2019. The learned Additional Advocate General states that final report has since been filed. Interestingly, the petitioner herein is figuring as sixth accused in Crime No.68 of 2014 which was also registered on the file of Kenikarai Police Station. The criminal prosecution registered against the petitioner and the members of the unlawful assembly is pending as on date.

11. There is yet another crucial aspect. One Thiru.M.Mohamed Abbas, Advocate filed W.P.(MD)No.2705 of 2014 before the Madurai Bench of Madras High Court for ordering judicial enquiry by a retired judge of the High Court assisted by eminent jurists, Human Rights activists and social workers for awarding compensation to the victims in this incident. The writ petition was disposed of on 26.02.2014 by directing the Director General of Police and the Home Secretary of the Government of Tamil Nadu to nominate an Inspector General of Police for taking up enquiry and to submit a report and for appropriate follow-up action. Pursuant to the said direction, the then Inspector



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General of Police, SID, CB-CID, Chennai was nominated as the enquiry officer. He enquired several persons and submitted his report. But the copy of the report was not published. The petitioner herein therefore filed W.P.(MD)No.22789 of 2017 for being furnished with a copy of the report. The writ petition was allowed by me on 26.07.2023. Pursuant to my direction, copy of the report was also furnished. However annexures were withheld. I directed that the annexures should also be made available to the petitioner.

12.The petitioner has not filed any writ petition contesting the findings set out in the report. In fact, before me, the learned counsel for the petitioner placed reliance on portions of the report. As rightly pointed out by the learned Additional Advocate General, the conclusion of the enquiry officer is in favour of police. Paragraph No.8 of the enquiry report reads as follows:-

“8.The question here is whether the police has resorted to unwarranted and excessive use of force or the police resorted to use of force due to conduct of the processionsits.



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From the enquiry it is very clear that the riot was provoked by the members of the PFI as they did not concede to the direction of Police officers and denied to obey the conditions of the permission given to them for taking out their Unity March Procession and started proceeding towards communally sensitive Kumariah Koil junction. Therefore, the Police in order to maintain peace, tranquillity and religious harmony in the communally prone Ramanathapuram District rightly intervened and used minimum force in self defence and to protect life and properties. Though, there were some defects with regard to preventive action, the Police acted judiciously and prevented the escalation of religious disharmony between Hindus and Muslims all over Tamil Nadu. It was further found that there was no abuse of Police powers and inspite of the injuries caused to the police and public, the police had used only minimum force and ensured the safety of both common public and the members of PFI by not opening fire. The entire incident took place due to the disobedience (sic) of the order promulgated by the Police officer and violation of conditions of the permission order. Police intercepted to maintain law and order and the untoward incident resulting to injuries on both side can not be attributed to high handedness of the Police.”



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13. We are now in the age of visual media. Almost everyone has a smart-phone. It is true that in the affidavit filed in support of the writ petition, there is an averment that the cameramen were attacked and their equipment seized. But I find it difficult to believe that none of the members of PFI did not videograph the entire action. Interestingly, the police are also unable to place any videographic evidence. Thus before me there is no impeachable material to show that the police indulged in excessive use of force or that without any provocation from PFI, they resorted to lathi-charge. On the other hand, the petitioner as well as the members of PFI are figuring as accused in criminal cases registered on the occasion. The findings of the enquiry officer also exonerate the police.

14. After a careful consideration of the submissions made by the learned counsel on either side and close scrutiny of the evidence on record, I have to necessarily conclude as follows:-

(a) The assembly of which the writ petitioner was a part was an unlawful assembly.

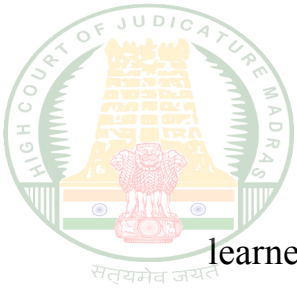


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(b) There is nothing on record to show that the police headed by the fifth respondent indulged in unprovoked action or that there was an use of excessive force.

(c) The report of the enquiry that was conducted pursuant to the direction of the Hon'ble Division Bench of this Court not only does not fault the police but exonerates them.

15. Whenever the police are constrained to disperse an unlawful assembly, some are bound to suffer injuries. It is the duty of the police as well as the district administration to provide them prompt medical treatment free of cost. They cannot be left to fend for themselves. In this case, the petitioner was rushed in 108 ambulance to GH, Ramanathapuram. The entry in the accident register pertaining to the petitioner has been enclosed in the typed set of papers. It does not shed much light. It is not known if the petitioner was admitted as in-patient. It is not known if any reference was made. The petitioner on his own got admitted in a private hospital. The discharge summary does not inspire the confidence of this Court. To a specific question posed by me, the

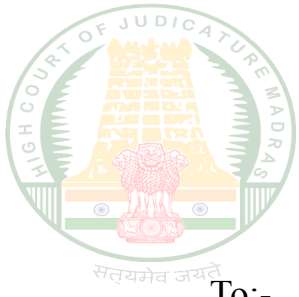


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learned counsel for the petitioner fairly admitted that the petitioner did not suffer any fracture. The State cannot be expected to bear the cost of treatment if the petitioner chose to get himself admitted in a private institution. It is not the case of the petitioner that the authorities of government hospital declined to provide treatment. The concept of “No fault liability” that one finds in Motor Vehicles Act cannot be imported in cases such as the one on hand. No case for granting relief has been made out and the writ petition is dismissed. No costs.

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To:-
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1. The Secretary,
Home Department, Secretariat,
Fort.St.George, Chennai.
2. The Director General of Police,
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G.R.SWAMINATHAN, J.

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