

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble MR.JUSTICE M.SUNDAR

**W.P. No.9236 of 2017
and W.M.P.No.27719 of 2017**

B.Bala Murugan

.. Petitioner

-VS-

The Government of Tamil Nadu
rep. By The Chief Secretary,
Govt. of Tamil Nadu,
Fort St. George, Chennai 600 009.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to direct the respondent to constitute an Enquiry Commission under the head of Mr.U.Sagayam, I.A.S., to inquire the mysterious death of former Chief Minister Ms.J.Jayalalitha.

For Petitioner : Mr.B.Bala Murugan,
Party-in-person

For Respondent : Mr.T.N.Rajagopalan
Spl.G.P.

* * * * *

ORDER

(Order of the Court was made by The Hon'ble Chief Justice and M.Sundar, J.)

This writ petition has been filed as a public interest litigation. This writ petition was initially filed with a prayer to mandamus the respondent before us to constitute an Enquiry Commission headed by a named individual being a bureaucrat. The prayer in the writ petition as initially filed reads as follows:

"... Therefore it is most humbly prayed this Hon'ble High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of a writ, directing the respondent to constitute an Enquiry Commission under the head of Mr.U.Sagayam, I.A.S., to inquire the mysterious death of former Chief Minister Ms.J.Jayalalitha and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

2.Now, post filing of the aforesaid writ petition, being W.P.No.9326 of 2017, the petitioner has come up with the instant miscellaneous petition, being W.M.P.No.27719 of 2017, with a prayer to amend the main prayer in the aforesaid writ petition.

3.The amendment to prayer now sought is to the effect of enlarging the number of members of the Enquiry Commission by adding the aforesaid named individual and also a member to be appointed by the Leader of the Opposition in the Tamil Nadu Legislative Assembly.

4.The prayer as sought to be amended is as follows:

"... Therefore it is most humbly prayed this Hon'ble High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of a writ, directing the respondent to include Mr.U.Sagayam, I.A.S., and also one member nominated by the main opposition party of the State Legislative Assembly into the Enquiry Commission setup under retired Hon'ble Justice Mr.Arumugaswamy, to inquire into the mysterious death of former Chief Minister Ms.J.Jayalalitha and the enquiry may be monitored by a Committee of the State Legislative Assembly headed by Main Opposition Leader and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

5.An 'One Man Enquiry Commission' headed by a retired Hon'ble Judge of this Court was constituted by the respondent vide

G.O.Ms.No.817, Public (S.C.) Department, dated 25.09.2017 and G.O.Ms.No.829, Public (S.C.) Department, dated 27.09.2017. These Government Orders were assailed in another public interest litigation being W.P.No.25940 of 2017. After hearing the writ petitioner as well as the learned Advocate General, we dismissed the said writ petition in and by order dated 04.10.2017 upholding the constitution of One Man Enquiry Commission of a retired Hon'ble Judge of this Court.

6.Furthermore, we put it to the petitioner appearing party-in-person as to whether there is any provision under the Commissions of Inquiry Act, 1952, that a leader of the opposition can appoint a member in an Enquiry Commission. The petitioner appearing party-in-person fairly admitted that there is no such provision.

7.Under the Commissions of Inquiry Act, 1952, particularly in the light of Sections 3 and 7 read with Section 2 (a), which defines 'appropriate Government', a Commission of Enquiry can be appointed either by the State Government or Central Government after forming an opinion that Enquiry Commission has to be constituted on the basis of opinion of Government or on the basis of the resolution passed by the respective Houses of elected Members.

8.The petitioner appearing party-in-person fairly submits that he does not make any comment about the integrity or competence about the One Man Enquiry Commission, which has already been constituted.

9.In the absence of any provision under the aforesaid Act and in the light of the fact that we have already upheld the appointment of the One Man Enquiry Commission (in other words, negated a challenge to the appointment of One Man Enquiry Commission of a retired Hon'ble Judge of this Court), we find no ground to entertain the instant miscellaneous petition seeking amendment of the prayer in the main writ petition. For the same set of reasons, we find no ground to entertain the main writ petition also.

10.We have noticed the averments in paragraph 13 of the affidavit dated 03.10.2017 filed in the amendment petition, being W.M.P.No.27719 of 2017. The averments are unfortunate, uncalled for and contumacious. The petitioner is warned against making such scurrilous averments with regard to Hon'ble Judges by name.

11.This writ petition and W.M.P.No.27719 of 2017 are dismissed.

No costs.

(I.B., CJ.) (M.S., J.)

06.10.2017

Index : Yes/No

Website : Yes/No

sra

To

The Chief Secretary to Govt. of Tamil Nadu
Fort St. George, Chennai 600 009.



WEB COPY

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

(sra)



W.P.No.9236 of 2017

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