

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7/9/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.6118 of 2018

T. Jayapal

Petitioner

Vs

1. The State of Tamil Nadu
rep. by its Secretary to Government
Health Department
Secretariat
Fort St. George
Chennai 600 009.
2. The District Government Head Quarters Hospital
rep. by its Superintendent
Tirupur.
3. The Joint Director
Medicine and Rural Development
Tiruppur.
4. The Assistant Divisional Engineer (South)
Construction and Maintenance
Tiruppur South
Tiruppur.
5. The District Collector
Tiruppur District
Tiruppur.

Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus to forbear the respondents from shifting the functioning of the Medical Out-Patient unit from the present place at District Government Headquarters Hospital, Tirupur and to continue the functioning in the same place.

For petitioner ... Mr.K.C.Karl Marx

For respondents ... Mr.S.Kamalesh Kannan
Government Advocate

O R D E R

(Order of the Court was made by Subramonium Prasad,J)

Instant writ petition has been filed to forbear the respondents, from shifting the functioning of the Medical Out-Patient unit, from the District Government Headquarters Hospital, Tirupur and to continue the functioning in the same place.

2. Petitioner is the Secretary of Communist Party of India (Marxist), Tirupur Corporation (South). It is stated in the petition that District Government Head Quarters Hospital, Tirupur, is situated near the Tirupur Old Bus Stand. Medical OP and Surgical OP Department, in the District Government Head Quarters Hospital, Tirupur, is functioning at the present place, for the past 70 years and now it is sought to be shifted from its present place.

3. Tirupur District Administration now wants to remove the Out Patient Unit, functioning in the Government Hospital, at Tharapuram Road, Perinchipalayam. Petitioner has made a representation, dated 6/11/2017, to the District Collector, Tiruppur District/fifth respondent, on the Public Grievance Day, who has forwarded the same to the Joint Director, Medicine and Rural Development, Tiruppur, third respondent. Vide proceeding, dated 27/11/2017, third respondent, rejected the same, stating that Hospital land has been handed over to the Highways Department, for construction of over bridge and expansion of road. The petitioner has given another representation, dated 9/1/2018 to the respondents, and the Hon'ble C.M. Cell and that the same has also been rejected, stating that the District Collector, through his proceeding, dated 6/12/2017, has transferred the land of 1702 sq.mtrs, belonging to the Government Headquarters Hospital, to Highways Department. Hence the petitioner had come forward with the present writ petition, praying for the relief as stated supra.

4. Joint Director of Medical and Rural Health Services, Tiruppur/third respondent, has filed a counter affidavit. Paragraph Nos.6 to 8 of the counter affidavit is extracted hereunder:-

"6. It is submitted the Highways Department has given Rs.1.62 crores as

compensation for the above demolished buildings. The Outpatient Department was functioning only as a referral centre from where the patients who need admission are referred to the IP campus where the OP has also been shifted to now. Originally the patients who needed admission had to travel from IP campus to IP campus for a distance of 3 kilometers. In the light of the current circumstances, with shift of the OP campus, the need for the patients to travel between two campuses does not arise. It is more convenient for the patients. It is submitted that the OP and IP campus are functioning smoothly in one location from 1/2/2018 onwards. It is submitted that also a sum of Rs.40 lakhs was sanctioned by the Director of Medical and Rural Health Services, Chennai for shifting of the OP campus. It is also pertinent to mention that several transport facilities like city bus and share auto for available near the IP campus.

7. It is submitted that Gynecology OP (for pregnant ladies) has already been shifted to IP campus one year ago, since the CEMONC (Comprehensive Emergency Obstetric and New Born Care Centre) is functioning at IP campus where mother and new born children are being treated. Since all the emergency departments like, operation theatres, dialysis Units, Labour ward, X Ray Block, Laboratory are functioning at the IP campus, the patients can easily get admission and treatments at the same place where IP and OP are at the same premises. At present certain OP department like Dental, ART, Eye, Siddha are functioning at the OP campus. It is submitted that after acquisition of the land with building to an extent of 1702 sq.m., from the earlier premises, the remaining space/land left therein would not be conducive to run the OP campus, as there will not be sufficient space and it will become congested and may cause inconvenience to the patients.

8. It is also submitted that due to unavoidable circumstances, and considering the convenience and welfare of the patients, Medical OP, Surgical OP, Ortho, Pediatric, Psychiatric etc., have been shifted to IP premises and as on date are functioning smoothly to the complete satisfaction of public and patients with effect from 1/2/2018 onwards

in the IP premises. Full-fledged medical facilities/services to the patients are being rendered round the clock."

5. Averments made in the counter affidavit, extracted supra, shows that OP Department, is now smoothly functioning, in the new location. It is also stated that earlier, OP Department was only a referral center, from where the patients, need admission. Originally, patients, who needed admission have to travel from OP to IP campus for a distance of 3 Kms. Now, after shifting, the need for the patients to travel between two campuses, does not arise. It is also stated that now with the shifting of OP Department, the entire area is now composite unit, where the IP and OP, are within the same premises, and patients can easily get admission and treatment at the same place.

6. Heard Mr.K.C.Karl Marx, learned counsel for the petitioner and Mr.S.Kamalesh Kannan, learned Government Advocate for the respondents.

7. It is well settled that Courts cannot run Government. Courts must act within their judicial permissible limitation to uphold the Rule of Law and harness their power, in public interest. Courts cannot and should not direct the Government, to act in a particular manner.

8. In Narmada Bachao Andolan Vs. Union of India and Others, reported in {2000 (10) SCC - 664}, the Hon'ble Supreme Court observed as follows:-

"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The Court has come down heavily whenever the executive has sought to impinge upon the Court's jurisdiction.

233. At the same time, in exercise of its enormous power, the Court should not be called upon to or undertake governmental duties or functions. The Courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under values of the Constitution and the rights of Indians. The

Courts must therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the Court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation, the Court should not refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

9. The above mentioned observations have been quoted with approval by the Supreme Court in BALCO EMPLOYEES' UNION (REGD) Vs. UNION OF INDIA AND OTHERS {2002 (2) SCC - 333}.

10. In view of the decisions, which this Court has taken note of, writ petition filed by the Secretary of a Political party, cannot be entertained and accordingly, the same is dismissed. No costs. Consequently, the connected

Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

mvs.

To

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Tiruppur.

+1cc to Mr.K.C.Karlmarx, Advocate SR.No.62416

+1cc to Government Pleader SR.No.62182

Writ Petition No.6118 of 2018

GMV (25/10/2018)