

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2018

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE ABDUL QUDDHOSE

W.P. No.3153 of 2018
and W.M.P.No.3870 of 2018

J.Anbazhagan
Member of Legislative Assembly,
Chepauk-Thiruvallikeni Assembly Constituency,
No.11/3, Mahalakshmi Street,
T.Nagar, Chennai-17. .. Petitioner

-vs-

- 1.The Speaker,
Tamil Nadu Legislative Assembly,
Fort St. George, Chennai-600 009.
- 2.P.Dhanapal
The Speaker,
Tamil Nadu Legislative Assembly,
Fort St. George, Chennai-600 009.
- 3.The Secretary,
Tamil Nadu Legislative Assembly,
Assembly Secretariat, Chennai-600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondents to forthwith remove the portrait of Selvi.J.Jayalalitha from the precincts of Tamil Nadu Assembly, as she has been found guilty of corruption charges by the Hon'ble Supreme Court of India.

For Petitioner : Mr.P.Wilson Sr. Counsel
for Mr.R.Girirajan

For Respondents : Mr.Vijay Narayan
Adv. General, assisted by
Mr.T.N.Rajagopalan,
Govt. Pleader for R-3

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O R D E R

(Made by Ms.Indira Banerjee, Chief Justice)

In this writ petition under Article 226 of the Constitution of India, purported to be filed in public interest, the petitioner, a Member of the Tamil Nadu Legislative Assembly elected from the Chepauk-Thiruvallikeni Assembly Constituency in Chennai from the Dravida Munnetra Kazhagam (DMK) party has, inter alia, sought orders on the respondents to remove the portrait of Selvi J.Jayalalithaa from the precincts of the Tamil Nadu Assembly.

2.A Press Release was issued by respondent no.3 and telecast through the visual media, announcing the decision taken by the Speaker of the Tamil Nadu Assembly on 10.02.2018 to unveil a portrait of Selvi J.Jayalalitha in the Tamil Nadu State Assembly Hall at 9.30 a.m. on Monday 12.02.2018 in the presence of the Chief Minister and the Deputy Chief Minister. The portrait was duly unveiled as scheduled, after which the petitioner filed this writ petition.

3.The petitioner has sought orders for removal of the portrait of Selvi J.Jayalalithaa, the former Chief Minister of Tamil Nadu, on the ground that she had been held guilty of corruption and possession of assets disproportionate to her known sources of income and convicted by a Special Court of offence inter alia under the Prevention of Corruption Act, by an order dated 27.09.2014 and sentenced inter alia to imprisonment of four years, apart from fine of Rs.100 crores.

4.Referring to a Notification No.223 of the Legislative Assembly Secretariat published in the Tamil Nadu Gazette dated Saturday, November 8, 2014, Mr.Wilson appearing for the petitioner argued that consequential to her conviction, Selvi.Jayalalithaa was disqualified under the Representation of People Act, 1951 read with Article 191(1)(e) of the Constitution, from being a Member of the Tamil Nadu Legislative Assembly.

5.Mr.Wilson argued that it was morally wrong and against public interest to display portraits of convicts and more so, in the Hall of the Legislative Assembly where laws are enacted.

6.Mr.Wilson further argued that Selvi.Jayalalithaa having been disqualified as a member of the Legislative Assembly, her portrait ought not to be displayed in the Hall of the Legislative Assembly.

7.Mr.Wilson also questioned the legality and/or propriety of a Government Order (Standing) No.457 dated 04.06.2006 which permitted the display of portraits of the former Chief Minister of Tamil Nadu, notwithstanding her conviction for corruption under the Prevention of Corruption Act, 1954.

8.As argued on behalf of the respondents, and admitted by the petitioner in his affidavit in support of the writ petition, the verdict of the Special Court was set aside by the High Court of Karnataka by a judgment and order dated 11.05.2017. Mr.Wilson, however argued that, on appeal by the State of Karnataka, the Hon'ble Supreme Court found all the accused including Selvi.Jayalalithaa guilty of corruption charges. It was, in view of Selvi Jayalalithaa's death that the appeals against her abated, and no sentence was imposed on her. Mrs.Sasikala, who had been co-accused, was convicted and sentenced inter alia to four years imprisonment with fine of Rs.100 crores and the properties belonging to her were ordered to be attached.

9.Mr.P.Wilson emphatically argued that Selvi.Jayalalithaa having been held guilty of corruption charges, her portrait should be removed from the Hall of the Assembly.

10.The questions raised by Mr.Wilson, on behalf of the writ petitioner are,

- (i) Whether portraits of a person who was held guilty of moral turpitude should be displayed in the Hall of the Legislative Assembly, which is the edifice of democracy?
- (ii) Whether a person found guilty of offences and subsequently disqualified from membership of the House can be glorified only because she has passed away?
- (iii) Whether the decision of the Speaker to install a portrait of Ms.Jayalalitha in the Hall of the Legislative Assembly is merely an administrative decision beyond the purview of Constitution ?
- (iv) Whether the administrative decision of the Hon'ble

- Speaker can be tested on grounds of arbitrariness, malafide and colourable exercise of patent power ?
- (v) Whether Constitutional propriety and morality permit the State to expend the public funds to hail, glorify persons found to be guilty ?

11. Public Interest Litigation emerged as a new genre of litigation in India, in the latter half of the twentieth century to uphold human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

12. On 10th December, 1948, the United Nations General Assembly proclaimed the Declaration of Human Rights defining and identifying human rights. The human rights include basic rights as the right to life of dignity, liberty, security of person, fair trial, freedom of conscience, thought, expression, association and privacy and freedom of movement.

13. Most of the human rights, referred to above, were incorporated in fundamental rights guaranteed under Part-III of the Constitution. With increasing concern for human rights, particularly, the human rights of the underprivileged, there has been a phenomenal growth in the volume of Public Interest Litigation.

14. Public interest has been defined in the 4th edition of Volume IV of Stroud's Judicial Dictionary to mean a matter of public or general interest in which a class of the community have a pecuniary interest or some interest by which their legal rights or liabilities are affected.

15. The 6th edition of Black's Law Dictionary defines public interest as "something in which the public, the community at large, has some pecuniary interest or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity or as the interests of particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or National Government".

16. In *Sheela Barse vs. Union of India*, (1988) 4 SCC 226, the Supreme Court held, "The proceedings in a public interest litigation are, therefore, intended to vindicate and effectuate the public interest by prevention of violation of the rights, constitutional or statutory, of sizeable segments of the society, which owing to poverty, ignorance, social and economic disadvantages cannot themselves assert- and quite often not even aware of-those rights. The

technique of public interest litigation serves to provide an effective remedy to enforce these group-rights and interests. In order that these public causes are brought before the courts, the procedural techniques judicially innovated specially for the public interest action recognises the concomitant need to lower the locus standi thresholds so as to enable public-minded citizens or social-action-groups to act as conduits between these classes of persons of inheritance and the forum for the assertion and enforcement of their rights. The dispute is not comparable to one between private-parties with the result there is no recognition of the status of a Dominus Litis for any individual or group of individuals to determine the course of destination of the proceedings, except to the extent recognised and permitted by the court."

17. In *Bandhua Mukti Morcha vs. Union of India*, reported in (1984) 3 SCC 161, the Supreme Court said that in a public interest litigation, it is obvious that the petitioner and the State are not supposed to be pitted against each other, there is no question of one party claiming or asking for relief against the other and the court deciding between them. Public interest litigation is a cooperative litigation in which the petitioner, the State or public authority and the Court are to cooperate with one another in ensuring that the constitutional obligation towards those who cannot resort to the Courts to protect their constitutional or legal rights are fulfilled.

18. Public Interest Law is a part of the struggle by and on behalf of the disadvantaged to use law to solve social and economic problems arising out of differential and unequal distribution of opportunities and entitlements in society. In an effort to render justice, public interest litigations have been entertained to protect the rights of future generations and to prevent needless exploitation of natural resources.

19. In *Janata Dal vs. H.S. Chowdhary*, reported in (1992) 4 SCC 305, the Supreme Court reiterated that lexically, the expression 'PIL' means a legal action initiated in a court of law for enforcement of public interest or general interest in which the public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected.

20. The importance of public interest law has been widely recognised. It is so because many a times issues falling within the sway of public interest affect large segments of society and are not restricted to the interest of immediate parties to a dispute. Public interest law fills in a gap in our law and legal system.

21. To enhance access to justice, the rule of locus standi stands relaxed in case of PILs, as also procedural rigidities. The philosophy behind the liberalised concept of locus standi has been prompted by poverty, ignorance, lack of legal knowledge and impediments in access to justice by reason of high cost of litigation as also other factors.

22. By liberalisation and relaxation of the rule of locus standi and rigid rules of procedure, a large number of people belonging to deprived and exploited sections of society are able to realise and enjoy their socio economic basic human and fundamental rights. Public interest litigation is also a remedy to effectively curb executive excesses and ensure a responsible Government, which functions within the limits of its powers.

23. In India, the Courts have also recognised that in some cases, a purely private interest might also develop into public interest and the Court might probe into a matter of public interest to which its attention has been drawn by way of a private litigation for the wider ends of justice. Reference may be made to the judgment of the Supreme Court in Shivajirao Nilangekar Patil vs. Mahesh Madhav Gosavi, reported in (1987) 1 SCC 227. However, as rightly held by the Supreme Court in Ramsharan vs. Union of India, reported in AIR 1989 SC 549, PIL does not mean settling disputes between individual parties.

24. In Subash Kumar vs. State of Bihar, reported in AIR 1991 SC 420, the Supreme Court held,

"Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity."

25. In a Public Interest Litigation, which aims to redress public injury, the public injury assumes greater importance than the person who brings the public injury to the notice of the Court for correction. A tax payer in the State has a right to challenge misuse or improper use of any public property by anyone including the political party in power, as held by the Supreme Court in *J. Jayalalitha vs. Govt. of Tamil Nadu*, reported in (1999) 1 SCC 53.

26. In *B. Singh vs. Union of India*, reported in (2004) 3 SCC 363, the Supreme Court observed that "a writ petitioner who comes to the court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind."

27. The concern for removal of injustice and protection of rights has given rise to the concept of judicial activism. While courts have taken recourse to what is often criticised, or may be, sometimes lauded as judicial activism to protect rights and to remove injustice, the Court cannot disregard its limitations. The Court has to confine itself to judicial determination of a controversy and not to embark upon determination of policy-oriented issues or matters with political overtones. To quote, Pathak, J in *Bandhua Mukti Morcha vs. Union of India*, supra, "the Court must never forget that the jurisdiction extends no further than the legitimate limits of its constitutional powers and avoid trespassing into political territory which under the Constitution has been appropriated to the other organs of the State."

28. In *State of H.P. vs. Umed Ram Sharma*, reported in (1986) 2 SCC 68, the Supreme Court cautioned against interference with administration and declared that in our constitutional system of separation of power, the courts cannot usurp the powers of the Executive. The parameters of judicial review must be clearly defined and never exceeded.

29. In jurisprudence there is a distinct difference between a legal wrong and a moral wrong. While there is judicial remedy for a legal wrong, a moral wrong, which is not illegal cannot be redressed by a Court of law.

30. It may be morally wrong to glorify the corrupt. However, in the absence of any law which prohibits display of portraits of a person convicted of corruption, this Court cannot interfere with the display of a photograph on that ground, for that might amount to imposition of a punishment not authorized by law. Furthermore, admittedly, the conviction of Selvi Jayalalithaa was set aside by the High Court in appeal, and the appeal filed by the State of Karnataka against her acquittal abated by reason of her death.

31. Observations by the Supreme Court against Selvi Jayalalithaa, after her death, after the appeal against her acquittal had abated, in the appeals relating to some of the co-accused do not warrant interference with display of her portrait in the Assembly Hall.

32. In *B.R. Kapur v. State of Tamil Nadu*, reported in (2001) 7 SCC 231, the question whether a person, who had been convicted of a criminal offence and whose conviction had not been suspended pending appeal could be sworn in and continue to function as the Chief Minister of a State was answered in the negative by the majority Judges. The judgment has no application to the issue involved in this writ petition.

33. In *Manoj Narula v. Union of India*, reported in (2014) 9 SCC 1, the Supreme Court, as per majority rightly opined that it could always legitimately be expected that regard being had to the role of a Minister in the Council of Ministers, the Prime Minister would consider not choosing a person with criminal antecedents to become a Minister. The expectation is unexceptionable. However, the bar on appointment to a responsible position possibly cannot be stretched to be a bar on display of the photograph of a former Chief Minister charged with a serious offence.

34. In deciding a Public Interest Litigation, it is important to keep in mind the exposition of the law by the Supreme Court in *Dattaraj Nathuji Thaware v. State of Maharashtra and others*, reported in (2005) 1 SCC 590, as set out herein below:

"12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest, an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The

attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not be publicity-oriented or founded on personal vendetta. As indicated above, court must be careful to see that a body of persons or member of the public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations."

(emphasis supplied)

35.As held by the Supreme Court in Dattaraj Nethuji Thaware, supra, "no litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions".

36.Whether a portrait should be installed in the Hall of the Assembly, if so, whose photograph should be installed, are entirely matters for the Speaker to decide. It is not for this Court exercising jurisdiction under Article 226 of the Constitution to sit in appeal over administrative decision of the Speaker or the administrative officials of the Legislative Assembly.

The writ petition is, therefore, dismissed. No costs. Consequently, W.M.P.No.3870 of 2018 is also dismissed.

Sd/-
Assistant Registrar (CCC)

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सत्यमेव जयते Sub Assistant Registrar

sra

To

1.The Speaker,
Tamil Nadu Legislative Assembly,
Fort St. George, Chennai-600 009.

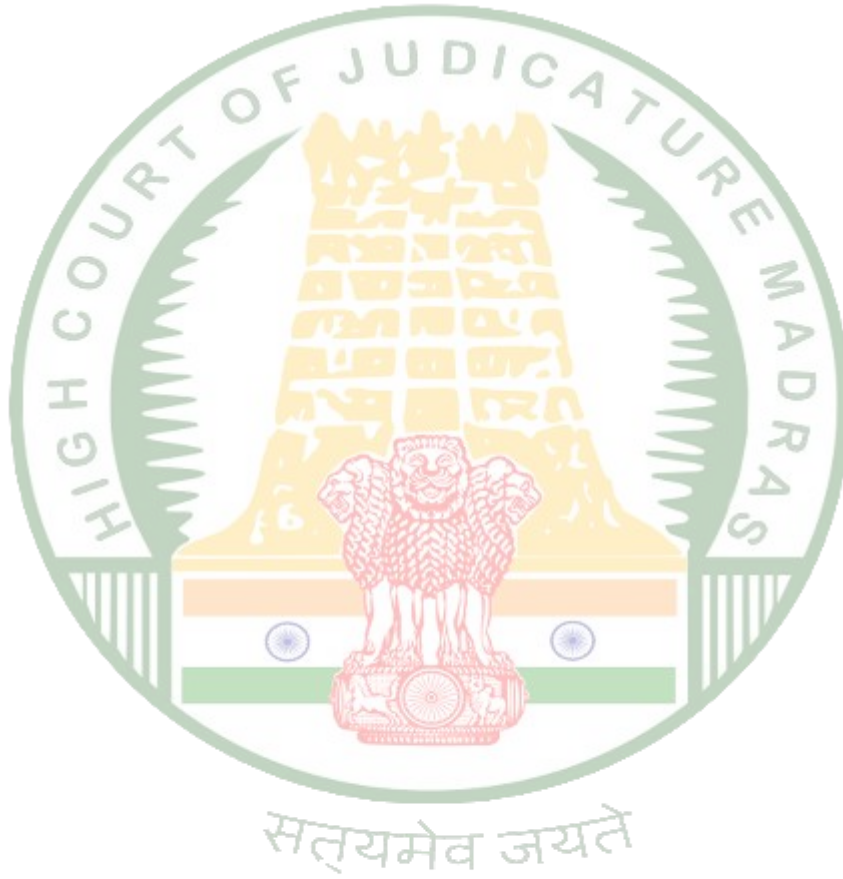
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2.The Secretary,
Tamil Nadu Legislative Assembly,
Assembly Secretariat, Chennai-600 009.

+1cc to the Government Pleader, S.R.No. 31901

W.P.No.3153 of 2018

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