

TAMPOE

v

**RUDRA RAJASINGHAM, INSPECTOR-GENERAL OF POLICE, AND
OTHERS**

SUPREME COURT.

COLIN-THOME' J., RANASINGHE, J. AND RODRIGO, J

S.C APPLICATION No 5/84

MARCH 2, 1984.

Article 126 of the Constitution—Infringement of the fundamental rights of freedom of association and movement—Article 14(1)(b) and (h) and Article 15(7) and (8) of the Constitution—Meaning of procession—Regulation 12 of the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 7 of 1983.

The petitioner as General Secretary of the Ceylon Mercantile Union (C.M.U.) forwarded a letter to the President inviting him and the Prime Minister to the Galle Face Green at any convenient time between 9.00 a.m. and 1.00 p.m. on 15th December, 1983, to meet worker victims of the July 1983 attacks on workplaces and explain to them what the Government was prepared to do for them. Among the invitees were the Inspector-General of Police and the Heads of the Armed Forces.

The petitioner was informed that the procession and proposed meeting at Galle Face Green would not be permitted in the interests of security and because a breach of the peace was feared.

The petitioner complains that on 15.12.1983 after an initial prevention by the Police of entry at the head of 22nd Lane, which was later relaxed the members of the C.M.U. were permitted to assemble at their Headquarters at 22nd Lane. About 1,135 members assembled at the Headquarters and the petitioner addressed them. The Police informed the petitioner that no procession would be permitted nor the proposed meeting at Galle Face Green. The petitioner and the assembled members of his Union attempted to proceed to Galle Face Green in small batches of five separated by a few feet from one another but were prevented.

In their affidavits filed by way of defence the I.G.P. and the other Police Officers denied that the members of the C.M.U. were at any time prevented from entering their own Headquarters or walking up and down along 22nd Lane. They admitted prohibiting the meeting at Galle Face Green and stated there was an attempt to go in procession to the

Galle Face Green by the members of the C.M.U. carrying banners and shouting slogans. Photographs were produced in support. A breach of the peace was feared. The Emergency (Miscellaneous Provisions and Powers) Regulations, No. 7 of 1983 (Reg. - 12) would have been contravened if there was a public procession as no permit had been issued and moreover the Galle Face Green itself was vested in the Army Commander.

Held—

(1) A procession is the action of a body of persons going or marching along in orderly succession. A public procession means a procession in a public place which includes any highway. 22nd Lane is a highway and therefore a public place. The members of the union tried to proceed starting from 22nd Lane to the Galle Face Green in groups of five separated by a few feet. This too was the action of a body of persons going or marching along in orderly succession in a highway and therefore a public procession. This contravened Regulation 12 of the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 7 of 1983, as no permit had been obtained.

(2) The claim that the petitioner and members of the union were prevented from entering or leaving 22nd Lane is not borne out by the photographs. The Police scrupulously adhered to the law in preventing a public procession.

APPLICATION under Article 126 of the Constitution for breach of fundamental rights.

Nimal Senanayake, S. A., with Saliya Mathew, L. M. Samarasinghe, A. D. Talspha, Thilak Balasuriya and A. B. Dissanayake for petitioner.

S. Aziz, D. S. G., with Upali Jayatileke, S. C., and T. G. Gooneratne, S. C., for respondents.

Cur. adv. vult.

March 13, 1984.

COLIN-THOME', J.

This is an application by the petitioner under Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka for a declaration that the petitioner's fundamental rights under Articles 12(1), (13) and 14(1)(b) of the Constitution had been violated and to grant the petitioner such relief in respect of the aforesaid violation.

The petitioner is the General Secretary of the Ceylon Mercantile Union which has a membership of over 30,000. On 9.12.83 he forwarded a letter to His Excellency the President inviting him as well as the Prime Minister and Cabinet Ministers "To Meet Worker Victims (of the Ceylon Mercantile Union) of July 1983 attacks on Workplaces". In the letter to the President the petitioner stated that 1,730 members of the C.M.U. were out of work as a result of damage or destruction of

industrial establishments in July 1983. Only 317 of the affected workers had been provided with work. The rest were without work and had not received any financial assistance from the Government. The invitees were asked to meet the members of the C.M.U. on Thursday, 15th December, 1983, at any convenient time between 9 a.m. and 1 p.m. at Galle Face Green, Colombo, near the Galle Face Hotel end, to explain to members of the C. M. U. what the Government was prepared to do for those members of the C. M. U. who were affected by the damage and destruction caused in July 1983.

Invitations to attend this meeting on Galle Face Green were also extended by the petitioner, on behalf of the union, to the Leader of the Opposition, members of the Opposition in Parliament, the National Security Council, Inspector-General of Police, heads of the Armed Services, Commissioner-General of Essential Services and the Chairman of Repia.

The I.G.P. by his letter dated 14th December, 1983, replying to the invitation, informed the petitioner that "no meeting nor assembly of persons on Galle Face Green as sought by you on the 15th December, 1983, will be permitted."

The petitioner in his petition and affidavit (paragraph 13) has stated that two police officers called at his residence on 14.12.83 and informed his wife that the Union would not be allowed to go in procession to Galle Face Green. His wife, at the insistence of the police officers, made a statement that the members of the C.M.U. had no intention of going in procession to Galle Face Green.

According to the affidavit of Tilak Edirisinghe, filed by the petitioner, on 15.12.83 he came to Kollupitiya at 6.30 a.m. to go to the C.M.U. Headquarters which was located about half way down 22nd Lane, Kollupitiya. He was stopped by armed police at the entrance to 22nd Lane from the Galle Road and was told by the Police that the C.M.U. office was closed and that no one will be allowed to go to the building but later C.M.U. members spoke to the police and the police allowed him and others to go to the C.M.U. building. At about 10.30 a.m. when the members of the C.M.U. and others wanted to go to Galle Face Green they were prevented from doing so by Mr. Gaffoor and other police officers.

The petitioner also averred in his affidavit that he too as well as other members of the C.M.U. were prevented by the police from entering 22nd Lane stating that the Union Office was closed, but after he

informed the police that the office was open that day both he and other members were permitted to enter 22nd Lane and to go to their headquarters. Learned Counsel for the petitioner stated from the Bar that the C.M.U. office generally opened at 8.30 a.m. 1,135 members entered the headquarters and the petitioner addressed them. The petitioner stated that shortly before that Mr. Gaffoor, Superintendent of Police (3rd respondent), informed him that the members of the C.M.U. would not be allowed to proceed to Galle Face Green. However, the members of the C.M.U. present at the headquarters unanimously decided they would attend Galle Face Green that morning to discuss their grievances with any persons who were present there on their invitation. The members decided that they would not go in any procession and that "they would go in small groups" and speak to any of the Union's invitees who might be present on Galle Face Green.

The petitioner stated that at both ends of 22nd Lane were posted police officers armed with tear gas, guns and other weapons; women police officers had wicker shields and batons. The police officers prevented egress from 22nd Lane and prevented the members who were on their way to Galle Face Green from proceeding. At this stage, the petitioner stated that "22nd Lane was completely blocked with members" . . . "Mr. Gaffoor told me who was leading the C.M.U. members that they could not be allowed to proceed." He told Mr. Gaffoor that most of the workers had assembled with the intention of meeting the invitees in a peaceful and legitimate manner at Galle Face Green. Mr. Gaffoor told him that he had to prevent them proceeding as he apprehended a breach of the peace not by the C.M.U. members but by others. Although the petitioner told Mr. Gaffoor that he and 4 others were not going in any procession but intended to walk to Galle Face Green they were prevented from doing so.

The petitioner pleaded that the action of the 3rd and 4th respondents and other police officers who prevented and obstructed the C.M.U. members from entering 22nd Lane or attending the C.M.U. headquarters and in cordoning off 22nd Lane at both ends and preventing the members of the Union from leaving 22nd Lane was a violation of the fundamental right of freedom of association, freedom of movement of the petitioner and members of the C.M.U.

He further pleaded that as General Secretary of the Union he was entitled to act in furtherance of the objects of the Union and to meet members of the Union involved in the Union's programme of action,

and acts resulting in obstruction to union members meeting him and in obstructing him from implementing the decision of the members were a derogation of his fundamental rights guaranteed under Articles 14 (1) (b) and 13 of the Constitution.

The petitioner also pleaded that the order of the Inspector-General of Police referred to by Mr. Gaffoor and the information conveyed by the Inspector-General of Police in his letter dated 14.12.83 that he would not be allowed to proceed to Galle Face Green and the action of the 3rd and 4th respondents and other police officers in preventing him and other members from proceeding to Galle Face Green were in violation of the fundamental rights referred to in Articles 14 (1) (b) and 13 and in violation by the police officers of their duty to afford him equal protection of the law guaranteed by Article 12 (1) of the Constitution and were acts done in pursuance of executive and/or administrative actions.

Mr. Rudra Rajasingham, Inspector-General of Police (1st Respondent), stated in his affidavit that he had received information that the union members who were affected by the ethnic disturbances together with others were planning to meet on Galle Face Green on 15th December, 1983. He and his senior officers were of the view that a threat to security and public order was posed by this assembling of persons for this meeting. On information received he was satisfied that there was every likelihood of serious breaches of the peace if the meeting was allowed. Another consideration was that neither the Union nor the organisers of the procession sought or obtained the permission of the police as required by law to go out in procession nor was the permission of the Secretary, Ministry of Defence, or higher authority sought or obtained for the use of Galle Face Green for organising a meeting or assembly.

Galle Face Green which was Government land was always in the charge of the Secretary, Ministry of Defence, who exercised his control through the Army. On 7th May, 1980, the land comprising the entirety of the Green was formally handed over by the Government Agent, Colombo, with the approval of the Land Commissioner, to the Army Commander. Plan No. 5433 was prepared by the Surveyor-General's Department depicting the entirety of Galle Face Green which stretches from the land immediately in front of the Galle Face Hotel to the other end of the Green. This land was now in the charge of the Army. Use of the Green for recreational purposes was

allowed, but the public can be excluded on any given occasion when the use of the Green was required by the army or permitted by the Army for use by others. He produced, marked 1 R 1, a certified copy of the letter issued by the District Land Officer of the Kachcheri dated 27th May, 1981, which stated that the land depicted in Plan No. 5433 was handed over to the Army Commander, as from that date by the Government Agent, Colombo, with the approval of the Land Commissioner.

It was confirmed at a security meeting which was attended by the Secretary, Ministry of Defence, the Army Commander, the Inspector-General of Police and others that no permission had been sought or given for the use of Galle Face Green for the assembly of the meeting or members of the union on 15th December, 1983. At this security meeting the proposed meeting on Galle Face Green was discussed and in view of the grave risk to public order by permitting such a meeting or procession a decision was taken that all steps should be taken to avert this risk, including the stopping of the procession.

Thereafter, the Inspector-General of Police issued instructions to the D.I.G and the Commissioner of Police, Colombo, to take steps to prevent the assembling of persons at this meeting.

Mr. Neil Weerasinghe, Commissioner of Police (2nd Respondent), stated in his affidavit that on receiving information on 12.12.83 that the C.M.U. was organising a meeting and/or assembly of their members affected by the recent ethnic disturbances he caused inquiries to be made regarding this. In the course of investigations it transpired that the meeting was to be held on 15.12.83 at the Galle Face Green which was to be preceded by a procession of the members of the C.M.U. and others from their headquarters to Galle Face Green. Information also reached him that some of the participants were prepared to disobey the orders of the Police and provoke the police to retaliate by using force and court arrest. He immediately conveyed this information to the Inspector-General of Police and considered the security aspects arising from the intended meeting which in his view was prejudicial to the maintenance of public order and peace.

Some of the matters which he considered in reaching this conclusion were, that the objective of the meeting and the procession which was to precede it was to canvass a matter relating to the recent

ethnic disturbances ; that both were organised by a Trade Union with a very large membership ; that there had been instances in the past where similar processions and assemblies had gone out of control and caused serious and widespread damage to property and injury to person ; that there was hardly any time to verify and take steps to ensure that the procession and meeting did not pose any risk to security and public order ; that for the same reason the safety of the members of the Union and other participants could not be ensured, and that no permission had been sought by the Union, nor given by the Secretary, Ministry of Defence, or Army Commander for the use of Galle Face Green.

After meeting the Inspector-General of Police he gave directions to the O.I.C. Police Station, Colpetty, the 4th respondent, and to the Senior Superintendent of Police, the 3rd respondent, as stated in their affidavits.

Mr. A. C. A. Gaffoor, Superintendent of Police (3rd Respondent), denied in his affidavit that the wife of the petitioner had stated that the members of the Union had no intention of going in procession to Galle Face Green. He produced a copy of her statement to Inspector Paranathala, 4th respondent, marked 3 R1. He specifically denied that there was prohibition at any time on persons seeking to enter the premises of the Union. The only restriction placed was on the C.M.U. procession being taken to Galle Face Green. There was no other interference with or prevention of, the movements of the members of the Union who assembled on 15th December.

Mr. Gaffoor informed the petitioner that it would not be possible to allow the members of the Union who had gathered in very large numbers to proceed to Galle Face Green in procession. He denied that there was any decision by the Union not to go in procession. On the contrary it was quite clear that the large crowd which had gathered were getting ready to go as one body and had in fact lined up for that purpose and were carrying large banners and shouting slogans. The photographs he produced 3R3I, 3R3L, 3R3M, 3R3N and 3R3O revealed that 22nd Lane at a certain stage was throughout its length and breadth filled to capacity with union members.

At a certain stage the members were in formation with the petitioner at the head almost abutting Galle Road. He informed the petitioner and some members of the procession that a meeting or assembly on Galle Face Green had not been permitted and also that proceeding to Galle

Face Green in this manner was a breach of the Emergency Regulations. He informed the petitioner and, at the petitioner's request, some members of the Union that if the procession and meeting were permitted there was a strong likelihood of a breach of the peace. The petitioner and the members of the Union accepted this situation and the petitioner informed him that since he could not take the members to Galle Face Green he wished to give them lunch and thereafter request them to leave. For this purpose some union members were sent out to bring lunch.

Mr. Gaffoor stated that from about 10 a.m. about 1800 members had collected at the union headquarters by proceeding along 22nd Lane on foot as well as in vehicles. This Lane was not cordoned off from any end at anytime of the day nor was the entry or exit of the C.M.U. members or other members of the public prevented. The only restriction which was placed was to prevent the large gathering of members from proceeding to Galle Face Green in a procession.

Inspector J. Paranathala stated in his affidavit that with a view to preventing a procession to Galle Face Green he deployed police squads at both ends of 22nd Lane. Instructions were given to these squads that on no account was any procession of the union members or others to be allowed to proceed from the headquarters to Galle Face Green. Strict instructions were given that the movement of the members of the public or of the Union into and out of 22nd Lane otherwise than in procession was not to be interfered with or obstructed in any manner. He was present at the scene throughout that day and he was satisfied that those instructions were complied with by his officers.

The affidavit of witness W. K. Wimalaratne, PS 7033, was filed. He was on duty at 22nd Lane on the 15th from 6.45 am. He saw members of the Union assembling at their headquarters. At about 10.30 a.m. he heard the petitioner address those assembled in the building. Thereafter the petitioner went up to the 3rd respondent on Galle Road and, after speaking to the 3rd respondent, returned to the headquarters and addressed the members of the Union.

In the course of his address the petitioner told the C.M.U. members "Now that we are getting ready to go to Galle Face we have been asked to bear the police assaults without running and fall down wherever we are".

After addressing the large crowd present at this time the petitioner started to lead the large crowd (about 1,500–2,000 present) towards Galle Road. The petitioner again spoke to the 3rd respondent and thereafter he requested the 3rd respondent to speak to the members. There was cordiality between the members of the Union and the police force. He heard the petitioner tell the crowd that policemen too have their grievances and that they should fight for their rights. The petitioner further stated that the members will remain till around 1 p.m. and disperse after lunch. Thereafter, some persons brought lunch packets for the members and the petitioner addressed the crowd once more and concluded by thanking the police that the police had discharged their duties and hence there was no enmity between the Union and the police.

The petitioner in his counter-affidavit averred that no organised or public meeting was planned and no procession was intended by the members of the C.M.U. His wife had informed the 4th respondent that no meetings, processions or picketing was intended. He annexed her affidavit marked 'YI'

He repeated his earlier allegations of police obstruction and submitted that some of the photographs produced by the 3rd respondent proved this contention. He repeated that he informed the 3rd respondent of the decision of the union members to proceed to Galle Face Green in small groups of five well separated from other groups. He drew attention to photograph 3R3E in support of this.

He stated that the photograph 3R3L showed him addressing the union members after 1.00 p.m. stating that they had now to abandon their plan to meet the invitees and should return to headquarters for lunch.

He stated that P. S. Wimalaratne omitted to mention in his affidavit that part of his speech to the members of the Union that they will move in groups of five separated at intervals.

Learned Counsel for the petitioner informed Court that he was not pressing the submission that the petitioner's fundamental rights under Articles 12(1) and 13 of the Constitution were violated. He confined this plea only to Article 14(1)(h) of the Constitution and not to Article 14(1)(b). Although Article 14(1)(h) is not specifically stated in the petition and affidavit in paragraph 26 of the petitioner's affidavit he

does refer to violation of the fundamental right of freedom of movement "of mine and the other members of the Ceylon Mercantile Union". The compass of the petitioner's original application has therefore now been considerably confined within narrow bounds.

Learned Counsel for the petitioner submitted that the police officers violated the fundamental right of freedom of movement under Article 14(1)(h) of the petitioner and other members of the Union when they obstructed their entry into and exit from 22nd Lane. He further submitted that there was no procession on this day. Lawful action against a procession could be taken only after a procession is formed. He submitted that the photograph X4 filed by the petitioner revealed that the members of the Union were in groups of five along 22nd Lane separated by a few feet. They intended to proceed to Galle Face Green in this manner but were prevented from doing so. This was not a public procession. He also submitted that the photographs filed by the 3rd respondent completely nullified the averments of Mr. Gaffoor that at a certain stage the members of the C.M.U. were in formation with the petitioner at the helm almost abutting Galle Road.

Article 14(1)(h) of the Constitution reads "Every citizen is entitled to the freedom of movement and of choosing his residence within Sri Lanka"

However, under Article 15(7) :

"The exercise and operation of all the fundamental rights declared and recognised by Articles 12, 13(1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order etc. or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For the purposes of this paragraph 'law' includes regulations made under the law for the time being relating to public security".

This has to be read with Article 15(8) :

"The exercise and operation of the fundamental rights declared and recognised by Articles 12 (1), 13 and 14 shall, in their application to the members of the Armed Forces, Police Force and other Forces charged with the maintenance of public order, be subject to such restrictions as may be prescribed by law in the interests of the proper discharge of their duties, and the maintenance of discipline among them."

In 1983, following grave acts of violence and lawlessness in various parts of the country a state of emergency was declared throughout the country. Regulations were made by the President under section 5 of the Public Security Ordinance (Chapter 40) cited as the Emergency (Miscellaneous Provisions and Powers) Regulations, No. 7 of 1983. On the 15th December, 1983, the Regulations published in Gazette Extraordinary No. 271/21, on Friday, November 18, 1983, were still in force.

Regulation 12 is as follows :—

- *12. (1) The President may, by order, prohibit the holding of public processions or public meetings, or of such public processions or meetings as may be specified in that order in any area in Sri Lanka for such period as may be so specified, subject to such exemptions as may be made by that order or by any subsequent order made under this regulation.
- (2) The President may give directions prohibiting the holding of any procession or meeting in any area in Sri Lanka the holding of which would be, in the opinion of the President, likely to cause a disturbance of public order or to promote disaffection.
- (3) Any police officer may take such steps, and use such force, as may be reasonably necessary for securing compliance with any order or directions made or given under this regulation."

The Order made by the President under Regulation 12 and published in Gazette Extraordinary No. 271/27 on Friday, November 18, 1983, reads :

"Order

1. This Order may be cited as the Emergency (Public Processions) Order.
2. The holding of any public procession whatsoever in any part of Sri Lanka is hereby prohibited during the continuance in force of this Order :
Provided, however, that the preceding provisions of this paragraph shall not prevent the holding of any procession in the case of which the following conditions are satisfied :—
 - (a) that the officer-in-charge of the police station in the area in which the procession is to commence or any police officer of a rank not below that of Assistant Superintendent has in his absolute discretion granted a permit authorising the procession ;

- (b) that the total number of persons taking part in the procession does not exceed such number as may be specified by the said officer in the permit so granted; and
- (c) that the procession commences and disperses within such periods as may be specified in the permit authorising such procession."

The words "public procession" in Regulation 12 have not been defined. According to the Shorter Oxford Dictionary a "procession" is the "action of a body of persons going or marching along in orderly succession." A "public procession" therefore means a procession in a public place, which includes any highway. 22nd Lane is a highway and therefore a public place. Did the members of the C.M.U. at any stage go in procession along this highway? The petitioner denies this. The affidavits of Mr. Gaffoor and P.S. Wimalaratne aver that at a certain stage a vast concourse of members of the Union emanated from their headquarters and proceeded along 22nd Lane carrying banners and shouting slogans with the petitioner at the helm. They proceeded along 22nd Lane to the point where it abutted Galle Road. There was every indication that this large body of persons which at one stage almost occupied the whole of 22nd Lane intended to march to Galle Face Green. This is not only supported by photographs 3R3L and 3R3M but also there is the admission by the petitioner in paragraph 21 of his affidavit "Mr. Gaffoor told me who was leading the Ceylon Mercantile Union members that they could not be allowed to proceed."

After being thwarted in their objective the petitioner adopted a change of tactics in order to reach Galle Face Green. The members of the Union tried to proceed to the Green in groups of five separated by a few feet. In my view this too was the "action of a body of persons going or marching along in orderly succession". It was still a "public procession" and contravened the Order made by the President under Regulation 12 as the petitioner and/or the C.M.U. had not obtained a permit authorising the procession. I hold, therefore, that in the circumstances of this case Mr. Gaffoor and the police officers were scrupulously adhering to the law by preventing such a public procession.

Secondly, did the police officers prevent the petitioner and members of the Union from entering or leaving 22nd Lane as claimed by the petitioner? The 3rd and 4th Respondents deny that there was any such obstruction. In fact the 4th Respondent has avowed that

strict instructions were given to the police squad that the movement of the members of the public or of the Union into and out of 22nd Lane otherwise than in procession was not to be interfered with or obstructed in any manner and these instructions were complied with by the police officers.

It is common ground that a large number of union members went down 22nd Lane and had a meeting in their headquarters which was addressed by the petitioner. The photographs show large numbers of them freely moving up this lane. The photographs of the petitioner also reveal that he was free to move up and down the lane. The photographs 3R3A and 3R3B show him talking to Mr. Gaffoor on the pavement alongside Galle Road without any constraint.

For the reasons stated I hold that the petitioner's freedom of movement was not violated on 15th December, 1983, by any police officer. The application of the petitioner is dismissed. I make no order as to costs.

RANASINGHE, J. – I agree.

RODRIGO, J. – I agree.

Application dismissed.
