



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD)No.13143 of 2017

Ganesan

: Petitioner

-Vs-

- 1.State represented by,
The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai.
- 2.Home Secretary,
Government of Tamil Nadu,
Secretariat, Chennai.
- 3.The Secretary,
Adi Dravidar & Tribal Welfare Department,
Secretariat, Chennai.
- 4.District Collector cum District Vigilance
Monitoring Committee,
Collectorate Complex,
Virudhunagar,
Virudhunagar District.
- 5.Principal Sessions Judge,
PCR Court, Srivilliputhur,
Virudhunagar District.

: Respondents

PRAYER: This Writ Petition has been filed under Article 226 of the Constitution of India, to issue a writ of mandamus, directing the respondent No.4, to consider the petitioner's representation dated 17.04.2017, requesting to change the public prosecutor and to appoint an eminent Senior Advocate of the petitioner's choice with immediate effect, and to consequently direct the trial court to expedite the trial in SC.No.27/2013 pending on the file of the PCR Court, Srivilliputhur, Virudhunagar District.

For Petitioner : Mr.R.Krishnamurthy
for Ms.S.E.Monica Vincent

For Respondents : Mr.S.Sathish Kumar
Additional Government Pleader

**ORDER**

This petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondent No.4, to consider the petitioner's representation dated 17.04.2017, requesting to change the public prosecutor and to appoint an eminent Senior Advocate of the petitioner's choice with immediate effect and consequential relief.

2. Heard Mr.R.Krishnamurthy, learned counsel appearing for the petitioner and Mr.S.Sathish Kumar, learned Additional Government Pleader, appearing for the respondents.

3.The petitioner states that he belongs to schedule caste community and that his father was brutally murdered by the dominant caste persons residing in the same village. The petitioner further states that since the petitioner's father was victim of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, there was an attempt to dilute the murder case of the petitioner's father. The petitioner also pointed out certain irregularities in the registration of FIR.

4.It was only after some pressure that was put by the petitioner, the offence itself was altered by including the Provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In these circumstances, the petitioner states that a representation was given to the 4th respondent to appoint an advocate of the petitioner's choice to prosecute the case.

5.The learned counsel for the petitioner relied upon Rule 4 (5) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rule, 1995 which reads as follows:

"4. Supervision of Prosecution and Submission of Report:-

(1) The State Government on the recommendation of the District Magistrate shall prepare for each District a panel of such number of eminent senior advocates who have been in practice for not less than seven years, as it may deem necessary for conducting cases in the Special Courts. Similarly, in consultation with the Director Prosecution in charge of the prosecution, a panel of such number of Public Prosecutions as it may deem necessary for conducting cases in the special Courts, shall also be specified. Both these panels shall be notified in the Official Gazette of the State and shall remaining force for a period of three years.

(2) The District Magistrate and the Director of Prosecution in charge of the prosecution shall review at least twice in a calender year, in the month of January and July, performance of Special Public Prosecutors so specified or appointed and submit a report to the State Government.



(3) If the State Government is satisfied or has reason to believe that a Special Public Prosecution so appointed on specified has not conducted the case to the best of his ability and with due care and caution, his name may be, of reasons to be recorded in writing, denotified.

(4) The District Magistrate and the Officer-in-charge of the prosecution at the District level, shall review the position of cases registered under the Act and submit a monthly report on or before 20th day of each subsequent month to the Director of Prosecution and the State Government. This report shall specify the actions taken proposed to be taken in respect of investigation and prosecution of each case.

(5) 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 fees as he may consider appropriate.

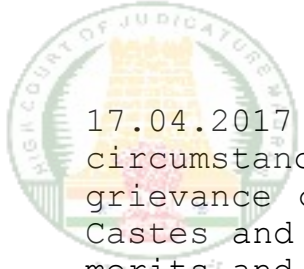
(6) Payment of fee to the Special Public Prosecutor shall be fixed by the State Government on a scale higher than the other panel advocates in the State."

6. The learned counsel for the petitioner also relied upon a judgment of this Court in the case of **N.Subburaj -Vs- The District Collector, Dindigul District & Others**, dated 19.02.2016 made in W.P. (MD) No.246 of 2016 wherein this Court in paragraph 13 has observed as follows:

"13. In fine, this Court is of the view that this Writ Petition will have to be allowed on the strength of what is discussed above. Accordingly, this Writ Petition is allowed and the impugned order in O.Mu.36690/2015/C2 dated 19.12.2015 (signed on 22.12.2015) passed by the 1st respondent is set aside. The 1st respondent is directed to appoint Mr.B.Mohan, Advocate, Bhavani, Erode District as Special Public Prosecutor in S.C.No.112 of 2015 on the file of the District Principal Sessions Judge, Dindigul in Crime No.571 of 2012, dated 08.12.2012, registered under the Special Enactment. The order to that effect shall be passed within a period of 15 days from the date of receipt of a copy of this order."

7. The case that was cited by the learned counsel for the petitioner is a case where order was passed rejecting the petition. This Court is of the view that the discretionary power given to the District Collector can be exercised in this case, having regard to the circumstances pointed out by the petitioner.

8. Hence, this Writ Petition is **allowed** and the 4th respondent is directed to consider the petitioner's representation dated



17.04.2017 and pass appropriate orders, having regard to the circumstances, stated in the petition and after considering the grievance of the petitioner in terms of Rule 4(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rule, 1995 on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order. It is open to the petitioner to approach this Court, in case of the petitioner's request to appoint an Advocate to the petitioner of his choice is allowed, to seek appropriate direction for the early disposal of the case by the Court in which the Criminal proceedings in S.C.No.27/2013 is pending.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai.
- 2.Home Secretary,
Government of Tamil Nadu,
Secretariat, Chennai.
- 3.The Secretary,
Adi Dravidar & Tribal Welfare Department,
Secretariat, Chennai.
- 4.District Collector cum District Vigilance
Monitoring Committee,
Collectorate Complex,
Virudhunagar,
Virudhunagar District.
- 5.Principal Sessions Judge,
PCR Court, Srivilliputhur,
Virudhunagar District.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.74582

+1cc to Ms.S.E.MONICA VINCENT Advocate in SR. No. 74098

das.myr

JS/KP/SAR.1/14.09.2017/4P-8C

W.P(MD)No.13143 of 2017
22.08.2017