

MOHOTTIGE AND OTHERS
v.
GUNATILLEKE AND OTHERS

SUPREME COURT
BANDARANAYAKE, J.
FERNANDO, J. AND
DHEERARATNE, J.
S.C. APPLICATIONS
NOS. 23/92, 24/92 AND 25/92.

Fundamental Rights – Freedom of Speech and Expression – Use of Loudspeaker – Right to Criticise Government – Article 14(1) (a) of the Constitution – Sections 56 and 80 of the Police Ordinance.

The office-bearers of the newly formed Homagama Branch of the Democratic People's Organization, namely Dharmadasa Mohottige (Secretary) and D. L. W.

Abeygunaratne (President) sought permission from the 1st respondent Gunatilleke who was the officer-in-charge of the Kahatuduwa Police Station to use a loudspeaker at a meeting (seminar) to be held on 04.01.1992. A permit was issued by the 2nd respondent (Assistant Superintendent of Police M. S. Ranasinghe) allowing the use of a loudspeaker subject to a condition: that the speakers should refrain from criticising the Government, any Organization or any individual. The 1st respondent imposed the further condition that speakers be restricted only to those he named in the permit, namely Lalith Athulathmudali, M. D. Premachandra and Premaratne Gunasekera. A further endorsement on this permit announced that the speeches would be tape-recorded.

Held:

(1) Section 56 of the Police Ordinance dealt with the duty of police officers to use their best endeavours and ability to prevent all crisis, offences and public nuisances, to preserve the peace and to collect and communicate intelligence affecting the public peace. Section 80 of the Police Ordinance empowers a Police Officer of rank not below Assistant Superintendent of Police to authorise the use of a loudspeaker in a public place. The imposition of conditions for such use is permissible. The imposition of conditions whereby the permit is limited to named speakers violates the law. The demand to know the names of speakers beforehand and naming them in the permit as the persons authorised to use the loudspeaker may constitute a violation of the right to free speech guaranteed by Article 14(1) (a) of the Constitution of persons who may otherwise have wished to speak.

D. Mohottige wished to speak but his name was not in the list of speakers. So he regarded himself as not permitted to use the loudspeaker and so he refrained from speaking. This amounted to an infringement of Mohottige's fundamental right to free speech and expression constituting a violation of Article 14(1) (a).

Gunasekera did use the loudspeaker to make a speech. Premachandra was not named in the permit because his correct name had inadvertently not been provided to the police. There was therefore no violation of their rights of free expression.

(2) On the endorsement prohibiting criticism of the Government –

Per Bandaranayake, J : "Freedom of speech and expression includes the right to fairly and within reasonable limits criticise a Government. This has been widely recognised in civilized jurisdictions as a natural right inherent in the status of a

free citizen. The people have a right to be informed of public issues through sources outside and independent of the Government. This freedom however can be restrained where its exercise is intended to or has a tendency to undermine the security of the state or public order, or incite feelings of disaffection or illwill against the State or bring the Government into hatred or ridicule etc”.

Where the effect of the conditions endorsed in the permit is in the nature of a blanket prohibition against saying anything against the Government or its activities, it tends to nullify democratic Government as is understood in this country. Such a condition would necessarily evoke feelings of fear and confusion in the public mind and of those wishing to participate at the seminar though upon the evidence speakers did defy the ban.

The speakers were in fact critical of the Government and that the Police did not stop them or interfere with the proceedings is at best an entreaty made in mitigation of the mischief done. The endorsement made by the 2nd respondent has restrained the 1st petitioner D. Mohottige unlawfully resulting in an infringement of his fundamental right to free speech.

Application for relief for the infringement of the fundamental right of freedom of speech and expression.

Lalith Athulathmudali, P.C., with Ranjan Gooneratne, Dr. Ranjit Fernando, Mahendra Amerasekera, Ranjith Moraweke, T. M. S. Nanayakkara, Nalin Dissanayake, Kalinga Indatissa, D. N. Pathmaperuma, instructed by Madduma Banda Hondakumbura for the Petitioners.

Upawansa Yapa, Deputy Solicitor General with D. Weerasuriya State Counsel, instructed by Sujatha Peiris, Asst. State Attorney for the Respondents.

Cur. adv. vult.

13th November, 1992.

BANDARANAYAKE, J.

The above applications complaining of violation of Fundamental Rights were taken up together with consent of parties as they relate to the same set of facts and incidents and give rise to similar claims for relief. According to the Petitioners after expulsion of Messrs. Lalith Athulathmudali former member of Parliament and Minister and others from the United National Party in 1991 but before formal recognition of the Democratic United National Front as a Political party by the

Commissioner of Elections, certain voluntary Organisations in support of the new party were formed under the name "Democratic People's Organisation". A branch office was formed in Homagama. The Petitioner Dharmadasa Mohottige was appointed the Secretary of this branch whilst D. L. W. Abeygunaratne was appointed President of this branch, Messrs. Athulathmudali and Premaratne Gunasekera were "Advisors" to the organisation.

The said branch organisation at Homagama decided to conduct a Seminar with public participation at Wetara, Piliyandala on 04.01.92 under the topic "Present Political Situation". By letter dated 18.12.91 – annexure P2 – the organisers Messrs. Abeygunaratne and Mohottige sought permission from the officer-in-charge, Kahatuduwa police, the 1st Respondent, to use a loudspeaker at the meeting (seminar) to be held on 04.01.92. A handbill distributed by the organisation for publicity purposes is annexure P1. In his affidavit P4 D. L. W. Abeygunaratne has stated that on 24.12.91. the 1st respondent telephoned him and wanted him to come to the police station regarding the issue of a loudspeaker permit. At the police Station 1st respondent asked for the names of the speakers at the meeting without which information he said he was not ready to recommend the issue of a permit. Therefore it was that he forwarded letter 1R2 dated 25.12.91 giving the names of persons who would speak at the meeting, to wit : (1) Lalith Athulathmudali (2) M. D. Premachandra and (3) Premaratne Gunasekera. A permit dated 02.01.92 was issued by the 2nd respondent Assistant Superintendent of Police for the use of a loudspeaker; it contained the following handwritten conditions which appeared in the body of the permit signed by the 2nd respondent, to

Wit : සැ.යු. එම අවස්ථාවේදී රජය, යම් සංවිධානයක් සහ යම් පුද්ගලයෙකු විවේචනයට ලක්වන අන්දමේ ප්‍රකාශවලින් වැළකී සිටිය යුතුයි.

Which translates as: "that the speakers should refrain from criticising the Government, any organisation or any individual. On the reverse of permit P3 were printed conditions (a) to (h) in Sinhala, Tamil and English. Printed condition (f) was as follows : "The Officer-in-charge of the police station of the area has every right to impose further conditions considered necessary to preserve the public peace". Further, a handwritten endorsement imposed by the 1st respondent

also appeared on the reverse of the permit authorising three named persons to speak, to

wit : "මෙම රැස්වීම සඳහා කථා කිරීමට අවසර ඉල්ලා ඇති පරිදි ලිපි ඇතුළත්වූදලි මහතා, ඇම්. ඩී. ප්‍රේමචන්ද්‍ර, ප්‍රේමරත්න ගුණසේකර යන මහත්වරුන්ට අවසර දී ඇති බැව් කරුණාවෙන් සලකන්න."

A further endorsement made by the 1st respondent stated that the speeches made at the meeting will be tape-recorded.

Petitioner D. Mohottige complains that although he expected to address the public meeting held on 04.01.92 he did not speak as his name was not among the speakers named in the endorsement made by the 1st respondent. This endorsement effectively prevented his participation at the meeting. Consequently his right of free speech and expression guaranteed by Article 14(1) (a) of the Constitution has been violated.

Petitioner G. M. Premachandra's name does not appear among the names of authorised speakers. But the name "M. D. Premachandra" has been included in the list. Petitioner Premachandra has stated in his affidavit that there is no person named "M. D. Premachandra. It is observed that letter 1R2 bears the initials "M" and "D" as against the name 'Premachandra'. The insertion of wrong initials in the permit is therefore not the fault of the police. Counsel confined his submission to saying that the fact of limiting the number of speakers is itself violative of the right of free speech.

Although petitioner G. D. P. Gunasekera had spoken at the meeting he protests he was unable to exercise his right of free speech and expression fully, due he says to the said illegal restriction imposed by the 2nd respondent in the body of permit P3.

By letter dated 13.1.92 Mr. Athulathmudali complained to the Inspector General of Police that restrictions imposed as contained in the permit were in direct violation of the freedom of speech and expression embodied in Article 14 of the Constitution. He requested that the police be instructed to desist from imposing such conditions which affect fundamental rights of citizens.

By letter dated 14.1.92 Ranjani Morawaka, Attorney-at-law has written to the 2nd respondent informing that the conditions set down in P3 violated the fundamental rights of her clients.

By letter dated 27.1.92 the IGP has replied informing that disciplinary action was being taken against the 2nd respondent.

The 2nd respondent by his affidavit dated 11.3.92 has stated that he was aware that permission had been sought to use a loudspeaker in application similar to P2 submitted to the 1st respondent and that the 1st respondent had submitted his report and recommendation 1R3. Being satisfied with the preliminary police investigations done in this regard the 2nd respondent granted permission to use a loudspeaker. The permit was issued in terms of Section 80 of the Police Ordinance which regulated the use of instruments producing sound. (He admits imposing the condition prohibiting criticism of the Government, any organisation or any individual but states that the words "නිති විමර්ශනය" should have appeared after the words "එම සංස්ථාවේ දී" in P3 and have been inadvertently omitted. If those had been included the condition would have read that the speakers should refrain from criticising the Government, any organisation or any individual in an unlawful manner which condition would have been proper and lawful).

The 1st respondent by his affidavit of 11.3.92 takes a different position. He states that no restrictions were placed on the petitioners right of free speech. Persons whose names were included in the permit used the loudspeaker at the meeting and others whose names were not included in the permit also spoke. Messrs Athulathmudali, Gunasekera and Abeygunaratne who all spoke, criticised the Government. The Inspector's notes of the meeting are produced 1R5. Hence, there was no infringement in fact of the rights of the petitioners.

Counsel for the petitioners submitted that,

(1) the imposition of the condition against criticism of the Government etc: on the permit was *per se* a restriction placed on the freedom of speech and expression and consequently an infringement of Art : 14 (1) (a).

(2) that upon the evidence, the 1st respondent had refused to consider issuing a permit if the names of speakers were not given.

(The 1st respondent has not denied this averment.) It was submitted that this requirement of insisting on knowing who was to speak placed a restriction on the freedom of speech as at that time (ie) 24.12.91, it was not possible to say with any certainty the persons, who would speak. Once you are committed to certain persons, other would-be speakers are deprived of the opportunity to address a public meeting.

(3) The Democratic Peoples Organisation which was sponsoring the seminar had put up banners tied to telephone posts across the roads announcing the meeting. Those banners also carried slogans. The 1st respondent had taken down the banners at 5.30 A.M. that day – *vide* his notes – 1R4. When the petitioners sent him a letter of demand he returned the banners. It was submitted, the 1st respondent's conduct was indicative of his desire to obstruct the meeting and prevent the organisers from having a successful meeting.

On behalf of the respondents it was argued that there was in fact no violation or an attempt at violation of a fundamental right. The respondents' position was that upon an application by the President of the branch association, for the use of a loudspeaker at a public meeting by three named speakers, the 1st respondent after due enquiry recommended the issue of a permit to the 2nd respondent who directed the issue of a permit acting under section 80 of the Police Ordinance. It was further submitted, endorsements on a permit do not amount to violation of a right. Some more meaningful action taken must be evident restricting freedom of speech or equality etc. No positive action was taken in any way to interfere with speeches made although the police were present throughout the proceedings. The speakers did in fact criticise the Government – *vide* police notes 1R5. Furthermore Lakshman Abeygunaratne who was not listed as a speaker in P3 made an introductory speech as the person convening the meeting. The conditions in the permit were in any case not implemented. Thus there had been no restraint and as the petitioners had exercised their rights there had in fact been no violation of their fundamental rights.

The 1st respondent has not by his affidavit specifically denied that he telephoned Abeygunaratne and got him down to the police station and demanded to know the names of speakers without which he was not going to recommend the issue of a permit to use a loudspeaker. But the facts are that Abeygunaratne had made two communications to the 1st respondent – the first by letter P2 dated 18.12.91, seeking permission to use a loudspeaker and by letter 1R2 dated 25.12.91. The assertions in the said affidavit P4 taken together with the fact that it was only in the second letter that names of speakers were mentioned and which letter contained nothing else and the non-denial that the 1st respondent made such a demand impels me to the belief that what Abeygunaratne says is true and that the 1st respondent has not made a full and frank disclosure of events that led to names of speakers being submitted to the police. I accordingly hold that the 1st respondent demanded this information before he took any further steps regarding the application for a permit to use a loudspeaker, and that after the issue of the permit he inserted the names of speakers in the permit.

Section 56 of the Police Ordinance Cap. 65 deals with duties of police officers. It would be his duty to use his best endeavours and ability to prevent all crimes, offences and public nuisances to preserve the peace and to collect and communicate intelligence affecting the public peace. Section 80 of the Ordinance provides for a permit to be issued (by any Officer not below the rank of an Assistant Superintendent of Police) authorising the use of a loudspeaker in a public place etc.; it also provides for conditions to be imposed regarding its use. The reverse of P3 carries printed conditions (*supra*). Printed condition (f) permits an officer-in-charge of a police station to impose any conditions necessary to preserve the public peace. The meeting was in fact to be held in a public place.

It would appear to me that the said printed condition (f) is nothing more than a repetition of the powers vested in a police officer in terms of the substantive law as found in S56 (a), (b) and (e). I accordingly hold that the 1st respondent had a legal right to impose condition (f) aforesaid. However whether the 1st respondent could have made the endorsements he has made is another question. There is no challenge to his endorsements that speeches made will

be tape-recorded. But the petitioners challenge his right to list and name speakers. The petitioners complain that this amounts to the imposition of a restriction as to who may use the loudspeaker. The 1st respondent seeks to explain this away by stating it was for the applicants to note that in accordance with the permission sought, the named persons have been permitted to use a loudspeaker at the meeting. Here the 1st respondent is persisting in saying that names were signified only because the applicant indicated that those persons were to be the speakers. In fact the endorsement is couched in language suggesting that the police are merely responding to a specific request. I have earlier in this judgment held that was not so but that names were submitted in response to a specific police request.

The nature of the document on which names appear in this case is also highly relevant to the question whether a condition was imposed by the insertion of particular names. The document under review is a permit for the use of a loudspeaker in that speeches may be broadcast to be heard by all attending the meeting. When a particular name is inserted in such a permit, then taken in its ordinary natural sense it means that permission is limited to those persons named. And this is being done with an eye on the preservation of public order. In my view this amounts to nothing more or less than the imposition of a condition as to the use of a loudspeaker. In the instant case it has been done by an Inspector of Police required by law to safeguard the public peace and with an awareness of his powers and duties both under Section 56 aforesaid and the printed conditions on the permit which I presume he knew both as a policeman and by his conduct enumerated above. In the circumstances I hold that the endorsement made by the 1st respondent on the reverse of P3 permitting three named speakers the use of a loudspeaker was a deliberate imposition of a condition restricting the speakers at the meeting to those whose names appeared on P3 and none other. Such a restriction does not have the sanction of law. Specific names inserted by the police on a permit would naturally convey the message that those whose names are not included are excluded from using a loudspeaker. This in my view is an unfair condition besides being without lawful authority. No convenor of a public meeting can say weeks in advance all who may

speak. Demanding disclosure of names beforehand can have the effect of silencing people who may otherwise wish to contribute to proceedings by participating. Both the demand to know the names of speakers and naming them in a permit may thus constitute a violation of the right to free speech guaranteed by Article 14 (1) (a) of the Constitution of persons who may otherwise have wished to speak.

We find that petitioner D. Mohottige says he intended to address the seminar but regarded himself as not permitted to use the loudspeaker and so he refrained from speaking. The endorsement made by the 1st respondent thus assumes an unwarranted intrusion on Mohottige's freedom of speech and expression. The conduct of the 1st respondent in this regard was obviously deliberate and has interfered with Mohottige's fundamental right to free speech and expression constituting a violation of Article 14 (1) (a) aforesaid.

As far as the other two petitioners Premachandra and Gunasekera are concerned, I am unable to hold there has been an infringement of the freedom of speech and expression by reason of the endorsement made by the 1st respondent on the reverse of P3. Gunasekera in fact spoke and Premachandra was faulted by a mistake of the convenors.

I now turn to the endorsement made by the 2nd respondent prohibiting criticism of the Government. Freedom of speech and expression includes the right to fairly and within reasonable limits criticise a Government. This has been widely recognised in civilized jurisdictions as a natural right inherent in the status of a free citizen. The people have a right to be informed of public issues through sources outside and independent of the Government. This freedom however can be restrained where its exercise is intended to or has a tendency to undermine the security of the state or public order, or incite feelings of disaffection or illwill against the State, or bring the Government into hatred or ridicule etc. But the effect of the condition contained in P3 against criticism of the Government is in the nature of a blanket prohibition against saying anything against the Government or its activities. It tends to nullify democratic Government as is understood in this country. This the 2nd respondent could not have done. Learned Counsel for the State acknowledges that the imposition of this condition cannot be supported. The IGP's letter dated 27.1.92 to Athulathmudali stating that disciplinary action was being taken against the 2nd respondent in this regard also suggests

that the head of the police department acknowledges that the aforesaid endorsement made by the 2nd respondent was unwarranted and unlawful. To my mind such a condition would necessarily evoke feelings of fear and confusion in the public mind and of those wishing to speak at the seminar though upon the evidence speakers did defy the ban. It is now too late to say that the endorsement made by the 2nd Respondent was due to carelessness and not intended as was submitted on his behalf but that all that was intended was to prevent unlawful criticism. Such could be easier said with hindsight. It is more probable upon the evidence that the 2nd respondent was aware of the import of his endorsement which was deliberately done for some reason which is not clear. That speakers were in fact critical of the Government and that the police did not stop them or interfere with the proceedings is at best an entreaty made in mitigation of the mischief done.

Upon the evidence this endorsement made by the 2nd respondent has restrained the 1st Petitioner D. Mohottige unlawfully. There has therefore been an infringement of his fundamental right to free speech; the 2nd petitioner cannot be heard to complain for reasons already given; the 3rd petitioner has exercised his rights as evidenced by notes 1R5 which have not been challenged.

There is insufficient evidence placed before the Court of violation of the equality rights of the petitioners who are therefore not entitled to a declaration upon such allegation.

As compensation for the infringement of Fundamental Rights guaranteed by Article 14(1) (a) the State will pay a sum of Rs. 7500/- to petitioner Dharmadasa Mohottige for violation of his freedom of speech consequent to the unlawful endorsement made by the 1st respondent on P3 and the unlawful endorsement made by the 2nd respondent also on P3. The State will pay Rs. 2000/- as costs to the 1st petitioner D. Mohottige. No costs in respect of applications of 2nd and 3rd petitioners.

FERNANDO, J. – I agree.

DHEERARATNE, J. – I agree.

Cases considered:

1. *Joseph Perera v. Attorney General*. SC. 107-109/86; SC Minutes of 25.5.87.
2. *Ratnasara Thero v. Udagampola* 1983 1 SLR 461.
3. *Visvalingam v. Liyanage* 1984 2 SLR.
4. *Austin v. Keele* (1971) 402 US 415.
5. *Terminello v. Chicago* (1949) 337. US 1.
6. *Palco v. Connecticut* (1937) 302. US 319.
7. *Francis v. Chief of Police* (1973) 2 AER 251. (PC).
8. *Grisswold v. Connecticut* (1965) 381. US 479.
9. *Thornehill v. State of Alabama* 310 US 88.
10. *West Virginia State Board v. Barnette* (1943) 319 US 624.

Application allowed.

Compensation ordered.
