

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2018

CORAM

The HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE S.S.SUNDAR

W.P.No.20531 of 2018

R.S.Bharathi
Organising Secretary
Dravida Munnetra Kazhagam Party
Anna Arivalayam, Chennai. ... Petitioner

Vs

- 1 Government of Tamil Nadu
rep. by Chief Secretary
Secretariat, Fort St. George
Chennai - 600 009.
- 2 The Secretary to Government
Public Department
Secretariat, Fort St. George
Chennai - 600 009.
- 3 The Secretary to Government
Home Department
Secretariat, Fort St. George
Chennai - 600 009.
- 4 The Secretary to Government
Public Works Department
Secretariat, Fort St. George
Chennai - 600 009.
- 5 The Commissioner
Corporation of Chennai
Chennai.
- 6 The Commissioner of Police
Greater Chennai City
Vepery, Chennai - 8. ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus to call for the records of the impugned press release

issued by the first respondent herein in P.R.No.532, dated 7.8.2018, to quash the same insofar as para (vi) of impugned press release, and consequently, issue a direction to the respondents to permit and allot land to lay the mortal remains of Dr.Kalaignar M.Karunanidhi, former Chief Minister of Tamil Nadu on the Marina Beach within the precincts of burial place of the founder of DMK party and former Chief Minister of Tamil Nadu Thiru Annadurai, namely "Anna Memorial", at Kamaraj Salai, Chennai - 600 005.

For Petitioner : Mr.P.Wilson, Senior Counsel
Mr.R.Shanmugasundaram,
Senior Counsel
Mr.C.Veerakathiravan,
Senior Counsel,
Mr.N.R.Elango
Senior Counsel
assisted by
Mr.R.Girirajan

For Respondents : Mr.C.S.Vaidyanathan
Senior Counsel
assisted by
Mr.T.N.Rajagopalan
Government Pleader
for 1st respondent

Mr.P.H.Arvinth Pandian
Additional Advocate General
Mr.T.N.Rajagopalan
Government Pleader
for respondents 2 and 3

Mr.L.P.Shanmugasundaram
Special Govt. Pleader
for 4th respondent

Mr.S.R.Rajagopal
Additional Advocate General
assisted by
Mr.K.Soundarajan
for 5th respondent

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Mr.T.N.Rajagopalan
Government Pleader
assisted by
Mr.C.Munusamy
Special Government Pleader
for 6th respondent

ORDER

(Order of the court was made by Huluvadi G.Ramesh,
Acting Chief Justice)

In this writ petition filed by Mr.R.S.Bharathi, Organising Secretary of the Dravida Munnetra Kazhagam (DMK) Party, the prayer sought is to call for the records of the impugned press release issued by the first respondent herein in P.R.No.532, dated 7.8.2018, to quash the same insofar as para (vi) of impugned press release is concerned, and consequently, to issue a direction to the respondents to permit and allot land to lay the mortal remains of Dr.Kalaaignar M.Karunanidhi, former Chief Minister of Tamil Nadu on the Marina Beach within the precincts of burial place of the founder of DMK party and former Chief Minister of Tamil Nadu Thiru Annadurai, namely "Anna Memorial", at Kamaraj Salai, Chennai - 600 005.

2.1. The facts in a nutshell are as under: It is a matter of record that (Late) Dr.Kalaaignar M.Karunanidhi, who was the Chief Minister of Tamil Nadu for five times; Member of Legislative Assembly for 13 times; President of the DMK Party, and a renowned political and social reformer, passed away on 7.8.2018 at 6.10. PM due to age related health issues.

2.2. It is stated that (Late) Mr.C.N.Annadurai, who was former Chief Minister of Tamil Nadu and one of the forefathers and founders of DMK Party, was laid to rest at Marina Beach and the said place is called "Anna Square". It is stated that the great ideologies of the great leaders of Dravidian Movement were taken forward by (Late) Dr.M.Karunanidhi and he is regarded as the god-father of millions of Tamilians across the globe and his contribution to the cause of Tamilians and their welfare is invaluable. The entire State of Tamil Nadu is bereaved by the demise of the great leader and in order to give this leader all due respects the mortal remains should be laid next to his beloved "Aringnar Anna" to fulfil the wishes of millions of Tamilians.

2.3. It is stated that a request was made on 7.8.2018 by the Leader of Opposition and the working President of DMK Party, Mr.M.K.Stalin, Member of the Legislative Assembly, along with his party members, when they met the Chief Minister of

Tamil Nadu in person to allot space in Anna Square at Marina Beach near the tomb of (Late) Mr.C.N.Annadurai, former Chief Minister of Tamil Nadu, to lay the mortal remains of (Late) Dr.M.Karunanidhi. It is stated that some party leaders and Members of Assembly also met the Chief Minister of Tamil Nadu on 7.8.2018 and made a written request in this regard.

2.4. It is stated that, when things stood thus, at around 7.50 PM, the first respondent issued a press release, being P.R.No.532, dated 7.8.2018 refusing to allot the land at Marina Beach as sought for, citing pendency of cases before this Court and some other legal issues. It was further stated in the press release that the Government is ready to allot Two Acres of government land near Gandhi Mandapam, Kamarajar Memorial, Rajaji Memorial, Opposite to Anna University in Sardar Vallabhai Patel Road.

2.5. It is alleged that the said press release is illegal, discriminatory and unfair, inasmuch as the licence for burial of former Chief Minister, (Late) Dr.M.G.Ramachandran at the Marina Beach was issued pursuant to the resolution of the Corporation Council, being Resolution No.671 of 1988 and in terms of Section 319(3) of the Chennai City Municipal Corporation Act, whereby a part of the Marina Beach was declared as burial ground and even thereafter, the former Chief Minister, Dr.J.Jayalalithaa, was laid to rest at Marina Beach, next to the founder of AIADMK Party and former Chief Minister Late Dr.M.G.Ramachandran.

2.6. In line with the tradition and practice of laying to rest mortal remains of former Chief Ministers of Tamil Nadu at Marina Beach, it is averred that it is just and proper to lay to rest the mortal remains of (Late) Dr.M.Karunanidhi within the precincts of his political mentor (Late) Mr.C.N.Annadurai's mausoleum at the Marina Beach.

2.7. In the said backdrop, the present writ petition is filed for the relief stated supra.

3.1. In the counter affidavit filed by the second respondent, it is stated that the use of land for burial as requested by the DMK party is under the control of the Government, through the Director of Information and Public Relations, Government of Tamilnadu, and that the fifth respondent is the competent authority to grant permission for burial within Corporation limits of Chennai. It is stated that the petitioner has not obtained any approval from the Corporation of Chennai or the requisite authorities for carrying out their request and that no such request has been filed before this Court.

3.2. It is stated that the instructions and policy issued by the Government of India, Ministry of Home Affairs, titled "Instructions regarding action to be taken on the Death of High Dignitaries" had been taken note of by the State Government while issuing the Press Release.

3.3. It is specifically stated that a decision has been taken by the State Government and the press release dated 7.8.2018 stipulates the six honours that are extended by the Government to (Late) Dr.Kalaignar M.Karunanidhi, which are well within the domain of the State Government and are in tune with the established precedents and protocol.

3.4. To fortify the stand taken in paragraph (vi) of the Press Release, wherein it is stated that due to pendency of many cases regarding burial at Marina Beach before this Court and due to various legal hurdles, the said place cannot be allotted, it is stated that there are legal hurdles regarding the allocation of the place as demanded, next to (Late) Mr.C.N.Annadurai. It is averred in paragraph (6) of the counter that "the petitioner is wontedly feigning ignorance of the second reason given, referring to the legal hurdles regarding the allocation of the said place demanded, i.e., at Anna Samadhi, next to Arignar Anna."

3.5. It is stated that the three memorials at Marina Beach are of Arignar Anna, Dr.M.G.Ramachandran and Dr.J.Jayalalithaa, who died during their tenure as the Chief Minister of the State, and that insofar as former Chief Ministers are concerned, they have been provided place at Gandhi Memorial Campus at Sardar Patel Road, based on requests made and/or decisions of the Government. It is stated that three former Chief Ministers, Late Mr.Rajagopalachari, Late Mr.K.Kamarajar and Late Mr.M.Bakthavatchalam were laid to rest at Gandhi Memorial Campus.

3.6. It is averred that the Public (Protocol) Department is always consistent with regard to the decisions being taken and when once such request was made in the case of death of a former Chief Minister, (Late) Mrs.Janaki Ramachandran, wife of (Late) Mr.M.G.Ramachandran, it was clearly stated that there was no specific instruction in the Protocol Manual with reference to the arrangements that are to be made in the case of death of former Chief Ministers of Tamil Nadu, and it was (Late) Dr.M.Karunanidhi, the then Chief Minister, who has handwritten a note permitting the burial of Mrs.Janaki Ramachandran at Ramawaram Gardens with full State Police Honours.

3.7. It is stated that, in the case on hand, the Government has taken a decision to allocate Two Acres of land in Gandhi Memorial Campus for laying the mortal remains of (Late) Dr.M.Karunanidhi, as in the case of (Late) Mr.K.Kamaraj.

3.8. It is also stated that writ petitions are pending before this Court concerning the burial/construction of memorials etc., in W.P.Nos.4775, 5023, 5049, 18651, 28745, 2581 of 2017 and 15483 of 2018, and during the course of hearing of this case at 1.30 AM on 8.8.2018, two writ petitions were sought to be withdrawn and one other petitioner, being the petitioner in W.P.No.28745 of 2017, submitted that he has no objection to the burial of Dr.M.Karunanidhi at Marina Beach, but sought liberty to seek transfer of all the four buried leaders to some other site at a later occasion. It is stated that the said writ petitioners do not have any right or authority to grant no objection to the laying of the mortal remains of (Late) Dr.M.Karunanidhi.

3.9. It is stated that the decision of the Government to allocate Two Acres of land in Gandhi Memorial Campus at Sardar Patel Road, Guindy, is with total application of mind, established precedents and within the realm of law.

3.10. It is also stated that whether a memorial can be permitted within the precincts of the Anna Samadhi or not can be decided only by the Coastal Zone Management Authority and the said authority had not been arrayed as a party to this writ petition.

3.11. It is stated that the hand drawn sketch filed by the petitioner during the course of early morning hearing is incorrect. It is stated that memorials are in two separate complexes one of Arignar Anna and the other of Dr.M.G.Ramachandran and Dr.J.Jayalalithaa and that the samadhi of Dr.J.Jayalalithaa is not in the same line as the samadhi of Arignar Anna, as claimed in the sketch.

3.12. It is finally stated that there is no violation of Articles 14 and 21 of the Constitution of India and, thus, the respondents prayed for dismissal of the writ petition.

4. Heard Mr.P.Wilson, Mr.R.Shanmugasundaram, Mr.Veerakathiravan and Mr.N.R.Elango, learned Senior Counsel appearing on behalf of the petitioner and Mr.C.S.Vaidyanathan, learned Senior Counsel, Mr.P.H.Aravind Pandian, learned Additional Advocate General, Mr.S.R.Rajagopal, learned Additional Advocate General, Mr.T.N.Rajagopalan, learned Government Pleader and Mr.L.P.Shanmugasundaram, learned Special

Government Pleader appearing on behalf of the respondents.

5.1. Mr.P.Wilson, learned Senior Counsel appearing on behalf of the petitioner contended that there is a clear violation of Article 14 of the Constitution of India inasmuch a place other than the place that has been sought for by the petitioner at Anna Square at Marina Beach is being granted, especially considering the fact that (Late) Dr.Kalaignar M.Karunanidhi, was one of the creators of the Dravidian movement and a five-time Chief Minister of Tamil Nadu and the President of DMK Party for nearly 50 years.

5.2. Mr.Wilson argued that when memorials of the the founder of the DMK Party (Late) Mr.C.N.Annadurai and (Late) Dr.M.G.Ramachandran, who was a member of the Dravidian movement way back in the year 1959, but he formed a different party called AIADMK in 1972 upon split, were constructed at the Marina Beach, the same treatment is not extended to Dr.M.Karunanidhi, who took over the DMK Party from its founder in the year 1969 and the stand of the respondent authorities shows that the Dravidian Patriarch is being subjected to gross discrimination.

5.3. He submitted that one of the difficulties pleaded by the Government to provide the place for burial within the precincts of his political mentor (Late) Mr.C.N.Annadurai's mausoleum at the Marina Beach is that he is not a sitting Chief Minister. He submitted that there is no rationale behind that differential treatment between a sitting Chief Minister and a former Chief Minister and the same is in violation of Articles 14 and 21 of the Constitution of India.

5.4. He submitted that the only legal impediment that is sought to be pleaded by the Government is stated in paragraph (vi) of the press release, which reads as under:

"vi) Due to the pendency of many cases regarding burial in Marina before the Madras High Court and due to various legal hurdles, the said place could not be allotted. On the other hand, enabling to bury his body, the Government is ready to allot two acres of Government land near Gandhi Mandabam, Kamarajar Memorial, Rajaji Memorial and opposite to Anna University in Sardar Vallabai Patel Main Road and the same is informed by the Hon'ble Chief Minister of Tamil Nadu."

5.5. He submitted that when three of the leaders of the Dravidian movement are accommodated at Marina Beach, such prayer as sought for in the case of (Late) Dr.M.Karunanidhi is rejected only on the ground of pendency of litigation before the High Court, which also does not survive as on date due to the

withdrawal of those writ petitions by the petitioners as a mark of respect to the great leader.

5.6. Referring to a decision of the Apex Court in *Parmanand Katara (Pt.) v. Union of India*, (1995) 3 SCC 248, wherein it was held that right to dignity and fair treatment is not only available to a living man, but also to his dead body, Mr.P.Wilson argued that there is a clear discrimination attracting the provisions of Articles 14 and 21 of the Constitution of India, more particularly, when the said place has been declared as burial ground as per Section 319 of the Chennai City Corporation Act way back in 1988.

5.7. It is further submitted that there is no legal impediment for using of the land for burial, as in counter affidavit filed in W.P.No.15483 of 2018, the Director, Department of Environment and also the Member Secretary, Tamil Nadu State Coastal Zone Management Authority had held that the said site falls in CRZ-II area as per CRZ Notification, 2011 and that buildings shall be permitted only on the landward side of the existing road, or on the landward side of the existing authorized structures. Pointing out to paragraph (3) of the said counter affidavit, wherein it is stated that "the proposed constructions are within the existing compounded monument area and not on the beach and therefore will not cause any environmental or ecological damage", Mr.Wilson argued that the government cannot blow hot and cold regarding violation of the Regulations relating to the Coastal Regulation Zone.

5.8. With regard to the pending cases regarding burial/construction of memorials in Marina Beach, Mr.P.Wilson argued that the said writ petitioners came forward voluntarily to withdraw the writ petitions and, therefore, as of now the Government has got a free hand and the objection raised by the Government on this score is unsustainable.

6. Mr.Veerakathiravan, Mr.R.Shanmugasundaram and Mr.N.R.Elango, learned Senior Counsel supplemented the arguments of Mr.P.Wilson.

7.1. Countering the arguments of the petitioner, Mr.C.S.Vaidyanathan, learned Senior Counsel, placing reliance on a decision of the Supreme Court in *Shesh Mani Shukla v. District Inspector of Schools, Deoria*, (2009) 15 SCC 436, submitted that the writ petitioner must establish a legal right in himself and a corresponding legal duty in the State and that sympathy and sentiments alone cannot form a basis for issuing a writ in the nature of mandamus. He submitted that, in the case on hand, the petitioner has no legal right at all and has not made out a case to seek a mandamus.

7.2. He further submitted that the Government has extended all protocols and State honours to the great leader, Dr.M.Karunanidhi. He submitted that great leaders like Late Mr.Rajagopalachari, Late Mr.K.Kamarajar and Late Mr.M.Bakthavatchalam, who were all former Chief Ministers of Tamil Nadu, had been laid to rest at Gandhi Mandapam and, therefore, there is no inequality or discrimination as alleged by the petitioner and in any event, in view of the legal impediment such a decision was taken by the Government.

7.3. Referring to the decision of the Supreme Court in Fertilisers and Chemicals Travancore Ltd. v. Kerala State Electricity Board, (1988) 3 SCC 382, wherein it is held that the allegation of discrimination should be specific and it is for the person assailing it to plead and prove the contrary, Mr.C.S.Vaidyanathan argued that the petitioner had neither specifically alleged discrimination, nor proved the same, and, therefore, the writ petition is not maintainable. He added that the Government on its own extended all State honours that are to be given to the national leader and inasmuch as no case is made out for violation of Articles 14 and 21 of the Constitution of India, the writ petition is not maintainable.

7.4. He also submitted that all the writ petitions filed at distinct times challenging the construction of memorials at Marina Beach, which were withdrawn overnight, have been stage-managed by the petitioner and all is not well in the facts and circumstances of this case.

7.5. Referring to the instance of Periyar E.V.Ramasamy, who was the former founder of the Dravidian Movement, he submitted that his case has not been considered similarly and that the DMK party has itself practiced such discrimination and, therefore, they have no right to seek equality or fair treatment and in any event, there is no violation of Articles 14 and 21 of the Constitution of India.

7.6. He further submitted that the treatment given to the former sitting Chief Minister on their death cannot be equated with persons who were not in power at the time of death and there is no discrimination and unequals cannot be treated alike.

7.7. The learned Senior Counsel submitted that the writ petition is filed challenging the Press Release and not an order passed by the Government, and unless the order is produced and challenged before this Court, this Court may not know whether any other reason is stated for rejecting the request.

8.1. In reply, Mr.P.Wilson, learned counsel appearing for the petitioner submitted that the former Chief Ministers like (Late) Mr.Rajagopalachari, (Late) Mr.K.Kamarajar and (Late) Mr.M.Bakthavatchalam, all belonged to the National Congress Party and, therefore, they were given place near to the National Leader of Congress, Mahatma Gandhi, and it was not as if they were discriminated on being the former Chief Ministers.

8.2. He submitted that when (Late) C.N.Annadurai was laid to rest in the Marina Bench and his follower, (Late) Dr.M.G.Ramachandran and his follower, (Late) Dr.J.Jayalalithaa were laid to rest at Marina Beach, the DMK party never objected nor raised an issue, but to lay to rest the mortal remains of (Late) Dr.M.Karunanidhi within the precincts of his political mentor, (Late) Mr.C.N.Annadurai's Mausoleum at Marina Beach, serious objection is being raised by the State Government stating that he was not a sitting Chief Minister and, therefore, he should not be extended the same benefit and this act shows the discrimination subjected to the great Dravidian leader.

8.3. He contended that the withdrawal of various writ petitions challenging the burial/construction of memorials shows that they have got concern and respect for the great Dravidian Patriarch. That apart, the defence taken by the Government in other writ petitions, runs counter to the stand taken in this case so far as violation of the Regulations of the Coastal Regulation Zone is concerned and it clearly demonstrates the discriminatory attitude of the respondent authorities.

9. Before advertng to the merits of the rival contentions, it is apposite to refer to the press release, which reads thus:

"Press Release No.532 Dated: 07.08.2018

Report dated 07.08.2018 issued by Dr. Girija Vaidyanathan, Chief Secretary, Government of Tamilnadu

Today (07.08.2018), Mr.M.K.Stalin, Leader of Opposition, Tmt. Kanimozhi, Member of Parliament, Mr.Azhagiri, Mr.T.R.Baalu, Former Central Minister, Mr.I.Periasamy, Former Minister and Mr.Murasoli Selvam have in person met Mr.Edapadi Palanisamy, the Chief Minister of Tamil Nadu. During their visit, they informed that there is no progress in the health condition of Thiru Kalaignar M.Karunanidhi and it is declining as informed by the Directors and due to the said situation, they requested the Chief Minister:

- (i) To allot Rajaji Hall situated in Omandurar Government Estate to pay last homage by Very Important Person and by Public.
- (ii) To allot space inside Anna Square situated in Kanarajar Salai to bury his body.

The Chief Minister considered their requests. In the mean time, on hearing the news of demise of Thiru Kalaaignar M.Karunanidhi, the Hon'ble Chief Minister of Tamil Nadu passed the following order:

- i) In order to pay last homage by Very Important Persons and Public, allotting Rajaji Hall in Omandurar Government Estate and to make necessary arrangements for the same;
- ii) To grant one day holiday on the day of funeral (08.08.2018);
- iii) To give State honour to him during the funeral; to fly National Flag half mast; to put National Flag on his body;
- iv) To observe seven days State mourning and during that period the National Flag would be flown half mast; Government programmes would be cancelled;
- v) To publish Homage News in Government Gazette; and
- vi) Due to the pendency of many cases regarding burial in Marina before the Madras High Court and due to various legal hurdles, the said place could not be allotted. On the other hand, enabling to bury his body, the Government is ready to allot two acres of Government land near Gandhi Mandabam, Kamarajar Memorial, Rajaji Memorial and opposite to Anna University in Sardar Vallabai Patel Main Road and the same is informed by the Hon'ble Chief Minister of Tamil Nadu."

10. Insofar as the plea of violation of Articles 14 and 21 is concerned, it is seen that the then National Congress leaders like (Late) Mr.Rajagopalachari, (Late) Mr.K.Kamarajar and (Late) Mr.M.Bakthavatchalam, who were all former Chief Ministers of Tamil Nadu, had been laid to rest at Gandhi Mandapam, within the same campus of the National Leader Mahatma Gandhi, and it is not as if in the allotment of the said place there was any controversy. The respondent authorities, in our considered opinion, cannot draw analogy to the burial of (Late) Mr.Rajagopalachari, (Late) Mr.K.Kamarajar and (Late) Mr.M.Bakthavatchalam at Gandhi Mandapam, with that of (Late) Dr.M.Karunanidhi, who is a Dravidian Patriarch, and was all along with (Late) Mr.C.N.Annadurai, who was laid to rest in Anna

Square at Marina Beach, and carried forward the Dravidian ideologies.

11. The Dravidian Movement, which has been followed by great leaders like (Late) C.N. Annadurai, was accepted by the majority of the people of Tamil Nadu as a matter of sentiment or regionalism. Such public sentiments, practices and customs should also be respected as a matter of convention. Custom is an important means of controlling social behaviour. The customs are so powerful that no one can escape their range. They are essential to the life of a society and are held sacred. Customs are observed not simply because they are traditionally enforced by the society, but because people's sentiments and feelings of personal obligation support them. Custom is both democratic and totalitarian. It is democratic because it is made by the group; everybody contributes to its growth. It is totalitarian because it affects every sphere of self expression, private and public, it influence our thoughts, beliefs and planners. Such conventions, customs and sentiments should be recognized at the time of deciding certain cases. Even the British Parliament does not have a codified constitution, it follows Acts, conventions, customs and practice. Therefore, such conventions, customs and sentiments cannot be brushed aside.

12. With regard to violation of the Regulations of the Coastal Regulation Zone is concerned, the counter filed by the State in W.P. No.15483 of 2018 runs counter to the stand taken in this writ petition. The writ petition, being W.P.No.15483 of 2018, was filed by one S.Doraisamy, advocate, as party-in-person opposing the proposed construction of memorial for the Former Chief Minister of Tamil Nadu, (Late) Dr.J.Jayalalithaa. In that writ petition, the petitioner alleged several legal hurdles for constructing a memorial. In the counter affidavit filed by the Director, Department of Environment, who is also the Member Secretary, Tamil Nadu State Coastal Zone Management Authority, it has been stated that there is no legal impediment for constructing the memorial for the Former Chief Minister, (Late) Dr.J.Jayalalithaa. It was further stated in the counter affidavit that the said site falls in CRZ-II area as per CRZ Notification, 2011 and that buildings shall be permitted only on the landward side of the existing road, or on the landward side of the existing authorized structures. Since the Government, particularly, the department concerned has taken a specific stand that there is no legal impediment for constructing the memorial for the former Chief Minister, (Late) Dr.J.Jayalalithaa in the same place, it is not open to the Government now to come up with a case that there are legal hurdles. In the entire counter affidavit filed in the writ petition, the respondents have not stated anything about the hurdles that stand in the way of the Government for earmarking a place for laying the mortal

remains of (Late) Dr.M.Karunanidhi. So the said ground raised by the respondent authorities has no legs to stand.

13. So far as the next ground seeking permission of the Corporation of Chennai is concerned for laying of the mortal remains of Dr.M.Karunanidhi, it is to be noted that licence for burial of former Chief Minister, (Late) Dr.M.G.Ramachandran at the Marina Beach was issued pursuant to the resolution of the Corporation Council, being Resolution No.671 of 1988, in terms of Section 319(3) of the Chennai City Municipal Corporation Act, way back in 1988 and, therefore, the Government is estopped from taking a different stand on that aspect at this stage.

14. With regard to providing place for burial at Marina Beach, it should also be noted that when leaders and their followers, namely (Late) Mr.C.N.Annadurai, (Late) Mr.M.G.Ramachandran and (Late) Ms.J.Jayalalithaa, were accommodated in a place, and when also the government despite the convention, on its own, as a matter of honour is extending all the courtesies stipulated in paragraphs (i) to (v) in the press release, the Government should have also provided a place as sought for by the petitioner, especially when there is a latest development with regard to withdrawal of all those cases before this Court unconditionally and by Court order.

15. The petitioner in W.P.No.28745 of 2017, while supporting the case of the petitioner herein, sought liberty to challenge the same at a subsequent stage. But, the said writ petition was dismissed by this Court on 8.8.2018 (earlier this day), stating that the writ petition lacks bonafide. In any event, the petitioner therein is a court-bird who is habituated to filing of petitions after petitions, whether it is maintainable or not. The petitioner therein cannot be allowed to take different stands at different point of time or to blow hot and cold.

16. Pendency of cases and legal hurdles are the grounds for rejection of the place for burial as stated in the Press Release. But, in the counter affidavit a discrimination is sought to be made on the basis that the other Chief Ministers buried at Marina Beach were sitting Chief Ministers, whereas as Dr.M.Karunanidhi, was the former Chief Minister. As held by the Supreme Court in Mohinder Singh Gill and another vs The Chief Election Commissioner, New Delhi and others AIR 1978 Supreme Court 851, the case of the respondents cannot be improved on the basis of the counter-affidavit. In our considered view, there is no rationale behind that differential treatment between a sitting Chief Minister and a former Chief Minister and the same is in violation of Articles 14 and 21 of the Constitution of India, more particularly, when the same is

not the ground for rejection of the place of burial stated in the Press Release.

17. That apart, in the counter affidavit filed, it is not the case of the respondents that the order passed by the Chief Secretary is not similar to the order produced before this Court as the impugned order. It is not the case of the respondents that there are other reasons that could be found from the files. To be precise, we also requested the respondents to produce the files relating to the impugned order. Though the learned Senior Counsel undertook to circulate the file before the end of the hearing, no file was produced. Hence, this Court also legitimately has to draw adverse inference against the Government for not producing the files, and it is not necessary to go beyond the order that is now challenged before us.

18. For entertaining a writ petition, the petitioner must establish a legal right in himself and a corresponding legal duty in the State. This court has no quarrel with the proposition. However, having regard to the facts of the present case, we do not think that we need to focus much on the legal right. In a democratic country, the Government is by the people and for the people.

19. When the respondents passed the impugned order, they have given a statement before the public that (Late) Dr.M.Karunanidhi will be treated on a par with a sitting Chief Minister and hence, they have no hesitation to extend all the privileges and honours by treating him as Chief Minister of a State. However, for allocating place for laying his mortal remains, the Government expressed only their helplessness on account of some legal hurdle and pendency of writ petitions. After giving a press release that they have no other reason except the reason pointed out in paragraph (vi) therein, the respondents are estopped from coming up with a new plea in the counter that (Late) Dr.M.Karunanidhi is a former Chief Minister, whereas others laid to rest at Marina Beach were sitting Chief Ministers.

20. In these circumstances, the Government has no impediment to accord sanction of a place at Marina Beach within the Anna Memorial, where the great Dravidian Leader, (Late) C.N.Annadurai was laid to rest. Discrimination sought to be made on the ground of the (Late) Dr.M.Karunanidhi, was a former Chief Minister, whereas (Late) Mr.C.N.Annadurai was the then Chief Minister, cannot be accepted, more so, when (Late) Dr.M.Karunanidhi and (Late) C.N.Annadurai were the pillars of the Dravidian Movement and it is trite that right to dignity and fair treatment is not only available to a living man, but also to his dead body, as held by the Supreme Court in

Parmanand Katara (Pt.) v. Union of India, (1995) 3 SCC 248.

21. Since already we dismissed the other writ petitions challenging the construction of memorials at Marina Beach, there is no legal impediment as submitted by the Government. Moreover, no interim order subsists as on date restraining the respondents from sanctioning such place for memorial.

For the foregoing reasons, the writ petition is allowed with a direction to the respondent authorities to provide a place to lay the mortal remains of (Late) Dr.Kalaignar M.Karunanidhi, former Chief Minister of Tamil Nadu on the Marina Beach, within the precincts of the burial place of the founder of DMK Party and former Chief Minister of Tamil Nadu, (Late) Mr.Annadurai, namely at "Anna Memorial, at Kamaraj Salai, Chennai - 600 005", in consonance with the rough sketch provided by the petitioner. Such exercise shall be carried out by the respondent authorities forthwith. No costs. Consequently, W.M.P.Nos.24145 and 24146 of 2018 are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

sasi

To:

- 1 The Chief Secretary
Government of Tamil Nadu
Secretariat, Fort St. George
Chennai - 600 009.
- 2 The Secretary to Government
Public Department
Secretariat, Fort St. George
Chennai - 600 009.
- 3 The Secretary to Government
Home Department
Secretariat, Fort St. George
Chennai - 600 009.
- 4 The Secretary to Government
Public Works Department
Secretariat, Fort St. George
Chennai - 600 009.

5 The Commissioner
Corporation of Chennai
Chennai.

6 The Commissioner of Police
Greater Chennai City
Vepery, Chennai - 8.

+1cc to Mr.R.GIRIRAJAN, Advocate, S.R.No.54520

+1cc to Mr.K.SOUNDARARAJAN, Advocate, S.R.No.55148

+1cc to the Government Pleader, S.R.No. 54533

+2cc to Mr.R.GIRIRAJAN, Advocate, S.R.No.54520 (11.08.2018)

W.P.No.20531 of 2018

MPI (CO)
TR(10/08/2018)



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