

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.32091 of 2016

Roseann Rajan

... Petitioner

Vs

1. The Chief Secretary
Government of Tamil Nadu
State Secretariat
St. George Fort
Chennai - 600 009.
 2. The Director General of Police
DGP Office Chennai
Tamil Nadu, Chennai - 600 004.
 3. The Additional Director General of Police
(PCR & Human Rights)
DGP Office Chennai
Tamil Nadu, Chennai - 600 004.
 4. The Secretary
Adi Dravidar and Tribal Welfare Department
Secretariat, St. George Fort
Chennai - 600 009.
 5. The District Collector
Collectorate Kancheepuram
Kancheepuram District
Kancheepuram - 631 501.
 6. The Superintendent of Police
District Collectorate
Kancheepuram District
Kancheepuram - 621 306.
- .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus directing the respondents to submit along with the final report to the

court concerned all relevant documents material to the case including release certificates; enquiry forms; Executive Release order; Acquittance of initial rehabilitation amount.

For Petitioner : Mr.David Sunder Singh

For Respondents : Mr.M.K.Subramanian
Government Pleader
assisted by
Mr.R.Vijayakumar
Addl. Government Pleader

ORDER

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

The petitioner has filed the public interest litigation in respect of the issue of bonded labour. The petitioner claims that despite legislations and authorities being set up, there is low rate of conviction due to failure to produce procedurally fundamental documents that establish a case of bonded labour in a court and absence of these documents results in acquittals. The documents are set out as under:

- (a) Release Certificate;
- (b) Enquiry Forms;
- (c) Executive Release Order;
- (d) Acquittance of Initial Rehabilitation Amount;
- (e) Sub Divisional Magistrate's Report to District Magistrates; and
- (f) other related documents.

2. The petitioner claims that it is the bounden duty of the police authorities to collect and submit the aforesaid integral documents to the Court. A FIR has to be registered under Section 156 of the Code of Criminal Procedure (for brevity, "the Cr.P.C.") and on investigation, a final report is filed as per Section 173(2) of the Cr.P.C. before the Sub Divisional Magistrates. However, since Sub Divisional Magistrates in Tamil Nadu do not have the authority to conduct trials pertaining to cases of bonded labour, these cases have to go through Session/Special Court trials.

3. It is the case of the petitioner that under Section 173 (8) of the Code of Criminal Procedure additional evidence has to be given to the Magistrate regarding on going and further investigation, but then this provision applies only to Court of Magistrates, but does not apply to Session Judges. Thus, where necessary documents are not submitted along with final report, the result is adverse.

4. The petitioner has given a list of sample cases and the grounds why they have not resulted in conviction and the prayer made is of a writ of mandamus against the respondents to submit along with the final report to the Court all relevant documents, including release certificates; enquiry forms; Executive Release order; Acquittance of initial rehabilitation amount.

5. Counter affidavits have been filed and a Circular Memorandum dated 17.12.2016 has been issued in this behalf.

6. The learned counsel for the petitioner is satisfied with the same, but still expresses two concerns.

7. The first concern emanates from what is set out in paragraphs (17) and (18) of the writ petition, i.e. that many cases regarding bonded labour are sent to Court lacking all the necessary documents from the Magistrate and the law does not permit the prosecution or the victim to file additional documents to the Session/Special Court.

8. In this behalf, in the counter affidavit filed by the Superintendent of Police/sixth respondent, it has been stated that there is no such complication as envisaged by the petitioner in view of the judicial pronouncements. In *Thirumoorthy v. State, rep. by Inspector of Police*, [2005] 1 MLJ (Cri) 94, it has been held that the petition for filing the additional documents has to be allowed at any stage of the pending trial of the case. Similarly, in *Rama Paswan and others v. State of Jharkhand*, [2007] 2 MLJ (Cri) 1402, it has been held that the filing of petitions under Section 311 of the Code of Criminal Procedure to examine additional witnesses and recalling of additional documents is a determinative factor whether new evidence is essential for the just decision of the case and it has to be determined by the Presiding Judge.

9. The second concern is expressed on the basis of the additional affidavit filed by the petitioner in support of the petition, where reference has been made to the order of the Hon'ble Supreme Court of India in *PUCL v. State of Tamil Nadu and others* (W.P.(C)No.3922 of 1985), requiring a State Level Officer to be nominated for release, rehabilitation, prosecution, etc., but no such officer has been appointed. In fact, it is averred that the Director of the Adi Dravidar and Tribal Welfare recommended for a State Level Officer to the Secretary of Department concerned vide letter dated 10.3.2015. The RTI information sourced by the petitioner states that the same is still under process. In the same connect is the plea that a State Action Plan must be envisaged.

10. On these two aspects nothing has been mentioned and we are, thus, of the view that the State Level Officer should be nominated within a period of four weeks from today. The State Action Plan be also structured and published within a period of three months from today.

The petition, accordingly, stands disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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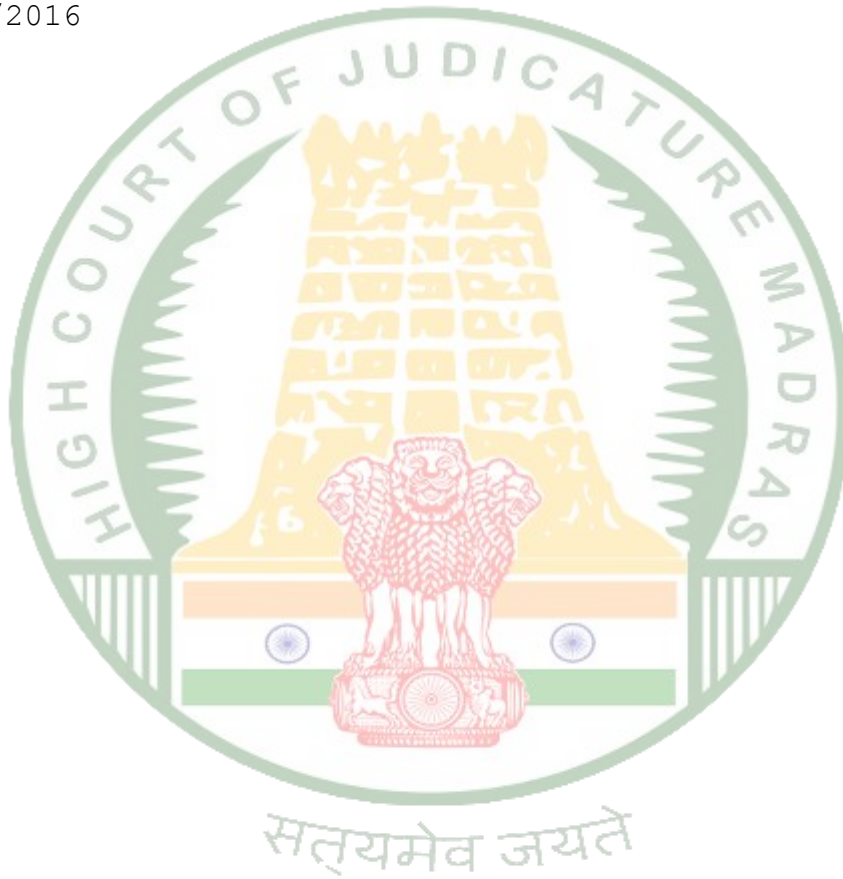
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+1cc to the Government Pleader Sr.73981

W.P.No.32091 of 2016

mv[co]
srg 23/12/2016



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