

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.02.2017

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE N. SESHASAYEE

W.P.No.25365 of 2004
and WMP No.594 of 2010

Balamurali ... Petitioner

Vs

1. The State of Tamil Nadu rep by
Secretary to Government,
Public Department (Law & Order),
Fort St. George,
Chennai - 600 009.
2. The Director General of Police,
Chennai - 600 008.
3. The Commissioner of Police,
Chennai - 600 008.
4. Hon'ble Justice Thiru A. Raman
Commission-of-Inquiry,
Coovam House,
Sivananda Salai,
Government Ommandurar Estate,
Chennai - 600 002.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari to call for the records relating to G.O.Ms.No.1271, Public Law and Order-F dated 20.10.2003 of the first respondent as published in Tamil Nadu Government Gazette, Part II Section 2 dated 20.10.2003, quash the same.

For petitioner : Mr.V. Selvaraj

For R.1 to R.4 : Mr.A.N. Thambidurai
Spl.Govt. Pleader

ORDER

(Order of the Court was made by S. NAGAMUTHU, J.,)

The petitioner has filed the present writ petition to issue a Writ of Certiorari to call for the records relating to G.O.Ms.No.1271, Public Law and Order-F dated 20.10.2003 of the first respondent as published in Tamil Nadu Government Gazette, Part II Section 2 dated 20.10.2003, quash the same.

2. In this writ petition the petitioner challenges the Government Order in G.O.Ms.No. 1271, Public Law and Order-F dated 20.10.2003 appointing the Hon'ble Mr. Justice A. Raman, a retired Judge of this Court as Commission of Enquiry under Sec.3 (i) of the Commission of Enquiry Act with the following reference.

(i) to inquire into and report the facts and circumstances leading to opening of fire by the Police on 26th September 2003 inside Flat No.6, Mahalakshmi Apartments, No.13, Tank Bund Road, Nungambakkam, Chennai - 600 034 resulting in the death of Thiru.Venkatesan Pannaiar.

(ii) To inquire into and report whether the police Firing was warranted and justified.

(iii) To inquire into and report whether there was any lapse on the part of the police in handling the situation and in opening fire.

3. Admittedly, one Mr.Venkatesa Pannaiyar was killed in a police firing, which took place on 26.09.2003. In connection with such killing of Mr.Venkatesa Pannaiyar, a criminal case was registered in Cr.No.1693 of 2003 on the file of Nungambakkam Police Station, Chennai City. When the said case was under investigation, the Government came forward to issue G.O.Ms.No.1271, Public Law and Order-F dated 20.10.2003 for holding necessary enquiry into terms of reference. The petitioner is aggrieved by the same and that is why, he is before this Court with this writ petition.

4. We have heard Mr.V. Selvaraj, learned counsel for the petitioner and Mr.A.N. Thambidurai, learned Special Government Pleader for the respondents 1 to 4 and perused the records carefully.

5. The learned counsel for the petitioner would submit that Mr.Venkatesa Pannaiyar was virtually killed by police officials and in turn, the police officers, who were involved in the killing, are guilty of murder. When the case was under investigation, according to the learned counsel, the Government had no authority to order for enquiry by appointing Commission under the provisions of the Commission of Enquiry Act as it would jeopardise the investigation in respect of the allegations against the police.

6. The learned Special Government Pleader filed counter. According to him, there is no bar for the Government to appoint an Enquiry under the Commission of Enquiry Act.

7. As we have already extracted the terms of the reference, the circumstances, under which, Mr.Venkatesa Pannaiyar was killed in the police firing, the learned counsel for the petitioner, though made arguments before this Court that such kind of enquiry cannot be ordered when the investigation was in progress, he is not able to cite before us either statutory provisions or constitutional provisions or atleast a judgment of the Hon'ble Supreme Court laying down the law declaring that there is a bar.

8. In our considered view since under Commission of Enquiry Act the Government can appoint such Enquiry Commission in larger public interest, it is for this Court to interfere with the same, unless it is shown to this Court that it is highly arbitrary and illegal. In such view of the matter, we find no merit in the writ petition. Hence the writ petition is dismissed. No costs. The earlier order granted by this Court stands vacated. Accordingly, connected WMP is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Government of Tamil Nadu,
Public Department (Law and Order),
Fort St. George,
Chennai - 600 009

2. The Director General of Police,
Chennai - 600 008

3. The Commissioner of Police,
Chennai - 600 008

4. The Hon'ble Justice Thiru A. Raman
Commission-of-Enquiry,
Coovam House,
Sivananda Salai,
Government Ommandurar Estate,
Chennai - 600 002

+1cc to the Government Pleader Sr.9426

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