

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE M.M.SUNDRESH

W.P.No.703 of 2013
and
M.P.Nos.1 and 2 of 2013

M.Garkey ... Petitioner

Vs.

- 1.The Chief Secretary,
Government of Tamil Nadu,
Secretariat,
Chennai-600 009.
 - 2.The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat,
Chennai-600 009.
 - 3.The Chairman & Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
31, Kamaraj Salai,
Chepauk, Chennai-600 005.
 - 4.The Secretary to Government,
Adi Dravidar & Tribal Welfare Department,
Secretariat,
Chennai-600 009.
 - 5.The Coordinating Director,
National Environment Engineering
Research Institute,
Zonal Laboratory, CSIR Complex,
Taramani, Chennai-600 113.
 - 6.The Director General of Police,
Post Box No.601,
Dr.Radhakrishnan Salai, Chennai.
 - 7.The Inspector of Police,
B6 Peelamedu Police Station,
Coimbatore.
- (R6 & R7 impleader as per order
dt.1.2.13)

.. Respondents

Petition under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondents to register the case under Section 304(II) of IPC and Section 3(2) (vii) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities Act, 1989 against the erring officials and other persons those who are responsible for the death of Manual Scavenger while cleaning the Septic Tank or sewerage lines and further direct the respondents to take Departmental action against the erring officials.

For Petitioner : Mr.Jaikumar
for
M/s.T.Fennwalter Associates

For Respondents : Mr.STS.Moorthy
Govt. Pleader for R1,2,4,6 & 7

Mr.Su.Srinivasan
Asst. Solicitor General of India for R5

Mr.M.Arokiyaraj for R3

* * * * *

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

Petitioner seeks to raise the issue of an unfortunate practice of Manual Scavenging, which was, in fact, banned by the Hon'ble Court in the year 2008 and subsequently, Employment of Manual Scavenger and Construction of Dry Latrine (Prevention) Act, 1993 was brought into force. It is the case of the petitioner that despite the prohibition and enactment, practice of manual Scavenging continues in Tamil Nadu and the prayer made is that, if any unfortunate death is caused, the respondents must mandatorily register a case under Section 304 (II) of Indian Penal Code, 1860 and Section 3(2)(ii) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act), 1989 against the erring officials or the authorities and other persons responsible for the death.

2. Learned counsel for the petitioner concedes that there had been subsequent developments in the form of enactment by the Parliament, viz. 'The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013'. The penal consequences for controvention are provided under Sections 8 and 9 of that Act, which read as under:-

'8. Whoever contravenes the provisions of section 5 or section 6 shall for the first contravention be punishable with imprisonment for a term which may extend to one year or with fine which may extend to fifty thousand rupees or with both, and for any subsequent contravention with imprisonment

which may extend to two years or with fine which may extend to one lakh rupees, or with both.

9. Whoever contravenes the provisions of section 7 shall for the first contravention be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two lakh rupees or with both, and for any subsequent contravention with imprisonment which may extend to five years or with fine which may extend to five lakh rupees, or with both.''

3. Learned counsel for the petitioner submits that despite the aforesaid, the prayer made in the petition has not become infructuous.

4. In our view, since a comprehensive Act with penal consequences has been enacted, it is not for this Court to direct as to whether in addition to the provision under the Act, prosecution must include the provisions of Indian Penal Code or otherwise. In any case, these should depend upon the facts and circumstances of each case and no general direction could be issued beyond the provision applicable, which would, in fact, cause prejudice in the criminal trial. It is for the prosecuting authorities to decide the issue.

5. The very purpose of the Special Act is to deal with banning of the unfortunate practice of manual scavenging and we hope that this practice is completely stopped and any violation would attract the provisions of the said Act and the provisions of Indian Penal Code, if applicable.

6. The writ petition, accordingly, stands closed. No costs. Consequently, M.P.Nos.1 and 2 of 2013 are also closed.

Sd/-

Assistant Registrar

Dated:13.3.15

True Copy

Sub Assistant Registrar

To

1.The Chief Secretary,
Government of Tamil Nadu,
Secretariat,
Chennai-600 009.

- 2.The Secretary to Government,
Municipal Administration and
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- 3.The Chairman & Managing Director,
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- 6.The Director General of Police,
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- 7.The Inspector of Police,
B6 Peelamedu Police Station,
Coimbatore.

+1 cc to Ms.T.Fennawalter Associates,SR.12004

+2 cc to Mr.M.Arokiyaraj, Advocate,SR.11407

+1 cc to Mr.Su.Srinivasan, Advocate,SR.11436

+1 cc to Government Pleader,SR.11380.

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W.P.No.703 of 2013

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