



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2017

CORAM:

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

W.P. (MD) No.15634 of 2017

Dr.Traffic K.R.Ramaswamy

: Petitioner

Vs.

1. The Secretary to
To In Charge The Governor of Tamil Nadu,
Rajbhavan, Guindy, Chennai.
2. The Chief Secretary,
Government of Tamil Nadu,
Fort St. George,
Chennai-9.
3. The Secretary to Government,
Home Department,
Fort St. George,
Chennai-9.
4. The Inspector General of Police,
Central Zone,
Trichy.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent Nos.1 to 4 to consider and pass appropriate orders on the representation dated 17.08.2017 sent by the petitioner for taking appropriate prosecution action against the persons as per law on the Ministers mentioned in the representation to the letter and spirit.

For Petitioner

: Traffic.Dr.K.R.Ramaswamy,
Party-in-person

For Respondents

: Mr.M.Govindan,
Special Government Pleader

**ORDER**

[Order of the Court was made by K.K.SASIDHARAN, J.]

This Writ Petition filed in *pro bono publico* by Traffic Dr.K.R.Ramaswamy seeks a Writ of Mandamus, directing the Governor of Tamil Nadu to summon the Legislative Assembly, direct the Government to prove majority and in the event of failure to obtain required majority, to suspend the Assembly and take action against two tainted Ministers.

2. It is the case of the petitioner that a corrupt Government is now ruling Tamil Nadu. The Ministers, who are involved in criminal acts and involved in money laundering, are part of the decision making process of the Government. They are taking advice from a convict, who is lodged at Bangalore Jail. The petitioner submitted a representation to the Governor of Tamil Nadu to take immediate action in the matter for saving democracy. Since follow-up action was not taken by the Governor, the petitioner has come up with this Writ Petition.

3. We have heard the petitioner who appeared as party-in-person.

4. The petitioner submitted a representation to His Excellency the Governor of Tamil Nadu on 17 August, 2017 through E-mail and immediately thereafter, filed this Writ Petition on 18 August, 2017.

5. The petitioner in his representation called upon the Governor to suspend or dismiss the State Government, which, according to him, is corrupt. The petitioner submitted that he would observe "Quit Corruptionist Day" in Madurai on 18 August, 2017, like "Quit India" against British Ruling.

6. The petitioner very strangely in the said representation made a request to appoint a permanent Governor for Tamil Nadu by the President of India and to take serious action against corrupt Rulers.

SUSPENSION OF LEGISLATIVE ASSEMBLY:

7. The affidavit filed by the petitioner in support of his Writ Petition does not contain any material warranting suspension of the Legislative Assembly of Tamil Nadu. When the Chief Minister and his Council of Ministers enjoy the confidence of the majority of the House, there is no need for suspension of the Legislative Assembly.

SUMMONING THE ASSEMBLY FOR PROVING MAJORITY:

8. The petitioner seeks a further direction to the Governor to summon the Legislative Assembly to prove the majority of the present Government. The petitioner is not a Legislator. There are



no materials before us to show that the Government has lost its majority. It is not as if the opposition parties are not vigilant and they would not initiate non-confidence motion, in case the Government lost its majority in the Assembly.

POWERS OF THE GOVERNOR:

9. The petitioner in a very casual manner called upon the Governor to dissolve the Assembly. There is no dispute that Article 174 of the Constitution empowers the Governor to summon the House, prorogue it or dissolve the Legislative Assembly. The power to suspend or dissolve the Assembly cannot be exercised in a routine manner.

10. The Hon'ble Supreme Court in **Nabam Rebia and Bamang Felix vs. Dy. Speaker, Arunachal Pradesh Legislative Assembly [2016(8) SCC 1]**, while indicating the extent of powers of the Governor in the functioning of Legislature, made it clear that the Governor cannot interfere in essential legislative functions. The Supreme Court held that the Governor cannot be seen to have such powers and functions, as would assign to him a dominating position, over the State executive and the State legislature. The relevant observation reads thus:

"163. The historical reason relevant for the present determination, emerges from the fact, that a Governor under the Constitution, is not an elected representative. A Governor is appointed by a warrant issued under the hand and seal of the President Under Article 155, and his term of office enures Under Article 156, during the pleasure of the President. A Governor is an executive nominee, and his appointment flows from the aid and advice tendered by the Council of Ministers with the Prime Minister as the head, to the President. The President, on receipt of the above advice, appoints the Governor. Likewise, the tenure of the Governor rightfully subsists, till it is acceptable to the Council of Ministers with the Prime Minister as its head, as the Governor Under Article 156 holds office, during the pleasure of the President. In our considered view, such a nominee, cannot have an overriding authority, over the representatives of the people, who constitute the House or Houses of the State Legislature (on being duly elected from their respective constituencies) and/or even the executive Government functioning under the Council of Ministers with the Chief Minister as the head. **Allowing the Governor to overrule the resolve and determination of the State legislature or the State Executive, would not harmoniously augur with**



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the strong democratic principles enshrined in the provisions of the Constitution. Specially so, because the Constitution is founded on the principle of ministerial responsibility. The acceptance of the submission advanced on behalf of the Respondents, would obviously negate the concept of responsible Government. Summoning of the Legislature, initiates the commencement of the legislative process; prorogation of the Legislature temporarily defers the legislative process; and the dissolution of the Legislature brings to an end, the legislative process. In the absence of any legislative responsibility, acceptance of the contention advanced on behalf of the Respondents, would seriously interfere with the responsibility entrusted to the popular Government, which operates through the Council of Ministers with the Chief Minister as the head. It is for the instant reasons also, that the submission advanced on behalf of the Respondents, with reference to the interpretation of Article 174, does not merit acceptance.

166. In view of the consideration recorded hereinabove, we are of the view, that in ordinary circumstances during the period when the Chief Minister and his Council of Ministers enjoy the confidence of the majority of the House, the power vested with the Governor Under Article 174, to summon, prorogue and dissolve the House(s) must be exercised in consonance with the aid and advice of the Chief Minister and his Council of Ministers. In the above situation, he is precluded to take an individual call on the issue at his own will, or in his own discretion. In a situation where the Governor has reasons to believe, that the Chief Minister and his Council of Ministers have lost the confidence of the House, it is open to the Governor, to require the Chief Minister and his Council of Ministers to prove their majority in the House, by a floor test. Only in a situation, where the Government in power on the holding of such floor test is seen to have lost the confidence of the majority, it would be open to the Governor to exercise the powers vested with him Under Article 174 at his own, and without any aid and advice.

175..... It does not lie within the domain of the Governor, to



interfere with the functions of the Speaker. The Governor is not a guide or mentor to the Speaker. The Governor cannot require the Speaker to discharge his functions in the manner he considers constitutionally appropriate. Both the Governor and the Speaker have independent constitutional responsibilities. The Governor's messages with reference to such matters (as were expressed in the message dated 9.12.2015), do not flow from the functions assigned to him. The Governor cannot likewise interfere in the activities of the Assembly, for the reason that the Chief Minister, or the entire Council of Ministers, or an individual Minister in the Cabinet, or for that matter even an individual MLA, are not functioning in consonance with the provisions of the Constitution, or in the best interest of the State. The State Legislature, does not function under the Governor. In sum and substance, the Governor just cannot act as the Ombudsman of the State Legislature.

211. The Governor has no role whatsoever, in the removal of the Speaker (or the Deputy Speaker) Under Article 179. The question of adoption or rejection of a notice of resolution, for the removal of the Speaker, is to be determined by the legislators. If the resolution for the Speaker's removal is supported by a simple majority of the members of the House, the motion has to be adopted, and the Speaker has to be removed. Failing which, the motion has to be rejected. Any action taken by the Governor, based on disputations, with reference to activities in which he has no role to play, is liable to be considered as extraneous. It is not for the Governor to Schedule the functioning of the Assembly. It is also not in the Governor's domain, to Schedule the agenda of the House. The Governor has no role with reference to the ongoing in the Assembly. The Governor must keep away, from all that goes on, within the House.

212. As long as the democratic process in the Assembly functions through a Government, which has the support of the majority, there can be no interference at the behest of the Governor. A constitutional failure as contemplated Under Article 356, is quite another matter. So also, a constitutional failure Under Article 360. Herein,



the Governor has not treaded the procedure postulated for a constitutional breakdown."

11. The members of the Legislative Assembly are elected by the people. The members, therefore, represent the will of the people. The members are elected to function as the representatives of the people for Good governance. They are public servants accountable to the people. The Government is elected by the members of the Legislative Assembly. There is a prescribed procedure for expressing non-confidence or move a resolution for the purpose of ousting the Government in a democratic manner. There should be *prima facie* materials suggesting that Government in power lost its majority. Then only, it would be possible for the Governor to direct the Government to prove its majority on the floor of the Assembly.

12. The petitioner, without any material or doing any kind of home work, rushed to this Court with this Writ Petition. In any case, we do not find any material to direct the Governor to summon the Assembly for proving the majority by the Government or to suspend the Legislative Assembly.

NON-APPOINTMENT OF FULL TIME GOVERNOR:

13. The petitioner is also aggrieved by the non-appointment of a full time Governor for Tamil Nadu. It is the contention of the petitioner that the acting Governor has to shuttle between Mumbai and Chennai to discharge his constitutional duties in the two major States in India.

14. The petitioner is right in his contention that the Governor had to air-dash to Chennai from Mumbai whenever there is an emergent political situation requiring his personal presence. The Governor is also functioning in different capacities, like the Chancellor of various Universities in the State. Therefore, his presence in the State is necessary.

15. The petitioner made a request to the Governor of Tamil Nadu to appoint a full time Governor to the State. The petitioner appears to be under the impression that the Governor would be in a position to speed up the process for appointment of a full time Governor.

16. Since the petitioner has not given any representation to the Central Government and proper parties are not before this Court, we are not in a position to issue direction for appointment of a full time Governor for the State. The initiation of this Writ Petition without submitting representations to the concerned authorities and making them parties to the litigation is a sheer waste of valuable judicial time. Though this is a fit case for imposing cost, we refrain from doing so, on account of certain



genuine causes taken up by the petitioner earlier.

17. The Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

To

1. The Secretary to
To In Charge The Governor of Tamil Nadu,
Rajbhavan, Guindy, Chennai.
2. The Chief Secretary,
Government of Tamil Nadu,
Fort St. George,
Chennai-9.
3. The Secretary to Government,
Home Department,
Fort St. George,
Chennai-9.
4. The Inspector General of Police,
Central Zone,
Trichy.

+1 cc to The Special Government Pleader in SR.No.74433

SML

AE/MR KKR/SAR3/01.09.2017/7P/6C

Order made in
W.P. (MD) No.15634 of 2017
Dated: 22.08.2017