

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 08.09.2017**

**CORAM :**

**The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE**

**AND**

**The Hon'ble MR.JUSTICE M.SUNDAR**

**W.P.No.23540 of 2017**

V.Elangovan

.. Petitioner

-VS-

1.The Chief Secretary,  
State of Tamil Nadu,  
Fort St. George, Secretariat,  
Chennai 600 009.

2.Mr.O.Panneer Selvam  
Deputy Chief Minister of Tamil Nadu,  
Fort St. George, Secretariat,  
Chennai 600 009.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Quo Warranto to call upon the 2<sup>nd</sup> respondent to show cause under what authority of law he is holding the office of the Deputy Chief Minister of Tamil Nadu.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.R.Vijay Narayan,  
Advocate General, assisted by  
Mr.M.K.Subramanian,  
Govt. Pleader, for R-1.

\* \* \* \* \*

**ORDER**

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

This writ petition has been filed by the petitioner for a Writ of Quo Warranto calling upon the second respondent to show cause under what authority of law he is holding the office of the Deputy Chief Minister of Tamil Nadu.

2.The appointment of Respondent No.2 as Deputy Chief Minister has been challenged upon reference to Article 164 of the Constitution of India, which provides as follows:

**164. Other provisions as to Ministers.—***(1) The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor: Provided that in the States of Bihar, Madhya Pradesh and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.*

*(1A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent. of the total number of members of the Legislative Assembly of that State:*

*Provided that the number of Ministers, including the Chief Minister*

*in a State shall not be less than twelve:*

*Provided further that where the total number of Ministers including the Chief Minister in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent. or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.*

*(1B) A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.*

*(2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.*

*(3) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.*

*(4) A Minister who for any period of six consecutive months is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.*

*(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be as specified in the Second Schedule.*

3.It is the case of the petitioner that there can be only one Chief Minister and not less than 12 Ministers. There is no provision under the Constitution for appointment of Deputy Chief Minister. According to the petitioner, on 21.08.2017, the Governor of Tamil Nadu administered oath of Office to the second respondent, which was telecasted live in several Television channels. According to the petitioner, the oath taken by the second respondent was as follows:

*"I O.Panneer Selvam do swear in the name of God that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India that I will faithfully and conscientiously discharge my duties as a Deputy Chief Minister for the State of Tamil Nadu and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will."*

4.According to the petitioner, the second respondent took oath as Deputy Chief Minister and not as the Minister of State. The oath of office is not in accordance with law, as there is no provision for



appointment of a Deputy Chief Minister under the Indian Constitution. The oath taken by the second respondent as Deputy Chief Minister is, according to the petitioner, invalid in law.

5.The petitioner has stated that in 1950, Vallabhai Patel, who had been holding the post of Home Minister, had been designated as Deputy Prime Minister, but, he had not been sworn in as Deputy Prime Minister. It is further alleged that after the death of Shri.Lal Bahadur Sastri in 1966, Mr.Morarji Desai had been designated as Deputy Prime Minister. He too had not been administered oath as Deputy Prime Minister. The petitioner has referred to the Raj Bhavan press release by the Principal Secretary to the Governor on 21.08.2017 and 22.08.2017 describing the second respondent as Deputy Chief Minister.

6.We have perused the press release, which indicates that on the recommendation of the Hon'ble Chief Minister of Tamil Nadu, the Hon'ble Governor of Tamil Nadu had inducted the second respondent, an M.L.A. of Bodinayakanur Assembly Constituency into the Council of Ministers. The press release, further indicates that the Governor had accepted the recommendation of the Hon'ble Chief Minister regarding the allocation of portfolio of Finance hitherto held by

Mr.D.Jeyakumar and portfolios of Housing, Rural Housing and Housing Development, Slum Clearance Board and Accommodation Control, Town Planning, Urban Development and Chennai Metropolitan Development Authority hitherto held by Mr.Udumalai K.Radhakrishnan to the second respondent and to designate him as Deputy Chief Minister. The press release does not indicate that he was administered oath as Deputy Chief Minister.

7.Be that as it may, even assuming that the second respondent was administered oath as Deputy Chief Minister, that would make no difference in view of the judgment of the Supreme Court in **K.M.Sharma vs. Devilal and Ors.**, reported in **AIR 1990 SC 528**. In the case of **K.M.Sharma**, supra, the appointment of Shri.Devi Lal as Deputy Prime Minister had been challenged on the ground that oath administered to him as Deputy Prime Minister was not the oath in accordance with the prescription of the Constitution and that he had still been functioning as the Chief Minister of Haryana when the oath of Office of his new assignment was administered to him. The Supreme Court, in effect, held that Shri.Devi Lal had just been a Minister like other members of the Council, though he had been described as Deputy Prime Minister, but the description of him as Deputy Prime Minister did not confer him any powers of the Prime

Minister. The writ petition challenging the appointment of Shri.Devi Lal as Deputy Prime Minister was, thus, rejected by the Supreme Court.

8.In **Devidas, S/o.Venkatrao Pawar, vs. Shri.Gopinath Mundhe and Ors.**, reported in **AIR 1996 Bombay 1**, a Division Bench of Bombay High Court relied upon the aforesaid judgment of the Supreme Court in **Devi Lal's** case and held that there was no separate form of administering oath either for the Chief Minister or the Deputy Chief Minister. The prescribed Form V in Schedule III was to administer oath to a Minister. Describing Respondent No.1 as Deputy Chief Minister was descriptive of him as Deputy Chief Minister only, though for all purposes he is Minister when it is common ground that there is no constitutional sanction for the office of the Deputy Chief Minister as such.

9.We are in full agreement with the judgment of the Bombay High Court, which is based on the judgment of the Supreme Court referred to above. The law laid down by the Supreme Court in **Devi Lal's** cases is binding on us.

This Writ Petition is, therefore, dismissed. No costs.

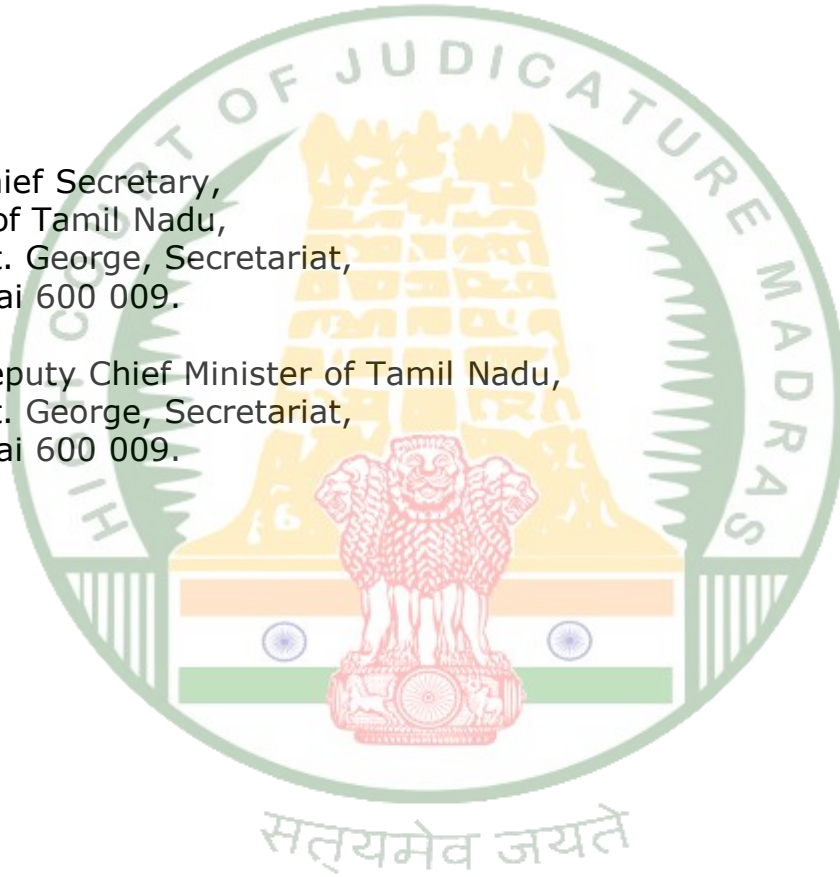
(I.B., C.J.) (M.S., J.)  
08.09.2017

Index : Yes/No  
Website : Yes/No

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To

- 1.The Chief Secretary,  
State of Tamil Nadu,  
Fort St. George, Secretariat,  
Chennai 600 009.
- 2.The Deputy Chief Minister of Tamil Nadu,  
Fort St. George, Secretariat,  
Chennai 600 009.



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The Hon'ble Chief Justice  
and  
M.Sundar, J.

(sra)



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