

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.667 of 2016
and CMP No.9887 of 2016

Mohammed Thasin ... Appellant/Petitioner

versus

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Home (Courts-II) Department,
Secretariat, Fort St. George,
Chennai 600 009.
2. State by the Inspector of Police,
O.C.U. CBCID,
Tirunelveli City Police Station,
Tirunelveli. ... Respondents/Respondents

Appeal filed Under Clause 15 of the letters patent against the order passed by this Court dated 09.04.2015 passed in W.P.No.33235 of 2014.

PRAYER IN W.P.No.33235 of 2014: Filed Under Article 226 of the Constitution of India to issue Writ of Certiorari or any other appropriate Writ order or direction in nature of a writ calling for the records of the impugned G.O. of the 1st respondent in his proceedings in G.O.MS.No.534, Home (Courts II) Department dated 5.8.2014 and quash the same.

For Appellant : Mr.S.I.A.K.Bagadursha
for M/s.K.K.Ramakrishnan

For Respondents: Mr.V.Anandhamoorthi
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Challenge in this Intra Court Appeal is to the order passed by the learned Single Judge in WP No.33235 of 2014 dated 09.04.2015, allowing the said Writ Petition on certain grounds, while rejecting the other contentions of the appellant herein.

2. The challenge in the Writ Petition was to the Government Order in G.O.Ms.No.534 dated 05.08.2014, in and by which, a Special Court was constituted for trial of certain cases arising under the Indian Penal Code, Explosives Substances Act and/or the Unlawful Activities (Prevention) Act. The said Government order in G.O.Ms.No.534 came to be passed invoking Section 22 of the National Investigation Agency Act.

3. The Writ Petition filed by the appellant in Writ Petition No.33235 of 2014 was taken up along with other cases filed by other persons who were accused of substantially similar offences and whose cases were also covered by the said G.O.Ms.No.534 dated 05.08.2014. Though as many as six contentions were urged by the petitioners, the learned Single Judge, by a common judgment dated 09.04.2015, rejected four of the said contentions and upheld the contention Nos.1 and 2. The net result was that the Writ Petitions were allowed and the Government Order in G.O.Ms.No.534 dated 05.08.2014 was quashed.

4. Aggrieved the Government filed Writ Appeal in WA Nos.857 to 861 of 2015, WA No.861 of 2015 was against the Writ Petition No.33235 of 2014, which was filed by the appellant Mr.Mohammed Thasin. The said appeals were heard by the Division Bench of this Court, to which one of us (Hon'ble Mr.Justice K.K.Sasidharan) was a party. The appeals were allowed setting aside the judgment of the learned Single Judge and upholding the Government order constituting a Special Court for trial of certain cases in which the appellant was an accused. The appellant had filed a Review Petition in Review Application No.328 of 2015, seeking review of the judgment in the Writ Appeal No.861 of 2015. In the said Review Petition, the appellant had raised various grounds including the grounds that were rejected by the learned Single Judge. The said Review Petition also came to be dismissed by the same Division Bench on 17.12.2015.

5. Aggrieved the appellant had moved the Hon'ble Supreme Court and the Hon'ble Supreme Court had granted leave and SLP Nos.14476 and 14477 have been converted into Civil Appeal Nos.5060 and 5061 of 2016. It is also stated at the bar the Civil Appeals are pending. This being so, the appellant had come forward with the present Appeal against the said common

order.

6. We have heard Mr.S.I.A.K. Bagadursha appearing for Mr.K.K.RamaKrishnan, learned counsel for the appellant and Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the respondents.

7. The challenge in the Writ Petition was to the Government Order in G.O.Ms No.534 dated 05.08.2014 by a common order dated 09.04.2015, the Writ Petition filed by the appellant was allowed, quashing the said Government Order. Of course, the learned Single Judge had rejected certain contentions raised by the appellant in the Writ Petition. The Writ Appeal No.861 of 2015 was filed by the Government, challenging the common order dated 09.04.2015 made in WP No.33235 of 2014 and other cases. The said appeal came to be allowed by the Division Bench on 16.10.2015, the appellant who was cited as respondent in WA No.861 of 2015 though served did not choose to appear, when the Writ Appeals were disposed of on 16.10.2015. However, the appellant herein sought for review of the judgment in Writ Appeal No.861 of 2015 in Review Application No.328 of 2015. It is seen from the grounds of the review, the appellant had raised all the points, which were negatived by the learned Single Judge, the Review Application came to be dismissed on 17.12.2015.

8. The learned counsel for the appellant, however, would contend that he is entitled to argue those grounds which were rejected by the learned Single Judge in this appeals de hors the judgment of the Division Bench dated 16.10.2015. We are afraid of such a contention cannot be countenanced. It was open to the appellant to have raised all his contentions, when the Writ Appeals filed by the State were heard by the Division Bench. Having failed to appear when the Writ Appeals were heard by the Division Bench and having moved a Review Application seeking to raise all the issues and having failed in that attempt also, we do not think that the appellant would be entitled to re-agitate the contentions that were already rejected by the Division Bench.

9. Ultimately, the Division Bench had upheld the Government Order and the said order is under challenge in the Civil Appeals as stated supra. Therefore, it is open to the appellant to raise all the issues before the Hon'ble Supreme Court in the Civil Appeals that are said to be pending. We do not think that the appellant would claim a right to re-agitate the issues which were rejected by the learned Single Judge in this Writ Appeal.

10. For the foregoing reasons, the Writ Appeal is dismissed. However, in the circumstances there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Principal Secretary to Government,
Government of Tamil Nadu,
Home (Courts-II) Department,
Secretariat, Fort St. George,
Chennai 600 009.

2. The Inspector of Police,
O.C.U. CBCID,
Tirunelveli City Police Station,
Tirunelveli.

+1cc to the Government Pleader, S.R.No.41397

W.A.No.667 of 2016
and CMP No.9887 of 2016

EV(CO)
TR(13/07/2018)

सत्यमेव जयते
WEB COPY