

ABEYRATNE
v.
GUNATILAKE AND OTHERS

SUPREME COURT.
DHEERARATNE, J.
RAMANATHAN, J. AND
WIJETUNGE, J.
S.C. APPLICATION NO. 270/92.
SEPTEMBER 18 AND 24, 1992.

Fundamental Rights – Freedom of speech – Loudspeaker permit – Constitution, Article 14(1) (a) and (b).

By denying the petitioner a permit for loudspeakers to enable him to hold a public meeting the petitioner's fundamental right of the freedom of speech enshrined in Article 14(1) (a) and (b) of the Constitution is violated.

APPLICATION for relief for violation of the fundamental right of freedom of speech and expression.

Lalith Athulathmudali P.C. with Ranjan Gunaratne, Dr. Ranjith Fernando, Mahen Amarasekera, Ranjani Morawaka, T. M. S. Nanayakkara, Gamini Peiris and J. Fernando for petitioner.

D. P. Kumarasinghe, Deputy Solicitor-General for respondent

Cur. adv. vult.

October 26, 1992.

DHEERARATNE. J.

Petitioner H. B. Abeyratne complained to this court that his fundamental right of the freedom of speech was violated by the

actions of the 1st respondent, Superintendent of Police Mahawa, and the 2nd respondent O.I.C. Police Station Polpithigama, on account of their failure to issue him a loudspeaker permit to hold a public meeting in support of the DUNF, a recognised political party of which he claimed to be the secretary and organizer for the Kurunegala District.

I need hardly underscore the importance of the use of amplifying mechanical devices both in advertising a public meeting and at a public meeting itself. The guarantee of freedom of speech and expression and freedom of peaceful assembly contained in Article 14(1) (a) and (b) of the Constitution could be rendered meaningless if permission for the use of amplifying mechanical devices in furtherance of free speech is unreasonably withheld. It is not disputed that the freedoms contained in Article 14(1) (a) and (b) may be lawfully restricted in the interests of public order.

The petitioner applied for a permit (obviously in terms of section 80 of the Police Ordinance) by letter dated 10.4.92 a copy of which was produced marked P1, to use loudspeakers between 1 p.m. and 8 p.m. on 9th May 1992 at the venue of the meeting and between 6th May and 9th May 1992 on vehicles to be engaged for the purpose of advertising the meeting. P1 was written on a letterhead of the Democratic United National Employees' Union which union is apparently the industrial relations organ of the DUNF. This letter P1 was addressed to the 1st respondent through the 2nd. Since the petitioner received no response to his application, he sent a written reminder P3 dated 24.4.92 under registered cover to the 1st respondent. This was followed by another written reminder P4 dated 27.4.92. The petitioner thereafter received letter P5 dated 6.5.92 by ordinary post from the 1st respondent to say that since an application had been received by him for a permit in connection with another political meeting to be held on the same day viz., 9.5.92, the petitioner's request for a permit was refused as there was likely to be a breach of the peace. The petitioner states that he received this letter on 8.5.92. Thereafter by letter P6 dated 12.5.92 the petitioner made a complaint to the Deputy Inspector-General of Police North Western Province against the 1st respondent alleging abuse of power. The petitioner in this letter mentioned about his application P1 for the loudspeaker permit and the reminders P3 and P4 sent to the 1st respondent. The petitioner specifically mentioned the fact that he received P5 by ordinary post on 8.5.92, the day before the scheduled meeting and that had he been informed by the 1st respondent in time

that there were moves afoot by some other party to hold another political meeting on the same day and in close proximity to the venue of his meeting, he would have sought permission to hold the meeting of the DUNF at some other venue in the same electorate.

The 1st respondent in his affidavit stated that the petitioner's application was received at the police station Polpithigama on 14.4.92 and on the same day a similar application was received from D. M. Thilakaratne, Provincial Council member North Western Province in connection with a meeting to be held on the same day the petitioner had planned to hold his. A photo copy of Thilakaratne's application and the envelope in which that application was said to have arrived (in one document) was produced marked X. It was further averred by the 1st respondent that he directed the 2nd respondent to summon the petitioner and explain matters to him; that the petitioner had come to the police station and insisted on holding the meeting on 9.5.92 at the pre-arranged venue; that Thilakaratne too refused to change the venue or the date of his meeting; that he telephoned the petitioner's residence which is situated almost opposite his office and left a message to the petitioner to see him but the petitioner never responded; and that subsequently he wrote to Thilakaratne letter X2 and to the petitioner letter P5 both dated 6.5.92 refusing permission for loudspeaker permits. The petitioner denies that he was either summoned to the police station or informed in any manner until he received P5. There was an application made by Thilakaratne for a loudspeaker permit to hold a meeting on the same day.

It does not appear to have commended to the police sense of the 1st respondent to inquire from his subordinate the 2nd respondent as to which of the applications X or P1, allegedly received on the same day, was first opened or read by the 2nd respondent, for, one cannot imagine any person performing the feat of opening or reading two letters simultaneously. Perhaps to the mind of the 1st respondent a solution founded on such a commonsense approach sounded too simplistic for the grave problem he was faced with.

The 2nd respondent in his affidavit sought to corroborate what was stated by the 1st respondent. He stated "I summoned both parties and explained matters to them and requested them to change either the date or the venue of the meeting". When and how were they summoned? Did they appear at the police station at the same time or separately? We are starved of those details necessary for us to test the veracity of the responden's version.

On the reverse of X (Thilakaratne's application) the 2nd respondent had made a minute purported to be dated 4.5.92, a literal translation of which reads as follows:-

S. P. Mahawa

(1) For the same day, permission has been sought for the use of loudspeakers for a propaganda rally of the Democratic United National Employees Union (sic).

(2) Having informed both parties regarding this matter, they were advised to change the day of the meeting to a subsequent day. Both parties expressed their reluctance.

(3) If two meetings of these parties are held on the same place there is likely to be a grave breach of the peace.

Therefore I am forwarding the applications without giving my approval.

Below this minute appears a seal of the office of the Superintendent of Police Mahawa bearing the date 6.5.92. There is no reference in the minute as to when the petitioner met the 2nd respondent to express his refusal to change the day of the meeting.

After the matter was argued before us by learned counsel for the petitioner on 19.9.92 and the pith of the case was felt, a further affidavit of the 2nd respondent with several additional documents was filed on 22.9.92 before the 2nd day of hearing. We decided to accept that affidavit and the documents. One such document was an affidavit dated 19.9.92 from one obliging Thilakaratne to say that on 10.4.92 he did apply for a permit for the use of loudspeakers for a meeting which he proposed to hold on 9.5.92. This affidavit is significantly silent on the question of his being summoned to the police by the 2nd respondent to persuade him to change the venue or the date of the proposed meeting. Probably had he deposed to that fact he would have to say further when that was and whether the petitioner too was present at the police station at the same time or not. Thilakaratne does not appear to have been peeved over the action of the 1st and 2nd respondents in refusing his application. Another document filed on 22.9.92 was a letter X22 from one J. M. Dhanapala dated 11.4.92 giving permission to Thilakaratne to hold a meeting on his land on 9.5.92. This was the first time that the name of J. M. Dhanapala transpired in the course of the proceedings. X22 contains no official seal, a contemporaneous memorandum or a folio

number so as to indicate that it has come from an official file. One wonders why if Thilakaratne forwarded his application to the 1st respondent through the 2nd on 10.4.92 along with Dhanapala's letter as stated in his affidavit, why Dhanapala's letter should carry the date 11.4.92. Application X does mention that the proposed meeting "will be held at the premises mentioned in the annexed letter", but it is significant that it makes no reference to either the name of the land or its owner. If application X had been posted on 10.4.92 as alleged on behalf of the respondents along with Dhanapala's letter, it is strange that Dhanapala's letter was dated 11.4.92.

In our anxiety to ascertain whether an application was received at the Polpithigama police station from Thilakaratne, as stated, we called for the original envelope in which the letter X was supposed to have arrived. The post mark of the Polpithigama post office on the envelope had the figures 10 and 92 representing the date and the year respectively with absolute clarity. The Arabic figure 4 representing the month between figures 10 and 92, to our naked eye seemed shadowy, giving us the impression that it was performing some sort of an Egyptian belly dance. We informed learned counsel that we did not wish to probe deeper into the distorted form the Arabic 4 had taken, purely to avoid procrastination of these proceedings and that we would consider that matter as a neutral factor, proving or disproving nothing.

I find it difficult to understand the conduct of the 1st respondent if his position is true, in not replying the petitioner's earnest and eager reminders regarding his application. The 1st respondent should have known that the petitioner as an organizer of a public meeting had several functions to perform towards its success; getting posters printed, having them displayed, engaging vehicles for advertising through loudspeakers, organizing public speakers and the like. To do all these the petitioner was no doubt anxiously waiting for the green light to come from the 1st respondent giving him reasonable time well before the day of the meeting. Why did the 1st respondent not have the courtesy to write to the petitioner promptly to say that there was a problem created by a rival application? Or if the petitioner was in fact summoned to the police station and matters explained to him, why did he not write to say that the petitioner was taking an unreasonable stand? In reply to our query on this unusual conduct on the part of the 1st respondent from the learned Deputy Solicitor-General, we

were informed that the 1st respondent being a busy officer would have forgotten to reply those letters and that he would have least expected this matter to end up in a court of law. I may mention here that in deciding the existence of any fact which a court thinks likely to have happened having regard to human conduct, it has necessarily to take the standard of a reasonable prudent man and not that of an absent minded professor.

Along with the petition, the petitioner submitted affidavit P10 from a trader of Polpithigama called Dassanayake to say that on 4.5.92 a police officer from the Polpithigama police station came to his shop and having inquired whether a proposed meeting to be held by the DUNF on 9.5.92 would cause any obstruction to his business, took down a statement from him. He further added in that affidavit that nothing was asked from him regarding any other political meeting. Along with the affidavit of the 1st respondent, affidavit X10 from the selfsame Dassanayake was produced. In that affidavit Dassanayake states that the police came to inquire from him on 25.4.92 about a political meeting to be held on the land of D. M. Gunaratne Banda. It may be noted that Gunaratne Banda is the person who had given a letter of consent to the petitioner to hold the meeting on his land. In X10 Dassanayake further stated that he told the police that he thought holding such a meeting would cause inconvenience to his business. The 1st respondent filed another affidavit X11 from one Jayatillake Banda also a trader from Polpithigama. According to Jayatillake Banda the 2nd respondent met him on 25.4.92 and inquired from him whether a political meeting to be held on the land belonging to Gunaratne Banda would cause any obstruction to his business to which he answered in the affirmative. Notes of the 2nd respondent made on 25.4.92 pasted in the MOIB was produced marked X19. Those notes are prefaced as follows:-

25.4.92, 1315 hours at Polpithigama. Having inspected the venue of the proposed propaganda meeting of the Democratic United Front (sic) to be held at Polpithigama on 9.5.92, I came here to inquire from the persons in the neighbourhood about this matter.

Thereafter the 2nd respondent had proceeded to record the statements of Jayatillake Banda and Dassanayake both of whom have stated that the holding of such a meeting would cause obstruction to their businesses.

Two significant facts emerge from what is immediately related above. Firstly, if as the 1st and 2nd respondents state, two

applications for loudspeaker permits were received on the same day and the problem of choosing one did not arise, it was hardly necessary for the 1st respondent to embark on an inquiry on 25.4.92 as to whether the proposed meeting of the DUNF would cause inconvenience to the neighbourhood. Secondly, no similar inquiries have been made regarding the proposed meeting organized by Thilakaratne. Both these facts demonstrate the probability of Thilakaratne's application not being there with the police as at 25.4.92.

After the arguments were concluded, I informed the learned Deputy Solicitor-General that we would like to look at the original application made by the petitioner. This was to enable us to examine entries and other official minutes or seals which may appear on that application and if they did so appear, to compare them with what appears on the application of Thilakaratne. I have been informed that this all important document which is the foundation of the petitioner's complaint "cannot be traced, as the same has been lost or misplaced" according to the 1st respondent's letter dated 4.10.92 addressed to the Deputy Solicitor-General. In contrast, it strikes me to observe, how letter X22 written by Dhanapala found its easy passage to our hands safely from Mahawa, escaping all such official misfortunes; it has even been spared of the burden of carrying an official seal of the police.

Far from respecting, securing and advancing fundamental rights as mandated by the Constitution, it appears to me that the 1st and 2nd respondents have conducted themselves in callous disregard of those sacred rights. Having taken the totality of the evidence coming from the affidavits and the documents I am inclined to the view that the alleged application of Thilakaratne was a red herring drawn jointly by the 1st and 2nd respondents across the path of justice.

By denying the petitioner a permit for loudspeakers to enable him to hold a public meeting, I am of the view that the 1st and 2nd respondents have violated the petitioner's fundamental right of the freedom of speech enshrined in Article 14(1) (a) and (b) of the Constitution. I direct the 1st and 2nd respondents to pay the petitioner a sum of Rs. 2500 each as compensation and a further sum of Rs. 1000 each as costs of the case.

RAMANATHAN, J. – I agree.

WIJETUNGA, J. – I agree.

Relief granted.