

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH
W.P.No.29233 of 2017

Priyadharshini

... Petitioner

Vs.

- 1.State represented by
The Chief Secretary,
Govt. of Tamil Nadu,
Secretariat,
Chennai.
 - 2.The Home Secretary,
Govt. of Tamil Nadu,
Secretariat,
Chennai.
 - 3.The Secretary,
Adi Dravidar & Tribal Welfare Department,
Govt. of Tamil Nadu,
Secretariat,
Chennai.
 - 4.The District Collector,
Collectorate Complex,
Tiruvannamalai,
Tiruvannamalai District.
 - 5.The District Adi Dravidar and
Tribal Welfare Officer,
Tiruvannamalai,
Tiruvannamalai District.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the respondent No.4 to appoint one E.S. Jose (Enrl. No.727/93), Advocate as Special Public Prosecutor in S.C.No.104 of 2014 on the file of the learned District and Sessions Judge, Tiruvannamalai.

For Petitioner : Ms.S.E.Monica Vincent
For Respondents : Mr.T.N.Rajagopal,
Special Government Pleader
(In-charge)
Assisted by
Mr.S.Babu, GA

ORDER

This petition has been filed by the petitioner seeking a direction to the fourth respondent to appoint Mr.E.S. Jose, learned Advocate (Enrl. No.727/93), as Special Public Prosecutor in S.C.No.104 of 2014 on the file of the learned District and Sessions Judge, Tiruvannamalai.

2.Heard Ms.S.E.Monica Vincent, learned counsel for the petitioner as well as Mr.T.N.Rajagopal, Government Pleader appearing on behalf of the respondents.

3.As contemplated under Section 4(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, if the victim of atrocity desires, the District Magistrate is empowered to engage an eminent Senior Advocate for conducting the cases in the Special Court for the victims of atrocity. Section 4(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act reads as follows:

"Notwithstanding anything contained in sub-rule (1) the District Magistrate or the Sub-Divisional Magistrate may, if deem necessary or if so desired by the victims of atrocity engage an eminent Senior Advocate for conducting cases in the Special Courts on such payment of fee as he may consider appropriate."

4.I had an occasion to consider the scope of Section 4(5) in an order passed in W.P.No.20732 of 2017 dated 05.09.2017 and the relevant portion of the said order is extracted as follows:

"3.The learned counsel for the petitioner relying upon the section 4(5) of the Schedule Case and Schedule tribes (Prevention of Atrocities) Act submitted that the District Magistrate is empowered to engage eminent Senior Advocate for conducting cases in the special courts for the victims of atrocity. In support of her submissions, the learned counsel relied upon the judgment reported in 2014 (4) MLJ 339 (R.Kandasamy vs. The District Collector). In the said Judgement Section 4(5) of the said Act has

been dealt with in detail and this Court came to the conclusion that irrespective of whether the prosecution is conducted by the Senior Prosecutor, the victim of the atrocity is entitled to engage a Senior Advocate for prosecuting the case. The District Magistrate has to accede to the request. Relevant portion of the said order of this court is extracted hereunder:

"..... 21.Rule 4(5) is independent of appointments envisaged in section 15 and Rule 4(1). Rule 4(5) envisages that if the District Magistrate, (District Collector) of the Sub Divisional Magistrate (Revenue Divisional Officer) deem it necessary or the victim of the atrocity desires an eminent Senior Advocate is required to be engaged to conduct the prosecution case in the Special Court, then the District Magistrate shall engage an Advocate. He shall be paid appropriate fee by the Government

.....
.....

23.It is true that sub rule (5) employs a different term viz., engage different from appoint or specify used in Section 15. But we do not think, the phraseology has any bearing on the extent of one's brief. Whether he is appointed, specified or engaged he would nonetheless be conducting the case in special Court. We are conscious of the fact that in the scheme of things provided in the Code, the trial in the Court of Session is conducted only by a Public Prosecutor or Special Public Prosecutor Section 15 of the Act also provides for conducting cases in Special Court by a Special Public Prosecutor. No mention, on the other hand is made of Special Public Prosecutor in sub rule (5). The reason however, is not far to seek. Section 15 contemplates 'specifying' a Public Prosecutor whether appointed under Section 24 of the Code or empanelled under sub-rule (1) of Rule 4 or appointing an advocate as Special Public Prosecutor for the purpose of conducting cases in the Special Court. These appointments apparently are made from

panels of prosecutors and Advocates. It may so happen that the victim of atrocity in a particular case may not have faith in the prosecutors/advocate specified or appointed under Section 15. He may like to have the case conducted by an Advocate of his choice. It is in order to inspire confidence of the victim of atrocity in the administration of justice that a special provision has been made for engagement of an eminent senior advocate to conduct the case. That is why a different term 'engaged' has been used in Rule 4(5) in contradistinction to 'appoint' or 'specify' in Section 15. 'Engaged' means that he has been engaged for a particular case, unlike appointment/specifying of an advocate/prosecutor from the panel. It is to be kept in mind that sub rule (5) contains a non-obstante clause overriding the provisions of rule (1) which means that the appointment under Rule 4(5) can be made of a person who is not in the panel. The panels, as seen above, comprise of advocates/Public Prosecutors of the choice of the Government. It is also to be kept in mind that the Act is a special statute enacted to provide relief to the victims of atrocity in the matter of trial of offences covered by the Act and Rule 4 (5) confers a right upon victim of atrocity to have his case conducted by an advocate of his choice so as to ensure that he has faith in the trial."

4.The above order is self explanatory. In this connection, the petitioner has also given a representation on 19.06.2017 to the 4th respondent seeking for engaging Mr.A.Pandian, Advocate as Special Public Prosecutor in S.C.No.06/2015 on the file of the Principal District and Sessions Court, Tiruppur. The fourth respondent herein is directed to consider the petitioner's representation dated 19.06.2017, in the light of the aforesaid judgement reported in 2014 (4) MLJ 339 (cited supra) and the observations made thereunder. Such exercise shall be completed within a period of one week from the date of receipt of a copy of this order".

5. In this background, it is seen that in the present writ petition, a similar prayer has been sought for by the petitioner seeking a Mandamus, directing the fourth respondent to appoint Mr.E.S.Jose, Advocate as Special Public Prosecutor in S.C.No.104 of 2014 on the file of the learned District and Sessions Judge, Thiruvannamalai.

6. The necessity for the petitioner to approach this Court was in view of the inaction, on the part of the fourth respondent to consider her representation dated 19.06.2017. As observed above, the Section 4(5) is self explanatory and mandatory on the part of the District Magistrate to engage such an advocate as desired by the victims as the words used in Rule 4 (5) reveals that "... the Magistrate shall engage such an advocate". It is with a bit of dismay for this Court to observe that the inaction of the fourth respondent in keeping the petitioner's representation dated 19.06.2017 pending indefinitely and making them to approach this Court by filing Writ petition is rather disappointing. It is needless to say that the petitioner has been put to serious prejudice, in view of the inaction, on the part of the fourth respondent.

7. When the matter came up for hearing on 23.11.2017, the learned Government Pleader had produced a copy of the order dated 22.11.2017 stating that the Advocate named by the victim, namely, Mr.E.S.Jose has been appointed as Special Public Prosecutor to attend the case in S.C.No.104 of 2014 on the file of the learned District and Sessions Judge, Thiruvannamalai only on the prosecution side in connection with the petitioner's request.

8. Today when the matter was called, the learned Government Pleader produced the copy of the order of the fourth respondent dated 23.11.2017, wherein the fourth respondent/District Collector, Tiruvannamalai had also appointed the Special Public Prosecutor for five other cases which is pending before him. According to them, no other case is pending before them. In view of the action taken by the fourth respondent by appointing Mr.E.S.Jose as Special Public Prosecutor in S.C.No.104 of 2014 on the file of the learned District and Sessions Judge, Tiruvannamalai, as sought for by the petitioner herein, no further orders are required in this petition.

9. In the result, the Writ Petition stands closed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

DP/nl

To

1.The Chief Secretary,
Govt. of Tamil Nadu,
Secretariat,
Chennai.

2.The Home Secretary,
Govt. of Tamil Nadu,
Secretariat,
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3.The Secretary,
Adi Dravidar & Tribal Welfare Department,
Govt. of Tamil Nadu,
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4.The District Collector,
Collectorate Complex,
Tiruvannamalai,
Tiruvannamalai District.

5.The District Adi Dravidar and Tribal Welfare Officer,
Tiruvannamalai,
Tiruvannamalai District.

+1 cc to Government pleader sr 84376

W.P.No.29233 of 2017

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