

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.Nos.26621, 26622 of 2014, 7211 and 7493 of 2015
and
M.P.Nos.1 to 3, 1 to 3 of 2014 and 2 & 2 of 2015

M.K.Stalin .. Petitioner in WP.Nos.26621 of 2014
and 7211/15

Durai Murugan .. Petitioner in WP.Nos.26662 of 2014
and 7493/15

Vs.

- 1.The Secretary,
Thiru R.Regupathi Commission of Inquiry,
Government Bungalow NCB1,
P.S.Kumarasamy Raja Salai,
Chennai - 600 028.
- 2.Justice R.Regupathi (Rtd.)
Single Member Thiru R.Regupathi Commission of Inquiry,
P.S.Kumarasamy Raja Salai,
Chennai - 600 028.
- 3.The State of Tamilnadu,
Rep. by its Chief Secretary,
Namakkal Kavignar Maaligai,
Chennai - 9.

..Respondents in all the Writ Petitions

PRAYER in WP.No.26621 of 2014: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records in G.O.Ms.No.1143, Public (Buildings) Department dated 02.12.2011 issued by the 3rd respondent appointing the 2nd respondent and continuing as a single member of the Commission of Inquiry and all its proceedings including procedure dated 05.06.2013 and collection of evidences culminating into summons dated 11.09.2014 issued by the 2nd respondent and to quash the same as it is in violation of Commission of Inquiry Act, 1952 and rules framed there under as well as violative of Art.14 and 21 of Constitution of India.

PRAYER in WP.No.26622 of 2014: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records in G.O.Ms.No.1143, Public (Buildings) Department dated 02.12.2011 issued by the 3rd respondent appointing the 2nd respondent and continuing as a

single member of the Commission of Inquiry and all its proceedings including procedure dated 05.06.2013 and collection of evidences culminating into summons dated 02.09.2014 issued by the 2nd respondent and to quash the same as it is in violation of Commission of Inquiry Act, 1952 and rules framed there under as well as violative of Art.14 and 21 of Constitution of India.

PRAYER in WP.No.7211 of 2015: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the 1st and 2nd respondents dated 05.06.2013, 26.06.2014, 17.02.2015 and 26.02.2015 including the questionnaire framed by the 2nd respondent and bearing the seal of the 1st respondent dated 13.02.2015 and to quash the same as illegal, arbitrary, unreasonable and unconstitutional and in violation of the Commission of Inquiry Act, 1972 and the Rules framed thereunder.

PRAYER in WP.No.7493 of 2015: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the 1st and 2nd respondents dated 26.06.2014, 17.02.2015 and 26.02.2015 including the questionnaire framed by the 2nd respondent and bearing the seal of the 1st respondent dated 13.02.2015 and to quash the same as illegal, arbitrary, unreasonable and unconstitutional and in violation of the Commission of Inquiry Act, 1972 and the Rules framed thereunder.

For Petitioners : Mr.P.Wilson, Senior Counsel
in all WPs for Mr.V.Arun

For Respondents :Mr.Vijay Narayan,
in all WPs Advocate General
Assisted by Mr.T.N.Rajagopalan,
Government Pleader for R3

Mr.V.Krishnamoorthy for R1
and R2

C O M M O N O R D E R

The cases were listed for hearing on 27th September 2018 at the instance of the learned counsel appearing on behalf of the Writ Petitioners. The matter was adjourned to 28.09.2018. On 28.09.2018, the learned Special Government Pleader requested for an adjournment, in view of the fact that the learned Advocate General has to make his submissions. At that point of time, the learned counsel appearing on behalf of the Writ Petitioners on record Mr.V.Arun, made a submission that the Writ Petitioners are willing to withdraw the Writ Petition and accordingly made an endorsement to that effect. However, in order to hear the learned Advocate General the cases are listed for hearing on 1st

October 2018.

2. Today when the matters are taken up for hearing, the learned Advocate General informed this Court that subsequent to the orders of this Court dated 03.08.2018, in MP.Nos.2, 3 of 2015 and WMP.No.23263 of 2018 and MP.No.2 of 2014 in WP.Nos.7049 of 2015 and 25445 of 2014, the Hon'ble Mr.Justice R.Regupathy demitted his office on 24.08.2018. Accordingly, the Government passed an order accepting the demittance of office by Hon'ble Mr.Justice R.Regupathy. Thereafter, the respondent State received all the papers from the Office of the Commission of Inquiry and had taken the decision and accordingly sent all the papers and files to the Department of Vigilance and Anti-Corruption for forming an opinion and for initiation of all further actions.

3. In this regard the Government passed an order granting permission to the Department of Vigilance and Anti-Corruption to conduct an enquiry vide order dated 28.09.2018. Pursuant to the orders of the Government, the Department of Vigilance and Anti-Corruption is in the process of scrutinizing the documents, papers and files and after coming to a conclusion, all further actions will be initiated.

4. The learned Senior Counsel appearing on behalf of the Writ Petitioners made a submission that after the orders passed by this Court on 3rd August 2018, the Commission is not in existence as Hon'ble Mr.Justice R.Regupathy demitted his Office. Thus, the cause aroused for filing of these Writ Petitions became vanished. Thus, the cases became infructuous and no further adjudication is required. The learned counsel on record also made an endorsement that the petitioners are withdrawing the Writ Petitions. The learned Senior Counsel for the Writ Petitioners states that, while accepting the withdrawal, no further order needs to be passed in view of the principles laid down by the Hon'ble Supreme Court of India reported in Anil Kumar Singh vs. Vijay Pal Singh and Others [2018 12 SCC 584].

5. This Court is of an opinion that the order of the Hon'ble Supreme Court of India relates to the withdrawal of suit or abandonment of part of claim under the provisions of Code of Civil Procedure. Thus, the same cannot have any implication in respect of withdrawal of writ petitions filed under Article 226 of Constitution of India.

6. Application of Code of Civil Procedure adopted in the case cited supra cannot have any direct impact in respect of writ petitions, wherein, the constitutional obligations mandates and the public interest are to be balanced by the Constitutional Courts, while dealing with these Writ petitions.

7. The writ petitions were filed challenging the appointment of Commission of Enquiry under the Commission of Inquiry Act. The learned Advocate General made a submission that the order passed by this Court dated 03.08.2018 in MP.Nos.2, 3 of 2015 and WMP.No.23263 of 2018 and MP.No.2 of 2014 in WP.Nos.7049 of 2015 and 25445 of 2014 was implemented by the State in entirety. Thus, the State has no objection in respect of withdrawal of the Writ petitions by the writ petitioners.

8. However, this Court would like to state that article 39 (c) of Constitution of India enumerates "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment" though, it is a directive principle, the Hon'ble Supreme Court of India time and again emphasized that the directive principles are also to be taken into consideration by the State while implementing certain policies.

9. It is relevant to point out that a building for new secretariat was constructed by spending the tax payers money to the tune of about Rs.400 Crores. However, the Government took the decision not to use the building for new secretariat and converted the same as multi-specialty hospital. The tax payers money spent on beautification and for other facilities for construction of new secretariat became a national waste. Even for conversion of the new secretariat building to a specialty hospital another few crores of rupees were spent by the State. However in respect of the conversions of buildings, the decision of the Government is upheld by the Courts. Thus, no further actions are required regarding conversions.

10. The Writ petitioners have challenged the Commission of Enquiry appointed to go into certain allegations regarding the construction of new secretariat building. The Commission of Enquiry was appointed and it was non-functional for about three years. The Commission of enquiry also spent an amount of about 4 ½ crores and the reports are not submitted even at the time when the writ petitions were heard by this Court. Ultimately nearly about 5 crores were spent for the Enquiry Commission. However nothing became useful for the welfare of the State as well as in the interest of the public at large. In respect of construction of new secretariat building and the allegations of corruption, substandard building materials and related issues are not even concluded till today. One way or other the issues are prolonged and protracted against the common interest.

11. Such a situation is not only painful but certainly a national concern about spending of tax payers money detrimental to the interest of the public at large. This Court is of the considered opinion that once the elected Government started

functioning and governing the State their action, policy decision and expenditure must be beyond its political ideologies and beyond any pale of doubt. All such expenditures must be only in accordance with the constitutional principles and the interest of the public at large.

12. Attachment to the duties and responsibilities are the constitutional principles for the persons who are administering and governing the State.

13. The power under the Constitution are provided to the Administrators only to protect the tax payers money and spend the same judiciously and for the welfare of the people at large and following the procedures contemplated under the Statutes as the State is the custodian. The Government is not only responsible, but also accountable. Any unlawful loss caused in respect of the tax payers' money will not only be questioned and actions are to be initiated and the persons liable are to be certainly prosecuted under the Penal Laws. The learned Advocate General informed this Court that the files had already been sent to the Director of Vigilance and Anti-Corruption Department, for scrutiny and to initiate all further actions. Necessary orders were also passed. Thus, any further actions must be taken without any undue delay on the part of the authorities concerned.

14. The State and its Authorities cannot escape from the clutches of Constitutional mandates by merely stating that all their actions are with reference to the policy decisions taken. The genuinity of the policy decisions taken and its implementations are also to be tested in the touchstone of the Constitution of India and the principles of reasonableness enunciated in the Constitution. Thus, the Government must be accountable in respect of the actions and policies taken and the citizens are entitled to question such expenditures of taxpayers' money and its correctness for the welfare of the people at large as the Constitution itself is constituted by "We the People of India".

15. In view of the fact that the Commission of Inquiry, which was challenged in these writ petitions, were already wound up and the Hon'ble Chairman appointed also demitted his Office, which was accepted by the State by passing necessary orders, there is no further consideration needs to be undertaken in respect of the grounds raised in these writ petitions. The fact that the cause aroused for filing of these writ petitions became vanished, no further deliberations are required and accordingly, based on the endorsements made by the learned counsel for the writ petitioners in the case bundles, the writ petitions stand dismissed as withdrawn. However, there shall be no order as to

costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dsa

To

- 1.The Secretary,
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- 3.The Chief Secretary,
State of Tamilnadu,
Namakkal Kavignar Maaligai,
Chennai - 9.

+2 ccs to M/s.Government Pleader sr.68144,68150

सत्यमेव जयते

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and 7493 of 2015

sj(co)
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