

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.08.2015
Delivered on: 21.08.2015

Coram:

The Hon'ble Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No. 34038 of 2014

C.Selvaraj

... Petitioner

Vs.

1. State of Tamil Nadu,
Through its Chief Secretary,
Fort Saint George,
Chennai - 600 009.
2. Tamil Nadu Electricity Board (TANGEDCO),
Through its Chairman,
Chennai - 600 002.
3. Tamil Nadu Electricity Regulatory Commission,
Through its Chairman,
Egmore, Chennai - 600 008.
4. Union of India,
Through its Power Secretary,
South Block,
New Delhi.
5. Union of India,
Through its Secretary, Corporate Affairs Ministry,
South Block, New Delhi.
6. Gnanadesikan,
Former Chairman,
Tamil Nadu Electricity Board,
Secretariat, Chennai.
7. Bharat Heavy Electricals Limited,
Through its Chairman,
Siri Fort,
New Delhi.
8. Comptroller and Auditor General,

Lodi Road,
New Delhi.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issue of a Writ of perpetual Mandamus to such appropriate authority, as this Court deems fit, to

- (a) To constitute and monitor an SIT comprising eminent citizens such as former CAG Shri Vinod Rai to probe the one lakh-crore scam in TNEB, which (scam) was orchestrated by Shri Gnanadesikan, and to further
- (b) Director revocation of licence of the scam-tainted second respondent and appoint an administrator, as per Sections 19 & 20(1)(d) of EA, 2003, to curtail the continuing-pillage.

For Petitioner : Mr.Manikandavathan Chittar for
Mr.Mathan Kumar

For Respondents : Mr.A.L.Somayaji,
1 to 3 & 6 Advocate General,
Assisted by Mr.S.T.S.Moorthy,
Govt.Pleader

Mrs.R.Varalakshmi (R2)

Mr.Abdul Saleem (R3)

For Respondents : Mr.SU.Srinivas
4, 5, 7 & 8 Assistant Solicitor General of India

O R D E R

THE HON'BLE CHIEF JUSTICE

The petition styled as Public Interest Litigation has been filed seeking a Special Investigation Team (for short 'SIT') probe in what is categorized as systematic and scientific blunder of the State Exchequer to the tune of 1 lakh crore through the Tamil Nadu Electricity Board by a coterie headed by the then Chairman of the Tamil Nadu Electricity Board (for short 'the TANGEDCO').

2. The State Government has been impleaded as a party, apart from TANGEDCO, Tamil Nadu Electricity Board Regulatory Commission, Union of India, Former Chairman of the Tamil Nadu Electricity Board, Bharath Heavy Electricals Limited and the Comptroller and Auditor General, New Delhi.

3. It is the case of the petitioner that the State of Tamil Nadu had achieved 100% rural electrification back in the 70's, but the things have gone downwards therefrom. There have been legislative changes when the Electricity Act, 1910 was replaced by

the 2003 Act bringing into force an Autonomous Regulatory Commission. The petition is broadly only a compilation of accusations. But the specific allegations, as set out in paragraph-12, are as under:-

- "(a) Ensuring artificial power-shortage throughout the State by non-implementation of EA, 2003.
- (b) Preventing new projects from taking-off, or delaying them indefinitely to maintain the shortage.
- (c) Stalling generation in existing units with flimsy excuses for several months.
- (d) Purchasing power from the private sector at exorbitant prices, and doling-out several thousand crores from the Exchequer's coffers to the private sector - and that too without regulatory approvals.
- (e) Doling-out hundreds of crores of rupees to the private sector illegally by misusing the quagmire of the regulatory and judicial machinery.
- (f) Abusing the process of the judiciary and misleading it through Standing Counsel as such as Shri Gunaraj, Official Liquidator, etc., so as to curry favours to the private sector, and then claiming that it was the Courts that issued orders.
- (g) Ensuring that cronies are placed in all vantage points at the board-level and also regulatory-level to facilitate the loot.
- (h) Fudging accounts, so much so that even the regulators or the auditors including C & AG do not have access to the accounts, and
- (i) Criminal nexus with contractors including PSUs such as BHEL to facilitate in award of contracts, and also to ensure delay of upcoming projects."

4. The Electricity Act, 2003 is also stated to have been abused as under:-

- "(1) Non-implementation of Open Access as prescribed by Section 42 of EA, 2003.
- (2) Rampant power purchase from private sector (including from blacklisted entities) violating orders of the Regulator.
- (3) Wilfully losing wheeling charges, prescribed by 42(3) EA, 2003, etc."

5. It is the case of the petitioner that there was rigging of contracts for new power projects, and simultaneously

delaying them so as to facilitate private power purchase for eternity. The Wind Power Sector is also stated to have been the subject matter of financial improprieties. In fact, the petitioner seeks to mention as if in each of the various incidents thousands of crores of rupees have been misappropriated. The writ petition seeks a mandamus to constitute and monitor a SIT comprising eminent citizens such as former CAG Shri Vinod Rai and revocation of licence of what is stated to be the tainted second respondent i.e., Tamil Nadu Electricity Board.

6. The State Government though strongly opposing any notice in the petition through the learned Advocate General submitted that it would place on record the stand of the State Government.

7. In the course of various dates of hearing, the matter gravitated to the issue arising from the report of the CAG. It was stated to have been forwarded to the second respondent/TANGEDCO, which submitted its remarks thereafter. Some of the issues were found satisfactorily resolved, while some other issues still remain, which were then placed before the Committee of Public Undertakings (for short "COPU"). As to what transpired after that also became an issue, and thus vide order dated 6.7.2015, we put to the learned Advocate General as to what was the nature of comments of the CAG; to what extent the explanations were not accepted; and what is the view taken by the COPU, if any. The materials were directed to be produced before the Court with a summary report, which was duly produced. The learned Advocate General also pointed out that the auditors appointed by the second respondent had found the accounts in order and the auditors in turn were appointed on the recommendations of the CAG. The initial objection of the learned Advocate General was predicated on the fact that the petitioner was a disgruntled employee, against whom disciplinary proceedings have been initiated, which was sought to be rebutted by the learned counsel for the petitioner stating that he has filed a response thereto. In respect of the Regulatory Commission/third respondent, he submitted that there were three members, and that there was a dissenting opinion of one member all along on the basis of the relevant accounts/materials not being shown to the Regulatory Commission.

8. Specific affidavits have been filed by the second, third and fifth respondents. The fifth respondent/Ministry of Corporate Affairs, Union of India has practically washed its hands off the matter in issue. So far as the counter affidavit of the second respondent/TANGEDCO is concerned, the initial portion of its affidavit states that the petitioner who had entered into the Board's service as temporary casual labourer was subsequently absorbed as Helper in Class-IV Service and in view of his position

of Diploma in Engineering, was appointed in Class-III Service where he spent 90% of his service time. He is alleged to have been, many a times, proceeded against with departmentally and punishment of increment cuts was imposed for proven charges. He was removed from service from the Board during 1988, but re-instated in 1993 on account of the favourable verdict by the High Court. The list of proceedings initiated against him has been set out. In view of his standing, it has been averred that he would have no knowledge on the accounts and financial working of the TANGEDCO and has primarily relied upon certain news items, more substantially relying on the dissenting order of one of the members of the third respondent/Commission. In such eventuality, the remedy is before the Appellate Tribunal for Electricity under Section 111 of the Electricity Act, 2003 and a second appeal before the Hon'ble Supreme Court under Section 125 of the Electricity Act, 2003. We may note that in this context, an appeal has already been stated to be pending before the Appellate Tribunal, which position is not disputed by the petitioner.

9. The third respondent/Regulatory Commission has also filed a counter wherein it has been pointed out that the petitioner has never approached the appropriate committee being the third respondent, and the question of revocation of licence in favour of the second respondent were totally within the domain of the power exercised by the third respondent. In view thereof, the very invocation of the jurisdiction under Article 226 of the Constitution of India by the petitioner is sought to be questioned.

10. The counter affidavit also states that the first tariff order was issued in the year 2003 and the non-revision of tariff for seven years thereafter had put the second respondent in a precarious financial position. The second revision took place in the year 2012 and all these revisions are necessary to make the second respondent financially viable.

11. The further aspect which has been brought out in the petition is the allegation that the facts set out in the petition more or less emanate from the petition filed by the unsuccessful tenderers with regard to tender disputes, which has been subsequently dismissed by a judgment of this Court delivered on 07.04.2015 in W.P.Nos. 26762 & 27529 of 2014.

12. The summary note along with the original records submitted by the learned Advocate General set-forths the procedure relating to the CAG Report, which conducts audit of the second respondent. The major observations in the inspection report which need further details are converted as statement of facts by CAG and are addressed to the second respondent. Replies to the statement of facts are in turn submitted by TANGEDCO to the CAG and any additional particulars are required, then those statements of facts

alone would be converted as draft paragraphs.

13. As far as the draft paragraphs are concerned, the CAG addresses the State Government through its Secretary, Energy Department seeking replies to the draft paragraphs, which in turn furnishes the same to the CAG with a request to drop the draft paragraphs. Such of the draft paragraphs which are not dropped by the CAG are included in the audit reports, which in turn is placed in the legislative assembly and the Government submits its para-wise replies to the audit report as explanatory notes to the Assembly Secretariat. The COPU comprising of MLAs from all the parties takes up the audit report for discussion along with CAG where the Chairman and Managing Director and the Directors of TANGEDCO are called to depose before the Committee as and when required, where after the report of the Committee is placed on the table of the Assembly and the recommendations of COPU, if any, would be sent to the Energy Department for furnishing action taken note. If the COPU is satisfied with the action taken report submitted by the Government Department, then the issues are treated as settled, otherwise the COPU would proceed further for resolving the issues. In respect of the contents of this report, it is stated that Rule 217(1) of the Tamil Nadu Legislative Assembly Rules issued under clause (1) of Article 208 of the Constitution of India, states that the reports of COPU, until presented to the Legislative Assembly, are to be treated as confidential. Insofar as the rules referred to aforesaid are concerned, Rules 211 to 218 are in respect of COPU. The relevant portions have been extracted as under:-

Committee on Public Undertakings

Rule 216. The functions of the Committee shall be-

(b) to examine the reports, if any of the Comptroller and Auditor-General on the Public Undertakings.

Rule 217(1).

The Government may, if it thinks fit, make available to Government any completed part of its report before presentation to the Assembly. Such reports shall be treated as confidential until presented to the Assembly.

14. In the given facts, to the extent of the issues referred to in the CAG Report, the PPN Power Generating Company, had raised disputes over payment dues before the third respondent, and that aspect was carried till the Hon'ble Supreme Court unsuccessfully by the contesting party. As far as the finalization of the proceedings by the COPU is concerned, the Legislative Assembly Secretariat has informed that the CAG report for the years 2010-11, 2011-12 & 2012-13 are yet to be examined by the COPU and

the final report will be placed before the Assembly. Till such time, the material is confidential and privilege in view of the Rules referred to aforesaid.

15. Learned Advocate General to buttress his arguments referred to the judgment of the Gujarat High Court reported in Gautam Dasharathial Thaker vs. State of Gujarat (2014 SCC On Line Guj 10494) to contend that the contention based on the report of the CAG solely cannot be the subject matter of public interest litigation. The relevant observations are as under:-

"Thus, the contention based on the report of CAG solely in this petition in the context of pleadings and prayer made by the petitioner cannot be subject matter of public interest litigation and considering overall facts and circumstances this writ petition (PIL) when solely based on report and extract of the CAG it is not advisable for this Court to proceed further in PIL keeping it open for the petitioner to take any appropriate action in accordance with law, if deem proper."

16. Learned Advocate General has also referred to the unreported judgment of the Division Bench of Delhi High Court decided on 03.12.2014 in W.P. (C) No.8502 of 2014 (Sarvesh Bisaria vs. Union of India and others), which in turn has referred to certain earlier judicial pronouncements in respect of the major controversy raised in the present petition. The Division Bench of the Delhi High Court in CWP No.1716/2000 (B.L.Wadhera vs. Union of India) decided on 16.05.2001 raised the issue of follow-up action on the reports of the CAG pointing out irregularities or illegalities. A preliminary objection was raised regarding the subject matter as the same was within the specific domain of the Parliament. The Court opined that the validity of any proceedings in the Parliament cannot be called into question in the Court and held that once it was found that the Legislature had the power and privilege, it must be left to the House itself to determine whether there in fact has been any breach of privilege, while taking support from the judgment of the Hon'ble Supreme Court in Pandit M.S.M.Sharma vs. Dr.Shreekrishna Sinha (AIR 1960 SC 1186).

17. It is enunciated that once the CAG Report is laid before the Assembly, it is dealt with by the Rules and Procedures of the Assembly. The role of CAG report is to enable the Legislature to oversee that functioning of the Government and it is for the Legislature to take action on the basis of CAG Reports or to direct the Government to take action on the basis thereof.

18. On the conspectus of the legal position enunciated aforesaid and the averments made in the petition, it is quite

obvious from the cryptic petition that there only allegations of misappropriation and mis-utilisation of thousands of crores! It, thus, appear that the past history of disputes between the petitioner and its employer, the second respondent, has coloured the thinking of the petitioner to make allegations largely on the press-reporting or averment in other petitions, other than the aspect of minority view, of the third respondent/Commission, which is stated to be the subject matter of challenge in appeal proceedings.

19. The substratum of the submissions of the learned counsel for the petitioner really arose over the aspects emanating from the report of the CAG, the procedure for which has been explained aforesaid. We are faced with the position where in terms of the procedure, the COPU is stated to be still examining the matter, and no finality has been achieved as yet. Only on submission of the COPU report, the same being placed before the Legislative Assembly, would the occasion arise for final view to emerge in terms of Rule 217(1) and even the reports of COPU are to be treated as confidential until presented to the Assembly. Thus, what is the confidential material disclosed to us was to satisfy our conscience and cannot be relied upon or that material required to be produced and filed before the Court.

20. We are not satisfied that the petition is supported by adequate materials. Further, the matter is still receiving the consideration of the COPU and the petition thus seems to be an endeavour to cause embarrassment to the second respondent without there being any final verdict on the accounting procedures or financial aspects by the concerned authorities. The concerned appeal is still pending qua two views of commission (minority and majority).

21. We are, thus, not inclined to interfere in this Public Interest Litigation. The writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

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Pv

Sub Assistant Registrar

Copy to:

1. Chief Secretary to Government,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2. The Chairman,
Tamil Nadu Electricity Board (TANGEDCO),
Chennai - 600 002.
3. The Chairman,
Tamil Nadu Electricity Regulatory Commission,
Egmore, Chennai - 600 008.
4. The Power Secretary,
Union of India,
South Block,
New Delhi.
5. Secretary to Government,
Ministry of Corporate Affairs,
South Block, New Delhi.
6. The Chairman,
Bharat Heavy Electricals Limited,
Siri Fort, New Delhi.
7. Comptroller and Auditor General,
Lodi Road, New Delhi.

+1cc to Mrs.R.Varalakshmi, Advocate, S.R.No.44427
+1cc to M/s.Su.Srinivasan, Advocate, S.R.No.44669
+1cc to Mr.Abdul Saleem, Advocate, S.R.No.44895
+1cc to the Government Pleader, S.R.No.44565

W.P.No.34038 of 2014

PUR(CO)
CA(04/09/2015)

सत्यमेव जयते

WEB COPY