BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.07.2017

Delivered on : 28.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.[MD].No.12482 of 2017
and
W.M.P.(MD)Nos.9622 to 9624, 9909 and 9986 of 2017

K.Kathiresan : Petitioner

Vs.

1. The Union of India,
Rep. by the Secretary to Government of India,
Ministry of Home Affairs,
New Delhi.

2. The State of Tamil Nadu,
Rep. by the Chief Secretary to Government,
Secretariat,
Chennai-600 009.

3. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Home Department,
Secretariat, Chennai-600 009.

4. The Director General of Police,
No.4, Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.

5. Thiru.T.K.Rajendran, I.P.S.,
Director General of Police,
No.4, Dr.Radhakrishnan Salai,
Mylapore,
Chennai-600 004.

6. The Chief Commissioner of Income Tax,
MG Road,
Nungambakkam,
Chennai-600 034.

7. The Joint Director,
   Central Bureau of Investigation South Zone,
   3rd Floor Shastri Bhavan,
   No.26 Haddows Road,
   Nungambakkam,
   Chennai-600 006.

8. The Director of Vigilance & Anti Corruption (DVAC),
   No.293, MKN Road,
   Alandur,
   Chennai-600 016.

9. The Union Public Service Commission,
   Represented by its Secretary,
   Dholpur House,
   Shahjahan Road,
   New Delhi-110 069. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the grant of extension of service to the fifth respondent herein in the impugned order of the second respondent in G.O.(2D) No.184, Home (SC) Department, dated 30.06.2017 and quash the same as illegal and to direct the seventh respondent to register the case, based on the letters sent by the sixth respondent which is now pending with the eighth respondent and direct the seventh respondent to constitute a Special Investigation Team to investigate the case in accordance with law under the direct monitoring of this Court.

For Petitioner : Mr.A.Kannan.
For Respondent No.1 : Mrs.L.Victoria Gowri.
For Respondents 2to4 : Mr.Muthukumaraswamy, Advocate General, Assisted by Mr.M.K.Subramanian, Government Pleader.
For Respondent No.6 : Mrs.Rajeshwari, For Mrs.S.Srimathy.
For Respondent No.8 : Mr.B.Pugalendhi, Additional Advocate General.

O R D E R

K.K.SASIDHARAN, J.

INTRODUCTORY:

Even before the commencement of selection process for appointment to the post of Head of the Police Force in the State of Tamil Nadu, a Writ Petition was filed by a Lawyer by profession for initiating an enquiry by the Central Bureau of Investigation regarding the alleged connivance of Senior Police Officers, as raised by the Commissioner of Police, Chennai, in his Office memo dated 22 December, 2016 in respect of the sale of banned substances viz., Gutkha and Pan Masala in the State of Tamil Nadu, with a view to stall the appointment of a probable candidate as Director General of Police. The Writ Petition filed by the Lawyer under the banner of Public Interest Litigation was dismissed by a Division Bench presided over by MR.JUSTICE SANJAY KISHAN KAUL [as His Lordship then was], by raising a doubt about the bona fides of the petitioner in filing the Writ Petition and with an observation that it would not be proper for advocates to lend their names as litigants and lending their shoulder to fire the gun, something which is condemnable. Now, it is the turn of a Trade Union Leader challenging the appointment of the fifth respondent as Director General of Police under the brand name "Pro Bono Publico" on the very same grounds raised in the Writ Petition filed by the Lawyer in W.P.No.1846 of 2017, which was dismissed by the First Bench, by order dated 27 January, 2017, the only difference being that the earlier Writ Petition was filed before the Principal Bench at Madras and the present one is before the Bench at Madurai.

THE ORDER UNDER CHALLENGE:

2. The challenge in this Writ Petition is to the Government Order in G.O.(2D)No.184, Home (SC) Department, dated 30 June, 2017, appointing the fifth respondent as the Director General of Police in the State of Tamil Nadu.

BACKGROUND OF THE PETITIONER:

3. The petitioner is stated to be a full time Trade Union Leader and a public spirited person, involved in multifarious social activities. The petitioner is functioning at present as the Madurai Urban District Secretary of All India Trade Union Congress Construction Workers Wing.

THE CASE OF THE PETITIONER:

4(A). It is the contention of the petitioner that on the day of the superannuation of the fifth respondent, his service was extended by two years from 01 July, 2017. Even though there are several competent Officers belonging to Indian Police Service in the Tamil Nadu Police, the fifth respondent was given extension of service with a view to appoint him as Director General of Police.

(B). The Income Tax Department in the year 2016 conducted search on the premises of a Gutkha Manufacturing Company at Chennai and seized several incriminating documents. Those materials revealed large scale payment of bribe to a Minister, Senior Officers of the State Police and other higher officials. The records also revealed that money was paid to the Commissioner of Police, Chennai. The fifth respondent was the Commissioner of Police during the relevant period. The Income Tax Department forwarded the incriminating materials to the Chief Secretary to the Government of Tamil Nadu for taking appropriate action. However, there was no action taken by the Government. The report was kept in cold storage. The fifth respondent was due for superannuation on 30 June, 2017. The State Government, with a view to favour the fifth respondent, failed to place the incriminating materials against him before the Union Public Service Commission. The Union Public Service Commission empaneled the fifth respondent and few other eligible Police Officers. The State Government selected the fifth respondent and appointed him to the prime post of Director General of Police, who is also the Head of Police Force in the State of Tamil Nadu.

(C). The issue regarding the appointment of a tainted officer as Director General of Police was raised by the opposition leader. The Chief Minister in his reply informed the Legislative Assembly that the letter received from the Income Tax Department was forwarded to the Director of Vigilance and Anti-Corruption for enquiry. The petitioner contended that it was not proper to appoint the fifth respondent as Director General of Police during the pendency of the enquiry into the corruption charges by the Vigilance and Anti-Corruption Department.

(D). According to the petitioner, the grant of extension of service to the top level officer was a colourable and mala fide exercise of power. The petitioner, therefore, seeks an order to quash the appointment and a consequential direction for a thorough investigation by the Central Bureau of Investigation.

MATERIALS PRODUCED:

5. The petitioner has not produced any material along with the Writ Petition to substantiate his allegation against the fifth respondent. The Newspaper reports regarding the question raised by the opposition leader on the floor of the Assembly and the reply given by the Chief Minister alone were produced to contend that the fifth respondent received bribe from a Gutkha Manufacturer and as such, his appointment is liable to be quashed.

THE INTERIM ORDER DATED 06 JULY, 2017:

6. The Writ Petition was taken up for admission on 06 July, 2017. Since the petitioner has alleged serious acts of misconduct against the fifth respondent, we decided to hear the learned counsel for the Writ Petitioner and the State. In order to consider the documents available with the State and the Income Tax Department, direction was given for production of documents. The operative portion of the order dated 06 July, 2017, reads thus:

"1....................

2......................

3..........

4. Though the petitioner in his affidavit filed in support of the Writ Petition made serious allegations against the fifth respondent, there are no materials before this Court to substantiate those contentions. Even then, taking into account the high office in which the appointment was made by the Government and the well recognized legal principle "The Institution is more important than an individual", we consider it deem and fit to direct the respondents 2, 6 and 8 to produce the documents indicated below:

(i) The Chief Secretary to Government, State of Tamil Nadu, the second respondent in the Writ Petition is directed to produce the entire records relating to the appointment of the fifth respondent.

(ii) The Chief Commissioner of Income Tax, MG Road, Nungambakkam, Chennai, the sixth respondent herein is directed to produce the alleged incriminating documents containing the names of Government Officers and all the other public servants stated to have been forwarded to the Chief Secretary, Government of Tamil Nadu for appropriate action.

(iii) The Director of Vigilance and Anti Corruption, Chennai, the eighth respondent is directed to produce the materials forwarded by the Chief Vigilance Officer/Chief Secretary for quick verification pursuant to the action taken by the Income Tax Department.

5. The Documents shall be produced in sealed covers by the above referred respondents positively by 10 July, 2017.

6. It is made clear that the direction to produce the documents by the respective respondents should not be construed to be an expression of opinion with regard to the selection process for appointment of fifth respondent as Director General of Police.

7. Post on 10 July, 2017."

DOCUMENTS PRODUCED BY THE AUTHORITIES:

7. The Chief Secretary to the Government of Tamil Nadu produced the file relating to the selection of fifth respondent as Director General of Police. The Chief Commissioner of Income Tax produced a copy of the statement of Shri.Madhava Rao, Partner of the Gutkha Firm with annexure. The Director of Vigilance and Anti-Corruption produced the Case Diary.

SUMMARY OF SUBMISSIONS:

8(A) The learned counsel for the petitioner made the following submissions:

(i) The fifth respondent was given extension of service in a routine and casual manner notwithstanding the availability of materials suggesting his acceptance of bribe.

(ii) The incriminating documents seized by the Income Tax Department were not forwarded to the Union Public Service Commission [in short "UPSC"]. The UPSC, therefore, failed to consider the integrity of the fifth respondent and his ineligibility for appointment to the sensitive post.

(iii) The names of the other senior-most Police Officers were also included in the panel. There are officers more competent than the fifth respondent. However, the Government favoured only the fifth respondent for extraneous consideration.

(iv) The enquiry is now conducted by the Directorate of Vigilance and Anti-Corruption. The Vigilance Commissioner is the controlling authority. The Vigilance Commissioner and the fifth respondent are functioning together in the Home Department. Therefore, enquiry by the Directorate of Vigilance and Anti-Corruption would not be a fair one. The enquiry, therefore, must be entrusted to the Central Bureau of Investigation.

(B) The learned Advocate General appearing on behalf of the State made the following submissions:

(i) The fifth respondent was selected by the State from the empaneled candidates, taking into account his length of service, good track record and range of experience.

(ii) The entries made regarding payment of bribe to the Police Officers without any kind of corroboration would not amount to incriminating materials to deny appointment to the fifth respondent.

(iii) The Government of Tamil Nadu strictly followed the judgment of the Supreme Court in Prakash Singh vs. Union of India [2006 (8) SCC 1] and the provisions of the State Act 22 of 2013, while appointing the fifth respondent.

(iv) The Writ Petition is not filed in public interest. It is a sponsored litigation. There is no element of public interest.

(v) The Public Interest Writ Petition is not maintainable in service matters.

(vi) The Vigilance and Anti-Corruption Department is seized of the matter. The case file produced by the Directorate of Vigilance and Anti-Corruption would show that the allegation against the fifth respondent is not correct.

(vii) Since there was no pending proceeding registered against the fifth respondent or legally acceptable materials suggesting his misconduct, the State was justified in appointing him as the Director General of Police.

(viii) There are no grounds made out by the petitioner for transfer of investigation.

ANALYSIS:

9. The petitioner has come up with this Writ Petition claiming two distinct reliefs;

(a) to quash the appointment of the fifth respondent as Director General of Police on account of his name being referred to in the incriminating documents seized by the Income Tax Department from the Partners of a Gutkha Manufacturing Concern.

(b) to direct the Central Bureau of Investigation to take up the investigation by constituting a Special team.

10. The material records were produced by the Chief Secretary to Government, Income Tax Department and the Director of Vigilance and Anti-Corruption, in sealed covers, for perusal of this Court. We were in a dilemma as to whether all those materials should be disclosed in our order during the currency of enquiry by the Vigilance and Anti-Corruption Department. To our surprise, the petitioner himself through his counsel produced the materials collected by the Income Tax Department after the conclusion of arguments. In case these documents were produced by the petitioner along with the Writ Petition, we could have avoided summoning records from the State Government, the Income Tax Department and Directorate of Vigilance and Anti-Corruption.

WHETHER APPOINTMENT WAS IN THE NATURE OF EXTENSION OF SERVICE:

11(A). The petitioner proceeded under the premise that the fifth respondent was given extension of service by the State. This is clear from the grounds raised by him and his reliance on the decision of the Bombay High Court in R.R.Tripathi vs. Union of India [2008(3) AIR Bom 404], which was in relation to the challenge made to an order granting extension of service to the Director General of Police and other Senior Police Officers by the Government of Maharastra.

(B). The appointment of the fifth respondent on 30 June, 2017, was not in the nature of extension of service. He was appointed as

Director General of Police on 30 June, 2017. The Supreme Court in Prakash Singh vs. Union of India [2006(8) SCC 1] held that once the Police Officer selected amongst the three empaneled Senior Officers of the Police Department is appointed as the Director General of Police, he should have a minimum tenure of at least two years irrespective of his date of superannuation. Therefore, by virtue of his appointment as Director General of Police, the fifth respondent got the benefit of two years service. The period of such service commenced on 01 July, 2017. In view of this, we reject the contention of the petitioner that the fifth respondent was given extension of service by the Government, notwithstanding the availability of competent IPS Officers for appointment to the post of Director General of Police.

THE CORE ISSUE:

12. The moot point is as to whether there were sufficient materials to deny appointment to the fifth respondent to the post of Director General of Police -cum- Head of Police Force in the State of Tamil Nadu.

THE ALLEGED INCRIMINATING DOCUMENTS:

13(A). Since the petitioner himself has produced the documents, which were earlier produced by the Income Tax Department in a sealed cover, we are constrained to analyze those materials to arrive at a conclusion as to whether the entries made in the books of Gutkha Manufacturing Concern would be sufficient to deny appointment to the fifth respondent.

(B) The entry relating to the payment of illegal gratification to the Commissioner of Police indicates that money was paid to him through one Mr.Rajendran. The Income Tax Department recorded the statement of Shri.Madhava Rao, Partner of the Firm dealing with Gutkha that a sum of Rs.60 Lakhs (Rupees Sixty Lakhs only) was paid to the Commissioner of Police on 21.04.2016, 20.05.2016 and 20.06.2016. Neither the account book nor the statement given by the Partner of Gutkha Manufacturing Concern contain a clear admission that money was paid directly to the fifth respondent, who was the Commissioner of Police at the relevant point of time. The money was given only to one Mr.Rajendran.

(C) The records produced before this Court indicates that the Gutkha Manufacturer has made large scale payments through two intermediaries, by name Mr.Rajendran and Mr.Nandakumar. Except the direct payment made to Mr.Arul, Advocate on record for the Firm, all other payments were made only through the intermediaries. Insofar as the Police Department is concerned, payments were made through Mr.Rajendran.

(D) There is nothing available on record to show that the Partner of the Gutkha Manufacturing Concern contacted the recipient of illegal gratification then and there or later for confirmation of the receipt of money. Since no such confirmation was made, it cannot be said, without proper enquiry that the money was actually received by the alleged beneficiaries.

PRELIMINARY ENQUIRY BY VIGILANCE AND ANTI- CORRUPTION:

14. The Directorate of Vigilance and Anti Corruption registered a preliminary enquiry case, pursuant to the direction given by the Vigilance Commissioner. During the course of enquiry, the Additional Superintendent of Police examined Thiru.Rajendran, whose name was referred to in the incriminating documents, as the person who actually paid the money to the Police Officers on behalf of the Gutkha Manufacturer. Thiru.Rajendran denied the allegation that money was paid by him to the Police Officers. His statement was recorded long before the name of fifth respondent was forwarded by the State to the UPSC for appointment as Director General of Police.

NON-PRODUCTION OF RELEVANT MATERIALS BEFORE UNION PUBLIC SERVICE COMMISSION:

15(A).The Government of Tamil Nadu, pursuant to the direction given in Prakash Singh's case cited supra, enacted "The Tamil Nadu Police (Reforms) Act, 2013". Section 3(1) of the Act provides that the Government shall appoint the Director General of Police from amongst the five senior-most Police Officers of the Department empaneled by the Union Public Service Commission for the post of Director General of Police, having regard to the length of service, good record and range of experience for heading the Police Force.

(B) The State Government forwarded the names of senior-most Police Officers to the Union Public Service Commission for appointment to the post of Director General of Police. The Union Public Service Commission considered the service records of all the officers and empaneled the fifth respondent and five other officers for appointment.

(C) The Head of Police Force must be thorough with the functioning of all the Branches of the Force. Then only, he would be in a position to discharge the function efficiently and in a highly professional manner. The Supreme Court in Prakash Singh's case cited supra observed that the empanelment of officers for appointment to the post of Director General of Police shall be on the basis of length of service, good record and range of experience for heading the Police Force. It is clear from the selection file that the fifth respondent satisfied the eligibility criteria as indicated in the judgment in Prakash Singh's case.

(D) It is the contention of the petitioner that relevant materials were not forwarded to the Union Public Service Commission and as such, the Selection Committee constituted by the

UPSC had no occasion to consider the incriminating materials against the fifth respondent. In other words, it is the case of the petitioner that in case the materials collected by the Income Tax Department were all placed before the Union Public Service Commission, the decision would have been different. There is absolutely no merit in the said contention for the following reasons:

(i) There was no direct implication of the fifth respondent in any of the records seized by the Income Tax Department, except the entries regarding the payment made to the intermediary to be given to the police officers including Commissioner of Police. Mere allegation alone would not be sufficient to deny appointment, unless it is corroborated by acceptable evidence.

(ii) There was no case registered against the fifth respondent for corruption or misconduct as on the date on which his name was forwarded by the State Government to the UPSC. Similarly, there was no case pending or contemplated against the fifth respondent as on the date on which he was empaneled by the UPSC.

(iii) The allegation was to the effect that the Gutkha Manufacturer has paid money to the Commissioner of Police through Mr.Rajendran. It was not the case of the Partner of the Gutkha Firm, who was examined by the Income Tax officials, that he made payment directly to the fifth respondent or that he personally or otherwise confirmed the receipt of money from Mr.Rajendran by the beneficiary.

(iv) Even before forwarding the name of the fifth respondent along with the names of other Police Officers to the UPSC by the State Government for empaneling the eligible officers, the Vigilance and Anti-Corruption examined the alleged intermediary Mr.Rajendran. In his statement, Mr.Rajendran stated that no such payment was made by him to the Police Officers. In view of the said statement and in the absence of any corroborative materials suggesting acceptance of illegal gratification by the fifth respondent, the State Government was not expected to forward the alleged incriminating materials to the UPSC, even if the Government was in possession of such materials handed over by the Income Tax Department.

(v) There should be at least prima facie materials suggesting receipt of illegal gratification by the fifth respondent. Mere entries in the records regarding illegal gratification without any kind of supportive materials would not amount to legal evidence. Since the intermediary denied the allegations that payment was routed through him and that he paid money to the Police Officers, the appointment of fifth respondent is not vitiated on the ground of non-production of incriminating materials before UPSC by the State.

RECORD OF SERVICE IN RESPECT OF FIFTH RESPONDENT:

16(A). We have perused the confidential records relating to the fifth respondent. There is not even a single adverse entry recorded in his Service book relating to his 32 years of police service. He was given Police Medal for meritorious service in 2001 and President's Police Medal for distinguished service in 2010.

(B).The service records produced by the State shows that the fifth respondent functioned in different capacities, like Assistant Superintendent of Police (Law and Order), Deputy Commissioner of Police (Security and Anti-Hijacking), Deputy Commissioner of Police (Traffic), Superintendent of Police in some of the sensitive Districts, Superintendent of Police, Special Branch CID, Deputy Inspector General (Intelligence), Deputy Inspector General (Technical Services), Inspector General of Police, South Zone, Madurai, Additional Commissioner of Police, Chennai, Inspector General of Police, Special Investigation Cell, Vigilance and Anti-Corruption, Director of Vigilance and Anti-Corruption, Inspector General of Police -cum- Member Secretary, Tamil Nadu Uniformed Service Recruitment Board, Additional Director General of Police (Administration), Police Headquarters, Additional Director General of Police (Law and Order), and Commissioner of Police, Chennai. He was holding the post of Director General of Police by way of full additional charge with effect from 07 September, 2016 till he was appointed as the Head of Police Force, Tamil Nadu, on 30 June, 2017. The successive Governments in power have certified that his performance was outstanding. All these relevant materials were considered by the Union Public Service Commission while empaneling the fifth respondent along with other eligible Senior Officers. We, therefore, hold that the Union Public Service Commission was justified in empaneling the fifth respondent for appointment to the post of Director General of Police.

MERIT REVIEW:

17(A). The learned counsel for the petitioner, by placing reliance on the averments in the affidavit filed in support of the

Writ Petition, strenuously contended that there are highly qualified and efficient Police Officers eligible for appointment as Head of State Police and that the State Government was not correct in appointing the fifth respondent, who is a tainted officer. The petitioner appears to be holding the brief of others and that must be the reason for his request to undertake the exercise of merit review. As observed by the Hon'ble Supreme Court in R.K.Jain vs. Union of India [1993(4) SCC 119] and Centre For PIL vs. Union of India [2011(4) SCC 1], Judicial review is concerned only with the question whether the incumbent possessed the qualification for the appointment and the manner in which the appointment was made. The other ground being whether the procedure adopted was fair, just and reasonable.

(B). The Supreme Court in Centre For PIL cited supra summarized the scope of judicial review in the following words:

> "64. .... We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction....................."

(C) The Hon'ble Supreme Court in Citizens for justice & Peace v. State of Gujarat [2009(11) SCC 213], made it clear that interference is very limited in sensitive matters, like appointment of Director General of Police. The Supreme Court said:

> "11. An appointment of a government servant is the prerogative of the particular Government, particularly, when it is a sensitive appointment of the Director General of Police. We, under the doctrine of "judicial review", would not extend our hands to upset such an appointment, more particularly, in the factual panorama which is available today..........."

(D) The inter se merits of the empaneled Police Officers were considered by the State Government and a conscious decision was taken to appoint the fifth respondent. It is not within the province of this Court to upset the said decision by conducting a comparative merit review. We, therefore, reject the contention taken by the petitioner on the ground of comparative merit.

THE EARLIER PUBLIC INTEREST LITIGATION:

18. The Commissioner of Police, Chennai City, vide his office memo dated 22 December, 2016, requested the Principal Secretary to Government, Home Department, Chennai, to conduct enquiry, taking into account the incriminating documents seized by the Income Tax Department on 07 July, 2016. Thereafter, and more particularly, within few days, a Writ Petition was filed by a Lawyer in the Principal Bench of this High Court to direct the Home Secretary,

to take immediate action on the basis of the Office memo dated 22 December, 2016 sent by the Commissioner of Police. The first Bench presided over by the Hon'ble the Chief Justice suspected the bona fides of the petitioner in filing the Writ Petition. The First Bench wondered as to how the writ petitioner got a copy of the Secret/confidential letter sent by the Commissioner of Police to Home Secretary. While dismissing the Writ Petition, by order dated 27 January, 2017, in W.P.No.1846 of 2017, the First Bench was pleased to make the following observation:

> "4. We also doubt the bona fides of the petitioner in filing the present petition. We have even earlier commented number of times on advocate lending their names as litigants and lending their shoulder to fire the gun, something which is condemnable. This is one more such case. It, in fact, seeks to give an impression as if some view officially taken is sought to be further pressed in the government decision system by filing a public interest litigation."

PETITIONER - MERE NAME LENDER:

19(A). The details furnished by the petitioner in this Writ Petition and his access to the records kept in the custody of public authorities clearly show that he is only a name lender and he is acting at the behest of others. We are fortified in the above conclusion on account of the indication in the order dated 27 January, 2017 in W.P.No.1846 of 2017, that the initiation of Public Interest Litigation was an attempt to obtain the seal of approval from the High Court to the view taken in the office memo of the Commissioner of Police dated 22 December, 2016.

(B). The petitioner is a Trade Union Leader based at Madurai. The petitioner has exhibited extensive knowledge of the entire background relating to the appointment of the fifth respondent. The background facts clearly reveals that the petitioner has taken up the cause of others who are personally interested in the subject matter. We have reasons to suspect the bona fides of the petitioner in filing this Writ Petition. The attempt of the petitioner does not appear to uphold the institutional integrity. In fact, there is no challenge to the appointment of fifth respondent at the instance of the other empaneled candidates.

DISPUTE REGARDING NON-RECEIPT OF INCRIMINATING MATERIALS:

20(A). The Chief Secretary, Government of Tamil Nadu, filed an affidavit dated 17 July, 2017 stating that there is nothing on record in her Office to indicate that the administration received the letter sent by the Principal Director of Income Tax (Investigation) Chennai, along with the annexures immediately after the raid. The learned counsel for the petitioner, by producing a copy of the letter sent by the Principal Director of

Income Tax, contended that the documents were entrusted to the then Chief Secretary to the Government of Tamil Nadu on 12 August, 2016. However, action was not taken thereafter to conduct enquiry.

(B). We have perused the documents produced by the Principal Director of Income Tax (Investigation), Chennai. It is found that the incriminating documents seized during the raid were handed over to the Chief Secretary, Government of Tamil Nadu, on 12 August, 2016. The documents were handed over in person to the then Chief Secretary on 12 August, 2016. The officer, who handed over the documents on 12 August, 2016, by his letter dated 13 August, 2016 sought co-operation from the State in its effort to curb tax evasion. In the said letter, the officer referred to the factum of supply of documents to the Chief Secretary on 12 August, 2016. The present Chief Secretary appears to have filed the affidavit dated 17 July, 2017 on verification of the records available in her office.

(C). The learned counsel for the petitioner made a mention before us few days after reserving the Writ Petition "for orders", that the newspapers have reported that the relevant file containing the incriminating materials was missing and, therefore, wanted the Income Tax Department to file an affidavit, with regard to handing over of documents to the Chief Secretary. We declined to re-open the matter for the reason that there are materials produced by the Income Tax Department before us to show that the Principal Director of Income Tax Department, Chennai, met the then Chief Secretary on 12 August, 2016. The affidavit filed by the Chief Secretary now indicates that those materials are not available with her office. This is a matter to be enquired into by the Vigilance and Anti-Corruption, during the course of enquiry. While appreciating the efforts taken by the Principal Director of Income Tax (Investigation), Chennai and his team of officers for exposing those who are dealing in illegal Gutkha and Pan Masala Trade and their patrons and well-wishers in Government Service and to unearth black money and evasion of tax, we do not express any opinion with regard to this contentious issue, in view of our decision to direct the Vigilance and Anti-Corruption to hold a detailed enquiry in the matter.

JUDGMENT CITED BY THE PETITIONER:

21. The petitioner placed heavy reliance on the judgment rendered by a Division Bench of the Bombay High Court in R.R.Tripathi vs. Union of India [2008(3) AIR Bom.404]. The said decision has no application to the facts of the present case. The issue before the Bombay High Court was in respect of the extension of service granted to a few police officers in violation of the statutory Rules and without considering the string of incriminating materials available on record and which was the subject matter of ongoing enquiry. The judgment has nothing to do with the extension of service based on Prakash Singh case. The

State of Maharastra made a proposal to the Government of India for the extension of service of two tainted officers, working as Commissioner of Police and Director General of Police, during the verge of their retirement on 30 November, 2017. The Bombay High Court held that their appointment was contrary to Rules and against public interest. In short, the issue before the Bombay High Court was not in relation to the appointment of the Head of the Police Force in the State of Maharastra in accordance with the Direction in Prakash Singh. Since the facts are totally different, we reject the contention taken by the petitioner on the strength of the Division Bench judgment rendered by the Bombay High Court.

THE PRECEDENT:

22(A). In Central Bureau of Investigation v. V.C.Shukla [1998 (3) SCC 410], which is otherwise called as "JAIN HAWALA DIARY" Case, the issue before the Hon'ble Supreme Court was whether on account of the entries made in the books of Jain Brothers with regard to the payments made to Sri.L.K.Advani and Shri.V.C.Shukla, the then members of Parliament, criminal prosecution can be launched against them. The Supreme Court found that the entire edifice of the prosecution case was built on the diaries and files and the related entries. The Hon'ble Supreme Court, after considering elaborately Section 34 of the Indian Evidence Act, indicated that even if the book of account has been regularly kept in the course of business, still it would not be sufficient to frame charges against the alleged beneficiaries. The Supreme Court said:

> "17. From a plain reading of the section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability......................."

(B) The Supreme Court in V.C.Shukla's case, after scanning the earlier decisions, opined that the Members of Parliament accused of receiving illegal gratification cannot be charged on the basis of the entries found in the account books.

> "39. A conspectus of the above decisions makes it evident that even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness, fix a liability upon a person. Keeping in view the above principles, even if we

proceed on the assumption that the entries made in MR 71/91 are correct and the entries in the other books and loose sheets (which we have already found to be not admissible in evidence under Section 34) are admissible under Section 9 of the Act to support an inference about the former's correctness still those entries would not be sufficient to charge Shri Advani and Shri Shukla with the accusations levelled against them for there is not an iota of independent evidence in support thereof............................."

SAHARA AND ADITYA BIRLA GROUP CASE:

23. Most recently, in Common Cause (A Registered Society) vs. U.O.I. 2017(1) Scale 573, the issue that came up for consideration before the Hon'ble Supreme Court was as to whether the entries made in the Books of the two Companies regarding illegal gratification paid to certain politicians would be sufficient to direct investigation against them. Before the Supreme Court, in answer to the contention taken by the learned counsel for the petitioner, by placing reliance on Lalita Kumari's case that such entries are sufficient for registering First Information Report and initiating investigation, the Attorney General submitted that in case cognizance is taken on the basis of such inadmissible evidence, it is open to any unscrupulous person to make an entry any time against anybody's name unilaterally on any sheet of paper or computer excel sheet. The Supreme Court, taking note of the said submission and placing reliance on V.C.Shukla's case, opined that to direct investigation in such cases, there must be some relevant and admissible evidence. The Supreme Court, while negativing the request for initiating investigation by CBI, observed thus:

"21. We are constrained to observe that the Court has to be on guard while ordering investigation against any important constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence and not admissible in evidence, we have apprehension whether it would be safe to even initiate investigation. In case we do so, the investigation can be ordered as against any person whosoever high in integrity on the basis of irrelevant or inadmissible entry falsely made, by any unscrupulous person or business house that too not kept in regular books of accounts but on random papers at any given point of time. There has to be some relevant and admissible evidence and some cogent reason, which is prima facie reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-relations with the random entries. In case we do not insist for all these, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in absence of cogent and admissible material on record, lest liberty of an individual be compromised unnecessarily........."

RELEVANCY OF V.C.SHUKLA AND SAHARA CASE:

24. In V.C.Shukla's case, the CBI investigated the matter and filed the final report, resulting in taking cognizance by the Special Court. The charge framed against Sri.V.C.Shukla was quashed by the High Court and it was confirmed by the Supreme Court. The order framing charge against Sri.L.K.Advani was set aside by the High Court and upheld by the Supreme Court. In Sahara and Aditya Birla Case, the Supreme Court negatived the request even to direct the Special Investigating Team of CBI to register a case and hold enquiry. In the present case, the allegation against the fifth respondent is not that he received money directly from the Gutkha Manufacturer. The entries indicate the payment made to an intermediary and only on that basis, the partner of the Gutkha Manufacturing Concern in his statement given to the Income Tax Department stated that money was given to the Commissioner of Police. The intermediary has denied such payment to the Police. In case the yardstick adopted in V.C.Shukla and Sahara case is followed, it can very well be said that the alleged material against the fifth respondent is weak and inadmissible. The Vigilance enquiry is still pending. It is too premature to arrive at a definite conclusion on the basis of available materials that money was paid to the fifth respondent. In any case, the incriminating materials seized by the Income Tax Department would not be sufficient to declare that the fifth respondent is unfit to hold the post of Director General of Police.

CBI INVESTIGATION:

25(A). The petitioner seeks a further direction to the CBI to constitute a special investigation team to investigate the case of corruption involving the public servants taking into account the materials seized by the Income Tax Department. In view of the said prayer, we have sent for the Case Diary from the Director of Vigilance and Anti-Corruption. It is found from the Case Diary that pursuant to the letter sent by the Commissioner of Police dated 22 December, 2016, the Principal Secretary to Government, Home Department, who is also the Vigilance Commissioner, directed the Directorate of Vigilance and Anti-Corruption to conduct a preliminary enquiry into the allegations of corruption. The Additional Superintendent of Police, Vigilance and Anti-Corruption, City Special Unit-I, Chennai, registered a preliminary enquiry on 27 January, 2017.

(B). The Special Investigation Team formed by the Director of Vigilance and Anti-Corruption has already identified the alleged middle man, by name Mr.Rajendran and recorded his statement on 20 March, 2017. The statement of Mr.Rajendran was recorded well before initiating action by the State Government for appointing the Head of Police Force.

(C). The enquiry by the Directorate of Vigilance and Anti-Corruption is in progress. There is no need for a change of enquiry or investigation by entrusting the matter with the Central Bureau of Investigation. There is no basis for the apprehension that it would not be possible for the Directorate of Vigilance and Anti-Corruption to hold impartial enquiry, in view of the involvement of a Minister and high ranking police officers.

(D) The Directorate of Vigilance and Anti-Corruption is an independent Organization and its officers are not answerable to the State Police or political executive. We are informed that in the neighbouring State of Kerala, the Vigilance and Anti-Corruption Department registered a case against the Minister of the former Government for corruption after holding preliminary enquiry and the same resulted in the resignation of the concerned Minister. Similarly, another Minister in the present Cabinet of the Government of Kerala also resigned recently pursuant to the registration of a case against him by the Directorate of Vigilance and Anti-Corruption, Kerala, for corruption and favoritism. This would clearly indicate that the Directorate of Vigilance and Anti-Corruption has been functioning independently and without any interference from those who are in power. In any case, there are no materials before us to suggest that a thorough investigation would not be conducted by the Directorate of Vigilance and Anti-Corruption in the subject case. However, taking into account the apprehension raised by the leader of the opposition in his representation dated 01 July, 2017 addressed to the Chief Secretary that it would not be possible to oversee the enquiry by the Vigilance Commissioner, who is also the Home Secretary, under whom the Director General of Police is functioning and to conduct an impartial and fair enquiry, we are constrained to direct the State Government to streamline the functioning of the Vigilance Organization and to ensure that enquiry by the Vigilance and Anti-Corruption in the Gutkha Scam is conducted in an unbiased manner and without the intervention of those against whom allegations are made, besides others in power.

APPOINTMENT OF VIGILANCE COMMISSIONER:

26. The Government has constituted the State Vigilance Commission headed by a Vigilance Commissioner. The Vigilance Commissioner has jurisdiction and power in respect of matters to which the executive power of the State extends. The Vigilance Commissioner is an independent authority vested with extensive powers to curb corruption and initiate action against the Government servants/servants of Public Sector Undertaking for acceptance of illegal gratification and matters incidental thereto. It is the apprehension of the petitioner that it would not be possible for the Vigilance Commissioner to hold enquiry against high ranking police officers and other public servants including a Minister through the Directorate of Vigilance and Anti- Corruption, as he is also holding the post of Home Secretary and in the said capacity, he is dealing day in and day out with the Director General of Police and other senior police officers.

27. The Vigilance Commissioner must act as a watch-dog. The Vigilance Commissioner must be chosen in such a manner that he would be in a position to function independently and without any kind of Government control. The Chief Secretary, the Home Secretary and the Director General of Police are members of the State Security Commission. Similarly, the Home Secretary and the Director General of Police are the members of the Committee constituted to assess the "threat perception" and to provide security to those who are under threat. The Home Secretary and the Director General of Police are expected to function in a coordinated manner to maintain law and order in the State. The enquiry by the Vigilance and Anti-Corruption must inspire confidence in the general public. The common man would be justified, in case there is an apprehension that the Directorate of Vigilance and Anti-Corruption would not hold enquiry independently and in a fair manner, in the event of the enquiry being monitored by an authority, who is also the administrative head of the Home Department, under whom, the Director General of Police is functioning. The enquiry by the Directorate of Vigilance and Anti-Corruption must not only be done in a fair manner, but, it should also appear to be done fairly. Therefore, it would neither be fit nor proper to designate the Home Secretary as the Vigilance Commissioner. Since the present enquiry relates to the allegation of acceptance of illegal gratification by high ranking public servants, we are of the view that the State must appoint a Vigilance Commissioner with independent charge.

CONCLUSION:

28. For the reasons aforesaid, we hold that

"(a) the State was correct in its decision selecting and appointing the fifth respondent as the Director General of Police;

(b) the entries made in the records seized from the Gutkha Manufacturer by the Income Tax Department are not sufficient to deny appointment to the fifth respondent as the Head of the Police Force; and

(c) the case on hand does not warrant transfer of enquiry/investigation to the Central Bureau of Investigation."

29. We make it clear that the observations made in this order would not stand in the way of the Directorate of Vigilance and Anti-Corruption from conducting enquiry/investigation independently and to take appropriate action in accordance with law.

30. DIRECTION TO THE STATE:

"(i) We direct the second respondent to appoint a Vigilance Commissioner with independent charge and professional independence to head the State Vigilance Commission. The Vigilance Commissioner should be in a position to function without fear or favour and without answerable to the political executive. The Vigilance Commissioner must be an upright officer and a person of unimpeachable integrity and good track records. He should not be associated with any other department and in particular, the Home Department, under whom the Director General of Police and the Police Force in general, are functioning. The commitment, devotion and accountability of the Vigilance Commissioner must be to the rule of law and not to the executive Government. There should not be any kind of political interference in the discharge of lawful function by the Vigilance Commissioner. The appointment should be made as expeditiously as possible and in any case, within a period of two weeks from today, so as to enable the Vigilance Commissioner to monitor the enquiry conducted by the Directorate of Vigilance and Anti-Corruption.

(ii) The Director, Vigilance and Anti-Corruption shall constitute a special team and conduct enquiry in this matter under his personal supervision. He should take orders only from the Vigilance Commissioner. He shall not share the materials collected during the enquiry/investigation with any of the public servants. He should report directly to the Vigilance Commissioner. There should not be any kind of interference in the course of enquiry by political executive or public servants and more particularly, the Director General of Police, the Minister concerned or any of the other officers against whom allegations are made. The status and position of the parties should not be a relevant factor while conducting enquiry.

(iii) The Director, Vigilance and Anti-Corruption must scrupulously follow the Vigilance Manual while conducting enquiry, submission of timely report and final report to the authority named in the Manual of the Directorate of Vigilance and Anti-Corruption, Tamil Nadu.

(iv) The time limit stipulated for completion of enquiry/investigation as prescribed by the Hon'ble Supreme Court in Lalita Kumari v. Govt. of U.P. [2014(2) SCC 1] and the Vigilance Manual shall be strictly adhered to by the Director of Vigilance and Anti-Corruption.

(v) The Principal Director of Investigation, Income Tax Department, Chennai, is directed to provide the entire incriminating materials seized from the Gutkha Manufacturer to the Director, Vigilance and Anti-Corruption forthwith for taking follow-up action.

(vi) The Director of Vigilance and Anti-Corruption is directed to hold a detailed enquiry relating to the missing of incriminating materials handed over to the then Chief Secretary by the Principal Director of Income Tax (Investigation) on 12 August, 2016, fix responsibility for the loss of file and ensure that the guilty are brought to book and appropriate action is taken in accordance with law."

DISPOSITION:

31. The Writ Petition is disposed of with directions as indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government of India,
   The Union of India,
   Ministry of Home Affairs,
   New Delhi.

2. The Chief Secretary to Government,
   State of Tamil Nadu,
   Secretariat,
   Chennai-600 009.

3. The Secretary to Government,
   The State of Tamil Nadu,
   Home Department,
   Secretariat, Chennai-600 009.

4. The Director General of Police,
   No.4, Dr.Radhakrishnan Salai,
   Mylapore,
   Chennai-600 004.

5. The Director of Vigilance & Anti Corruption (DVAC),
   No.293, MKN Road, Alandur,
   Chennai-600 016.

6. The Chief Commissioner,
   Income Tax Department,
   MG Road, Nungambakkam,
   Chennai-600 034.

7. The Joint Director,
   Central Bureau of Investigation South Zone,
   3rd Floor Shastri Bhavan,
   No.26 Haddows Road, Nungambakkam,
   Chennai-600 006.

8. The Secretary,
   Union Public Service Commission,
   Dholpur House, Shahjahan Road,
   New Delhi-110069.

9. The Principal Director (Investigation),
   Income Tax Department, 108, MG Road,
   Nungambakkam, Chennai-600034.

+1cc to M/S. A.KANNAN, Advocate, SR.No.68464.
+1cc to M/S. S.M.S.JOHNNY BASHA, Advocate, SR.No.68546.
+1cc to M/S. L.VICTORIA GOWRI, Advocate, SR.No.68519.
+1cc to Special Government Pleader, SR.No.68760 & 68734.

Order made in
W.P.[MD].No.12482 of 2017
Delivered on:
28.07.2017

SML
SDS/SKN:RSK/SAR 4/28.07.2017/22P/14C