

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.11.2020

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.16115/2020 & WMP.Nos.20086 & 20087/2020

K..Nagarajan

.. Petitioner

Versus

1.Union of India

represented by Union Home Secretary
and Chairman, National Executive Committee [NEC]
Ministry of Home Affairs,
New Delhi 110 001.

2.State of Tamil Nadu

represented by Chief Secretary
Secretariat, Chennai 600 009.

3.The Director General of Police

Mylapore, Chennai 600 004.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records on the file of the 2nd respondent in II Clause [vii] of G.O.Ms.No.613 dated 31.10.2020 insofar as it relates to persons going for the Vel-Yatra and to quash the same as illegal, incompetent and

without jurisdiction and further, in the larger interest of the participating public, to direct the 2nd and 3rd respondent to issue appropriate order to all the District Police Officers to facilitate free movement of Vel yatra conducted by the petitioner between 08.11.2020 to 06.12.2020.

For Petitioner : Mr.V.Ragavachari for
Mr.R.C.Paul Kanagaraj

For R1 : Mr.R.Sankaranarayanan
Additional Solicitor General of
India assisted by
Mr.Rabu Manohar
Senior Panel Counsel for Central
Government

For R2 : Mr.Vijay Narayan
Advocate General assisted by
Mr.V.Jayaprakash Narayan
Government Pleader

For R3 : Mr.S.R.Rajagopal
Additional Advocate General

ORDER

[Order of the Court was made by M.SATHYANARAYANAN]

(1) Heard the submissions of Mr.V.Ragavachari, learned counsel appearing for the petitioner ; Mr.Rabu Manohar, learned Senior Panel Counsel for the Central Government who accepts notice on behalf of the 1st respondent ; Mr.V.Jayaprakash Narayan, learned Government

Pleader who accepts notice on behalf of the 2nd respondent and Mr.S.R.Rajagopal, learned Additional Advocate General who accepts notice on behalf of the 3rd respondent.

(2)Mr.Rabu Manohar, learned Senior Panel Counsel for the Central Government is being led by Mr.R.Sankaranarayanan, learned Additional Solicitor General of India and Mr.V.Jayaprakash Narayan, learned Government Pleader is being led by Mr.Vijay Narayan, learned Advocate General.

(3)The primordial submission made by the learned counsel for the petitioner, by drawing the attention the attention of this Court to paragraph No.8 of the affidavit filed in support of this writ petition, wherein a comparative table has been given between the Central Government Notification No.40-3/2020-DM-I[A] dated 30.09.2020 and paragraph II[vii] of the State Government Notification in G.O.Ms.No.613 dated 31.10.2020 and would submit that though the Central Government Notification says "*such gatherings beyond the limit of 100 persons may be permitted, outside Containment Zones....*", the State Government Notification restricting the same to the maximum ceiling of 100 persons after following duly the Standard Operating Procedure [SOP] and in the light of the provisions of the

Disaster Management Act, 2005, the State Government cannot deviate from the Central Government guidelines. The learned counsel for the petitioner, arguing on the factual aspect, on instructions, would submit that the earlier request made by the State Vice President, Tour-in-Charge of Bharatiya Janata Party, Tamil Nadu dated 07.10.2020, is not pressed and drawn the attention of this Court to the representation dated 04.11.2020 submitted by the State General Secretary of the Bharatiya Janata Party, Tamil Nadu to the Director General of Police, Mylapore, Chennai-4, wherein it has been stated that the Tamil Nadu State President of Bharatiya Janata Party, will be taking a State wide tour called "Vetrivel Yatra" from 6th November, 2020 to 6th December, 2020 and the inauguration of the said Yatra will be started at Tiruttani – one of the Arupadai Veedus of Lord Murugan and it is going to be flagged off by the Hon'ble Minister of State Home Affairs of Government of India and the said Dignitary also consented to participate in the inaugural function and the National General Secretary of the said Party is also participating. Therefore, a request has been made in the said representation seeking sincere support and help to carry out a grand inauguration in a peaceful manner and the representee is also looking forward the valuable support.

(4) It is the further submission of the learned counsel for the petitioner that undertaking a religious tour and worshipping a temple is a Fundamental Right Guarantee under Article 25 of the Constitution of India and since the COVID-19 Protocol as well as SOP is going to be complied with in letter and spirit, there cannot be any difficulty on the part of the 3rd respondent to consider and dispose of the representation and prayed for appropriate orders.

(5) Mr. R. Sankaranarayanan, learned Additional Solicitor General of India assisted by Mr. Rabu Manohar, learned Senior Panel Counsel for the Central Government / 1st respondent would submit that since papers have been served just few hours back, prays for short accommodation to get instructions as to the mandatory nature of the guidelines issued by the 1st respondent binding the concerned State Government.

(6) Mr. Vijay Narayan, learned Advocate General assisted by Mr. V. Jayaprakash Narayan, learned Government Pleader appearing for the 2nd respondent would submit that neither the representation dated 04.11.2020 nor the affidavit filed in support of the present writ petition speak about the number of persons going to accompany the President while he is undertaking Vel Yatra to various Murugan Temples throughout the State and in the light of the fact that there is a

likelihood of second wave of COVID-19 infection and the onset of monsoon as well as the anniversary of Babri Masjid demolition day also falls on 06.12.2020, the Revenue as well as Law and Order machinery would be put to maximum stress and since the representation is bereft of any particulars, it is for the local Superintendents of Police to take a call as to the prayer made by the petitioner.

(7) Mr. S.R. Rajagopal, learned Additional Advocate General appearing for the 3rd respondent would submit that the State vice President did visit Tiruttani temple with lot of followers and they did not adhere to the COVID – 19 protocol and in the event of intervention by police to enforce the same, there is a likelihood of law and order problem and it is ultimately for the police machinery to take a blame and also adopted the arguments of the learned Advocate General as to the insufficiency of the particulars submitted by the petitioner in the representation dated 04.11.2020.

(8) In response to the said submission, the learned counsel for the petitioner prays for short accommodation so as to enable him to get further instructions to come out with a further detailed representation supported by an additional affidavit along with the documents.

(9)Call on **10.11.2020 IN THE MOTION LIST.**

(10)Registry to print the names of Mr.R.Sankaranarayanan, learned Additional Solicitor General of India assisted by Mr.Rabu Manohar, learned Senior Panel Counsel for the Central Government / 1st respondent ; Mr.Vijay Narayan, learned Advocate General assisted by Mr.V.Jayaprakash Narayan, learned Government Pleader appearing for the 2nd respondent and Mr.S.R.Rajagopal, learned Additional Advocate General appearing for the 3rd respondent.

[MSNJ] [RHJ]
07.11.2020

AP

Internet:Yes

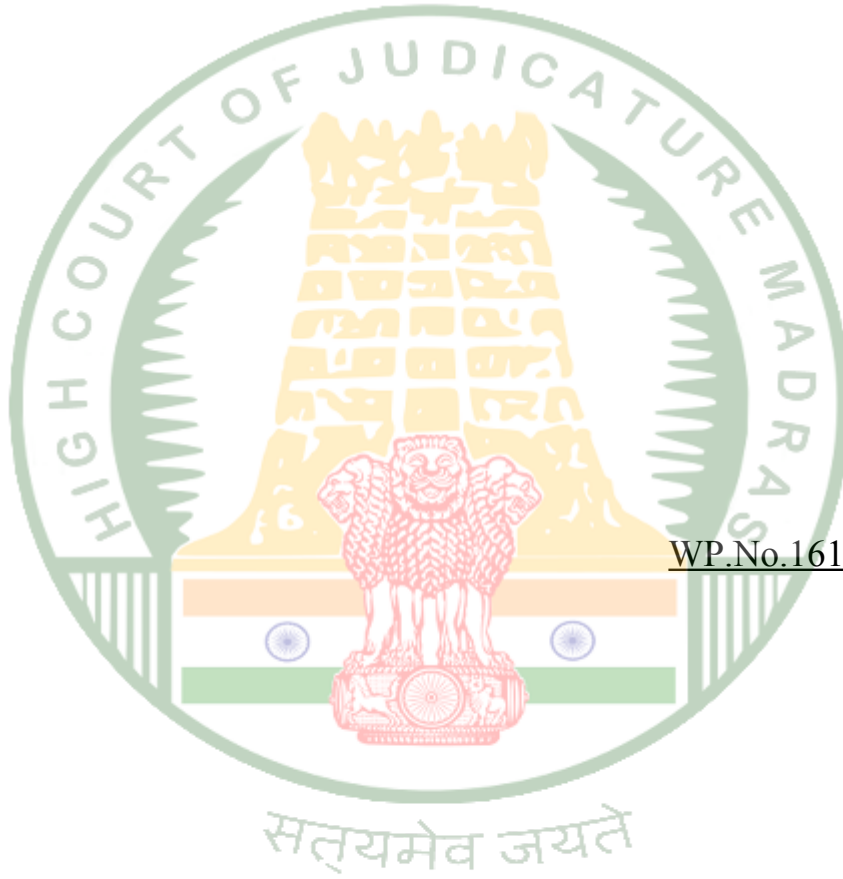
To

- 1.Union Home Secretary
and Chairman, Union of India
National Executive Committee [NEC]
Ministry of Home Affairs,
New Delhi 110 001.
- 2.The Chief Secretary
State of Tamil Nadu
Secretariat, Chennai 600 009.
- 3.The Director General of Police
Mylapore, Chennai 600 004.

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AND
R.HEMALATHA, J.,

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