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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

W.P.No.33762 of 2017

1. Amrutha, S.
2. L.S.Lalitha
3. Ranjani Ravindranath ... Petitioners

vs.

1. The Commissioner,
Greater Chennai Corporation,
Chennai 600 003.
2. The State of Tamil Nadu,
rep. by its Chief Secretary,
Fort St. George,
Chennai 600 009.
3. Deepa Jayakumar
4. Deepak Jayakumar ... Respondents

(R3 & R4 impleaded by this Court vide order dated 22.12.2017 in W.M.P.No.37661 of 2017 in W.P.No.33762 of 2017)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the Respondents herein to ascertain the 1st Petitioner's maternity, by conducting an appropriate DNA Test to ascertain that she is the daughter of Late Ms.J.Jayalalithaa and consequently on such ascertainment of the 1st Petitioner's maternity in the manner decided by this Court to consider the 1st Petitioner's representation on 09.12.2017 for the 1st Petitioner and the family members to cremate the remains of Ms.J.Jayalalithaa as per rites, rituals and customs of Sri Vaishnava Iyengar Brahmin Community, within such time as fixed by this Hon'ble Court with due Police Protection to the 1st Petitioner and her family members at the time of cremation.

(Prayer amended as per order of this Court dated 22.12.2017 in W.M.P.No.37660 of 2017 In W.P.No.33762 of 2017)

For Petitioners : Mr.V.Prakash, Senior Counsel
for Mr.A.Arumuga Nainar



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For 1st Respondent : Mr.T.C.Gopalakrishnan
For 2nd Respondent : Mr.Vijay Narayan,
Advocate General,
assisted by Mr.T.N.Rajagopalan,
Special Government Pleader
For 3rd Respondent : Mr.G.Subramani
For 4th Respondent : Mr.S.L.Sudarsanam

O R D E R

Undoubtedly, this case has created waves in the mind of the general public, as if they were waiting to watch a movie with full of suspense.

2. One Amrutha, (who is the 1st Petitioner herein) claiming to be the daughter of Late Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu, has filed the present Writ Petition along with one L.S.Lalitha and Ranjani Ravindranath, (who are Petitioners 2 and 3, respectively), initially, with the following prayer:

"Writ Petition praying for the issuance of a Writ of Mandamus, directing the Respondents to consider the representation dated 09.12.2017 of the 1st Petitioner for permitting the family members of Late Ms.J.Jayalalithaa to cremate her body as per the rites, rituals, customs of Vaishnava Iyengar Brahmin Community, to which Late Ms.J.Jayalalithaa and her family members belong to, within a time to be fixed by this Hon'ble Court, with due police protection to the 1st Petitioner and her family members at the time of cremation and pass such other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

3. When the Writ Petition was taken up for admission, this Court posed a question to the Learned Senior Counsel appearing for the Petitioners that the relief sought by the Petitioners could not be considered, unless Class-II Legal Heirs of Late Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu, are impleaded as parties to the Writ Petition.

4. Subsequently, the Petitioners herein filed W.M.P.No.37661 of 2017 seeking to implead one Deepa Jayakumar and Deepak Jayakumar, (who are Class II Legal Heirs of Late



Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu) as parties to the above Writ Petition and W.M.P.No.37660 of 2017 seeking to modify the Prayer in the Writ Petition. This Court, by orders dated 22.12.2017 in the respective Miscellaneous Petitions, impleaded Class II Legal Heirs of Late Ms.J.Jayalalithaa, as necessary parties to the above Writ Petition and ordered modification of the Prayer in the Writ Petition. The modified Prayer in the Writ Petition, reads thus:

"Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the Respondents herein to ascertain the 1st Petitioner's maternity, by conducting an appropriate DNA Test to ascertain that she is the daughter of Late Ms.J.Jayalalithaa and consequently on such ascertainment of the 1st Petitioner's maternity in the manner decided by this Hon'ble Court to consider the 1st Petitioner's representation on 09.12.2017 for the 1st Petitioner and the family members to cremate the remains of Ms.J.Jayalalithaa as per rites, rituals and customs of Sri Vaishnava Iyengar Brahmin Community, within such time as fixed by this Hon'ble Court with due Police Protection to the 1st Petitioner and her family members at the time of cremation."

5. The case of Amrutha, the 1st Petitioner herein, as put forth in her Affidavit, is, as under:

5.1. The 1st Petitioner/Amrutha grew up as the daughter of Late Mrs.Shylaja and Late Mr.Sarathy, who were issueless. Late Mrs.Shylaja was the sister of Late Ms.J.Jayalalithaa, the former Chief Minister of Tamil Nadu. The 1st Petitioner came to know from her relatives, viz. Mrs.L.S.Lalitha and Mrs.Ranjani Ravindranath, Petitioners 2 and 3 herein, that in the month of August 1980, they were called by Late Ms.J.Jayalalithaa to discuss an important issue relating to the birth of a child. As per the assertions of her relatives, the 1st Petitioner/Amrutha was born on 14.08.1980 at the residence of Late Ms.J.Jayalalithaa in Mylapore, Chennai and she was given to understand that the maternal aunt of Late Ms.J.Jayalalithaa, viz. Late Mrs.Jayalakshmi has been taking care of the child birth and maternity.



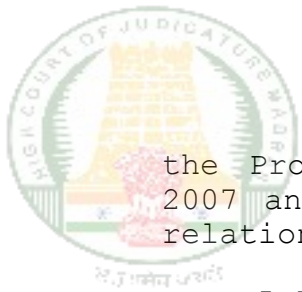
5.2. On the request of Late Ms.J.Jayalalithaa, the elder relatives of the 1st Petitioner/Amrutha, viz. Mrs.L.S.Lalitha and Mrs.Ranjani Ravindranath went to the house of Late Ms.J.Jayalalithaa to visit her. According to them, an understanding was arrived at between Late Ms.J.Jayalalithaa and the family members that the birth of the 1st Petitioner/Amrutha will not be disclosed to uphold the dignity of the family, since they belong to a very religious, orthodox and cultured Brahmin family and her birth came as a shock to everyone. Late Ms.J.Jayalalithaa wished that the 1st Petitioner/Amrutha be brought up by her own sister Late Mrs.Shylaja and her husband Late Mr.Sarathy, who were issueless and therefore, they were asked to come from Bangalore to Late Ms.J.Jayalalithaa's house in Chennai.

5.3. As per the assertions made by the family members, it was decided amongst the family members that the birth of the 1st Petitioner/Amrutha will be kept secret and that all of them, viz. Late Mrs.Jayalakshmi, Late Ms.J.Jayalalithaa, Late Mrs.Shylaja and Late Mr.Sarathy took a promise in front of God and amongst themselves that the true facts and circumstances of the 1st Petitioner/Amrutha's birth will not be disclosed.

5.4. The 1st Petitioner/Amrutha completed her School education in Aruna Nursery and Primary School, a Government School at Vidyapeetha under the care of Late Mrs.Shylaja and Late Mr.Sarathy, her foster parents. Her foster mother, Late Mrs.Shylaja was working with Hindustan Aeronautics Limited, Bangalore.

5.5. In June 1996, the 1st Petitioner/Amrutha's foster mother gave a chit to her and requested her to visit Late Ms.J.Jayalalithaa, stating that Late Ms.J.Jayalalithaa was her maternal aunt and also asked her to give the chit to Late Ms.J.Jayalalithaa. The 1st Petitioner/Amrutha was accompanied by her maternal Uncle Late Mr.Jayaraman to the Poes Garden, where Late Ms.J.Jayalalithaa was residing. When the 1st Petitioner/Amrutha entered the main door of the house, she was embraced by Late Ms.J.Jayalalithaa affectionately and lovingly and offered all sorts of hospitalities without even reading the chit given by Late Mrs.Shylaja. The 1st Petitioner/Amrutha was astonished by such a response that too from a person introduced as maternal aunt by the family members. The 1st Petitioner/Amrutha was residing with Late Ms.J.Jayalalithaa at Poes Garden and the true facts and circumstances of her birth was not revealed to her.

5.6. Late Ms.J.Jayalalithaa, during her visits to Bangalore, on many occasions, used to visit the 1st Petitioner/Amrutha and stayed with her, as could be evident from



the Protocol Register of the 2nd Respondent, during the years 2007 and 2008 and the 1st Petitioner/Amrutha developed a strong relationship with Late Ms.J.Jayalalithaa.

5.7. Later, the name of the 1st Petitioner was changed from Manjula to Amrutha, on the suggestions of the family elders and Late Ms.J.Jayalalithaa. The 1st Petitioner/Amrutha's foster mother, Mrs.Shylaja died on 09.04.2015, without disclosing her biological mother. However, her foster father, viz. Late Mr.Sarathy, who died on 20.03.2017, before his death, disclosed to the 1st Petitioner/Amrutha, in the month of March, that Late Ms.J.Jayalalithaa was her biological mother and that her birth was kept as a secret to uphold the dignity of the family. Similarly, the 2nd Petitioner/L.S.Lalitha also informed the 1st Petitioner/Amrutha that Late Ms.J.Jayalalithaa was not issueless and that the 1st Petitioner/Amrutha was the only daughter of Late Ms.J.Jayalalithaa. Thus, the 1st Petitioner/Amrutha came to know of her biological mother Late Ms.J.Jayalalithaa, only after the latter's demise.

5.8. According to the 1st Petitioner/Amrutha, the Protocol Register maintained by the 2nd Respondent for the period between 1996 and 2016 will reveal that she had been frequently visiting Late Ms.J.Jayalalithaa and residing with her in her room. During the 1st Petitioner/Amrutha's visit to Poes Garden, Late Ms.J.Jayalalithaa refrained her from socializing with other inmates of Poes Garden, as there was danger to her life and Late Ms.J.Jayalalithaa always used to be along with the 1st Petitioner/Amrutha during her stay at Poes Garden. In order to spend time with her, Late Ms.J.Jayalalithaa used to cancel all the meetings, appointments and other Office work and that the 1st Petitioner/Amrutha used to sleep with Late Ms.J.Jayalalithaa in the same bed.

5.9. According to the 1st Petitioner/Amrutha, she and her family members including her biological mother belong to Vaishnava Iyengar Brahmin Community. Despite the said fact, the last rites of her biological mother were not performed as per Vaishnava Iyengar Brahmin Community and she was buried alongside the memorial of Late Dr.M.G.Ramachandran, former Chief Minister of Tamil Nadu, on Marina Beach, Chennai. Though her biological mother never expressed any desire to be buried, either to the 1st Petitioner/Amrutha or to any other family members, relatives or friends, it is necessary that the mortal remains of Late Ms.J.Jayalalithaa is cremated as per the customs, to enable her rest in peace.

6. Further, the 1st Petitioner/Amrutha has filed an Additional Affidavit, relevant portion of which is reiterated hereunder:



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"3. As I had already stated in my earlier affidavit in the Writ Petition filed by me, I was made to believe that Late Selvi. J.Jayalalithaa was my maternal aunt, whom I used to call "Periamma". I came to know that I was born to Late Selvi J.Jayalalithaa and Late Shoban Babu only when my foster father Mr.Sarathy revealed my true parentage to me just before his death on 20.03.2017, succumbing to cancer.

4. I respectfully submit that I was admitted to Aruna Nursery and Primary School, a Government School (Vidyapeetha) as a child and I studied in Kannada medium. Later, I pursued and completed my Masters in Political Science.

5. I submit that I got married to my Late husband Mr.Y.S.Prakash on 30.11.2000. Late Selvi J.J.Jayalalithaa did not attend the wedding because at that time, she was detained in prison, but my marriage had her consent and blessings. After her release, she gifted me a gold pooja lamp, which I have had in my pooja room at my residence. It was stolen, for which, I gave a police complaint on 03.05.2006 at Anumantha Nagar Station, for which FIR was registered.

6. I submit that after my marriage, my husband went to Switzerland for an assignment and he died on 02.06.2005 in an accident at Switzerland.

7. It is submitted that when Late Selvi J.Jayalalithaa was admitted in Apollo Hospitals on 22.09.2016, I went to visit her, but I was not allowed inside the Hospital. At that point of time, I did not know she was my mother, but thought she was my maternal aunt, whom I wanted to visit as she had always been very affectionate to me.

8. I submit that after she died, I also came to the funeral on 06.12.2016. When her mortal remains were kept for the public to pay their last respects and when I went nearby, I was not allowed to come near her body by the police. I could only see her



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from a distance as a member of the public.

9. I respectfully submit that when my mother died in Apollo Hospitals, the person who was with her was Mrs.Sasikala Natarajan, who made sure that no one could have any access to my mother. Apollo Hospital was like a fortress and the Hospital Management also made sure that nobody had access to her. Her personal effects were in Veda Nilayam. As to what steps the Government took to ensure that Late Selvi J.Jayalalithaa's personal effects were secured, is not known. We do not know whether she left behind a Will. The Government has a duty to ensure that the personal effects of Late Selvi J.Jayalalithaa was inventories in a systematic manner, which the Government has failed to do. At that point of time, it appears that Mrs.Sasikala Natarajan was fully in charge without any accountability to the Government with regard to the personal effects of Late Selvi J. Jayalalithaa. Virtually, she was treated as an orphan and decisions were taken by the Government with regard to her funeral rites which was done at the instance of Mrs.Sasikala Natarajan. I believe they had no respect for her religious beliefs or ascertained from her in any manner as to how her last rites should be performed. On the contrary, the public was made to believe until her death was eventually announced, that she was recovering and would be discharged. The 2nd Respondent has a duty to disclose to this Honourable Court, what steps it took to secure the personal effects of Late Selvi. J.Jayalalithaa.

10. It is respectfully submitted that submissions were made on behalf of the 1st Respondent without any investigation or effort to investigate the veracity of my claim, that I am the daughter of Late Selvi J.Jayalalithaa. In fact, the State raised the issue of maintainability and only on the hearing on 05.01.2018 submitted that the State is going to take steps to investigate the claim.

11. I respectfully submit that I am



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also filing a supporting affidavit of Dr.G.V.Rao, Former Chief Staff Scientist, who headed the DNA finger printing laboratory at the Centre for DNA Fingerprinting and Diagnostics, Hyderabad (CDFD), who has recommended the following steps:

"In the event the State persists in its stand that I am a rank outsider and not related to Late Selvi J.Jayalalithaa comparison of my DNA testing of my biological tissue with the biological tissue of the impleaded 3rd Respondent especially the comparison of the Mitochondrial DNA (Mt DNA for short), would show that I am a descendant of Sandhya, as Sandhya, Jayalalithaa, Deepa and myself would have similar Mt DNA)"

12. I hereby submit that I am willing to submit my biological sample for DNA matching/analysis with the biological tissue of the 4th Respondent viz. Deepa Jayakumar, the results of which will reveal the truth.

13. I also consent to give my biological sample for comparison/matching with the duly authenticated biological sample of Late Selvi J.Jayalalithaa which will confirm the truth behind the claim, that I am her daughter.

...

17. I respectfully submit that I am willing to have my biological sample compared with the biological sample of any of the children of Late Shoban Babu to have my paternity established. His children are Mrudula Rao, Nivedita Amrutha, Prashanti, Karuna Seshu."

7. Denying the averments of the 1st Petitioner/Amrutha that she is canvassing unproved factual details, the 2nd Respondent/Chief Secretary, State of Tamil Nadu, has filed a Counter Affidavit, to the following effect:

7.1. With reference to the 1st Petitioner/Amrutha's averment that Late Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu, visited her on many occasions during her visits to



Bangalore and stayed with her, the 2nd Respondent has stated that due to efflux of time, the veracity of the same could not be verified and as such, there is no proof to show that the former Chief Minister visited the 1st Petitioner/Amrutha during her visits to Bangalore during the years, 2007 and 2008 and that the 1st Petitioner/Amrutha has not produced any evidence in support of such statement.

7.2. From the available information, the 2nd Respondent has stated that there is no proof to corroborate the claim of the 1st Petitioner/Amrutha that she had visited the former Chief Minister Late Ms.J.Jayalalithaa at her residence at Poes Garden and stayed with her.

7.3. Further, the Telephone Bills furnished by the 1st Petitioner pertain to the years 2002 and 2003, which are more than 15 years old. As per the rules of the Telecom Regulatory Authority of India, the Telephone Call detail records are maintained for one year only and hence, the claim of the 1st Petitioner/Amrutha that Late Ms.J.Jayalalithaa had spoken to her over telephone could not be verified and there is no proof to substantiate her claim.

7.4. Moreover, in the Sworn Affidavit dated 25.04.2016 filed by Late Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu, before the Returning Officer of Dr.Radhakrishnan Nagar Assembly Constituency during the Tamil Nadu Legislative Assembly election held during May 2016, Late Ms.J.Jayalalithaa herself had declared that she had no spouse or dependents, which clearly shows that the claim of the 1st Petitioner/Amrutha that she is the biological daughter of Late Ms.J.Jayalalithaa is utterly false.

7.5. There are no records, which indicate that the 1st Petitioner/Amrutha had visited Late Ms.J.Jayalalithaa, while she was undergoing treatment at the Hospital or at the time of her funeral.

7.6. Late Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu was laid to rest at Marina Beach with full State honours by the State Government and at the time of funeral, neither the 1st Petitioner/Amrutha nor the said relatives made a request for following the rites, rituals and customs as mentioned by the 1st Petitioner/Amrutha.

7.7. Furthermore, the 1st Petitioner/Amrutha had given representation only on 09.12.2017, after a lapse of more than a year of the death of Late Ms.J.Jayalalithaa and as such, the claim of the 1st Petitioner/Amrutha deserves to be rejected.

7.8. With reference to the prayer of the 1st



Petitioner/Amrutha to conduct an appropriate DNA Test to ascertain that she is the daughter of Late Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu, the 2nd Respondent has stated that the Writ Petition itself is not maintainable, as there cannot be a roving enquiry in the matter and that DNA matching sought for by her is unsustainable and devoid of merits.

7.9. With reference to the 1st Petitioner/Amrutha's averment that Late Mrs.Shylaja was the sister of Late Ms.J.Jayalalithaa, the 2nd Respondent has stated that the Government had accorded sanction on behalf of Late Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu to prosecute Mrs.Shylaja for a defamatory Article published in the Tamil Bi-weekly 'Junior Vikatan', in its Issue dated 23.07.2014, for claiming that Late Ms.J.Jayalalithaa was her sister and accordingly, Criminal Complaint No.29 of 2014 was filed in the Court of the Principal District and Sessions Judge, Chennai by the City Public Prosecutor, Chennai, which is still pending. Thus, according to the 2nd Respondent, the claim of the 1st Petitioner/Amrutha that Late Mrs.Shylaja was the sister of Late Ms.J.Jayalalithaa, is false and devoid of merits.

7.10. As regards the averment of the 1st Petitioner/Amrutha that she was born on 14.08.1980 at the residence of Late Ms.J.Jayalalithaa, at Mylapore, Chennai, the 2nd Respondent has stated that Late Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu had participated in the 27th Filmfare Awards-South function, which was held at Chennai on 06.07.1980 and the video clipping taken during the above function clearly shows that Late Ms.J.Jayalalithaa was actively participating in the function and that the claim of the 1st Petitioner/Amrutha that she was born on 14.08.1980 at the residence of Late Ms.J.Jayalalithaa, is utterly false and deserves to be rejected.

8. Mr.V.Prakash, Learned Senior Counsel appearing for the Petitioners, submitted that the 1st Petitioner/Amrutha is the daughter of Late Ms.J.Jayalalithaa and to prove the same, she is prepared to undergo DNA Test. He pleaded that this Court may order DNA matching of the blood samples of the 1st Petitioner/Amrutha with that of the 3rd Respondent/Deepa Jayakumar, mainly relying on the decision rendered by the Apex Court in the case of Narayan Dutt Tiwari (N.D.Tiwari) vs. Rohit Shekhar, (2012) 12 SCC 554. Relevant portion of the said judgment reads as under:

"19. The learned Single Judge has observed that mandatory testing upon an unwilling person would entail an element of violence and intrusion of a person's physical person and may leave irreparable scars and is



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unwarranted and impermissible under Article 21 of the Constitution of India. It was thus concluded that Respondent 1 could not be physically confined for the purpose of giving a blood sample and to ensure compliance with the order dated 23.12.2010.

55. A presumption is not in itself evidence, but only makes a prima facie case for parties in whose favour it exists (see *Sodhi Transport Co. vs. State of U.P.*). As far back as in *Damisetti Ramaendrudu v. Damisetti Janakiramanna*, it was held that presumption cannot displace adequate evidence. The Supreme Court also in *Mohanlal Shamji Soni v. Union of India*, held that it is the rule of law in evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue and the Court ought to take an active role in the proceedings in finding the truth and administering justice."

8.1. Learned Senior Counsel appearing for the Petitioners has further relied on the following:

(i) an Apex Court decision in the case of *Sharda vs. Dharmpal*, (2003) 4 SCC 493

"81. To sum up, our conclusions are:

1. A matrimonial court has the power to order a person to undergo medical test.

2. Passing of such an order by the court would not be in violation of the right to personal liberty under Article 21 of the Indian Constitution.

3. However, the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. If despite the order of the court, the respondent refuses to submit himself to medical examination, the court will be entitled to draw an adverse inference against him."

(ii) a decision of this Court in the case of *R.Rajagopal @ R.R.Gopal @ Nakkheeran Gopal vs. J.Jayalalitha* in O.S.A.No.86 of 2006, dated 06.04.2006

"31. ... However, at the same time, it



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must be noted that the Supreme Court in R.Rajagopal case has clearly held that a citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education, among other matters, and none can publish anything in reference to the above matters without his/her consent, whether laudatory or critical. Therefore, if an Article is purely relating to the personal life of a public official, it would be necessary for the member of the press or media to publish such Article only after a reasonable verification of the facts. The position may, however, be different if a person voluntarily thrust himself or herself into a controversy or voluntarily invites or raises a controversy. In the circumstances, we direct the appellants that whenever they propose to publish any Article purely concerning personal life of the first respondent or the second respondent or both, the appellants shall forward their queries and/or the gist of the proposed Article, as the case may be, to the fax number furnished by the learned counsel appearing for the Respondents. The first respondent or the second respondent or both, as the case may be, shall respond to the queries of the appellants in relation to their proposed Article to the fax number of the Appellants. However, if there is no response to the queries either from the first respondent or the second respondent within 36 hours from receiving such queries, the appellants will be entitled to proceed to publish the proposed Article in their bi-weekly. It is true that the press cannot be compelled to also publish the version of the official, about whom the Article is written, with reference to the Article published against him/her. We, however, feel that it is expected of any responsible member of the Press to also indicate the version of the official concerned in their proposed Article."

(iii) a decision of the Bombay High Court in the case of Anandrav Bhikaji Phadke vs. Shankar Daji Charya, (1883) ILR 7 Bom 323



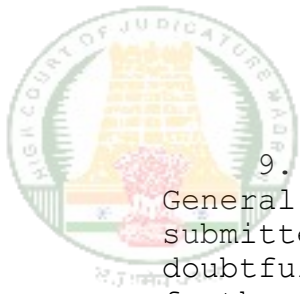
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"3. "4. ... Now the rights connected with the religious foundation, in the absence of any code of rules laid down by the founder or the sovereign power, have to be sought in the practice of the Institution. What has long been done is presumed to have been rightly done. The evidence on that subject has led the Assistant Judge to the conclusion that the right of exclusive worship set up, as against the defendants, by the plaintiffs has been proved, and that the contradictory right set up by the defendants has not. This right is one which the Courts must guard, as otherwise all high-caste Hindus would hold their sanctuaries, and perform their worship, only so far as those of the lower castes chose to allow them. We, therefore, reverse the decrees of the Courts below, and award the relief sought, with all costs, to the plaintiffs."

(iv) a decision of the Rangoon High Court in the case of Ma Kin vs. U Ba, 1929 SCC Online Rang 64

16. A perusal of the evidence shows that the case was settled entirely on the evidence and the question of burden of proof did not come up for decision at all (After considering the evidence on both the sides, his Lordship concluded.) I would, therefore, hold that the deceased died, a Mahomedan and so her Mahomedan relations are entitled to possession of the body and to perform the funeral ceremonies over it, and I would, therefore, dismiss the appeal with costs.

17. All that I would like to add is to stress that the success of the plaintiff's suit depends mainly on the fact that among the plaintiffs there is one (namely Ma Bi Khin) than whom none of the defendants is nearer related to the deceased; that Ma Bi Khin is a Mahomedan, while the defendants are Buddhists, and the deceased was a Mahomedan. If the law recognizes the rights of an executor to obtain or retain possession of a corpse, the same rights may reasonably be extended to the nearest relation of the deceased in the absence of an Executor ..."



9. At the threshold, Mr. Vijay Narayan, learned Advocate General appearing for the 2nd Respondent/State of Tamil Nadu, submitted that the locus standi of the 1st Petitioner/Amrutha is doubtful and that the Writ Petition is not maintainable. He further submitted that unless an extraordinary case is made out compelling a DNA Test, this Court cannot order the same, as it would amount opening the Pandora's box and there is a disputed question of fact involved in this Writ Petition. In support of his stand, the Learned Advocate General has relied on a decision of the Apex Court in the case of Bhabani Prasad Jena vs. Convenor Secretary, Orissa State Commission for Women, (2010) 8 SCC 633, relevant portion of which, reads as under:

"21. In a matter where paternity of a child is in issue before the Court, the use of DNA test is an extremely delicate and sensitive aspect. One view is that when modern science gives the means of ascertaining the paternity of a child, there should not be any hesitation to use those means whenever the occasion requires. The other view is that the court must be reluctant in the use of such scientific advances and tools which result in invasion of right to privacy of an individual and may not only be prejudicial to the rights of the parties, but may have devastating effect on the child. Sometimes, the result of such scientific test may bastardise an innocent child even though his mother and her spouse were living together during the time of conception.

22. In our view, when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA test is eminently needed. DNA test in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The Court has to consider diverse aspects including presumption under Section 112 of the Evidence



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Act; pros and cons of such order and the test of "eminent need" whether it is not possible for the Court to reach the truth without use of such test.

23. ... In Sharda (Sharda vs. Dharmpal, (2003) 4 SCC 493), while concluding that a matrimonial court has power to order a person to undergo a medical test, it was reiterated that the court should exercise such a power if the applicant has a strong prima facie case and there is sufficient material before the court. Obviously, therefore, any order for DNA test can be given by the court only if a strong prima facie case is made out for such a course."

10. Heard the learned Counsel on either side, perused the material documents available on record and also viewed the Video clipping of the Film Fare Award Function held in Chennai on 06.07.1980, produced by the learned Advocate General appearing for the 2nd Respondent/State of Tamil Nadu.

11. Denying the averments of the 1st Petitioner/Amrutha, both the 3rd and 4th Respondents have filed separate counter affidavits. However, Learned Counsel appearing for the 3rd Respondent submitted that he is sailing with the arguments of the learned Advocate General appearing for the 2nd Respondent/State of Tamil Nadu.

12. Moreover, three persons, viz. one P.A.Josseph, R.C.M.Vishnu Prabhu and one V.A.Pugazhendhi, claiming to be members of AIADMK Political Party have filed separate Miscellaneous Petitions seeking to implead themselves as necessary parties to the Writ Petition. Under the guise of protecting the name and fame of Late Ms.J.Jayalalithaa, the above named persons are trying to achieve different purposes. In case, they try to file any Petition to implead either directly or indirectly by setting up other persons, before the Civil forum, this Court will take stringent action against them, as they have no interest except vested interest in the issue on hand. As the case on hand pertains to the ascertainment of the maternity of the 1st Petitioner/Amrutha, the above named persons have nothing to do by getting themselves impleaded in this Writ Petition and hence, the impleading Petitions are unwarranted. Further, the conduct of the above named impleading Petitioners is deprecated, as they are only publicity mongers.



13. Though, according to the 1st Petitioner/Amrutha, she is prepared to undergo DNA Test to prove that Late Ms.J.Jayalalithaa is her mother by matching the blood samples of herself with that of Late Ms.J.Jayalalithaa, the prime question to be decided in this case is as to whether the averments raised and materials produced by the 1st Petitioner/Amrutha would be sufficient to accept her claim or such claim has been made by her in the air.

14. The main objection by the 2nd Respondent/State of Tamil Nadu is that there is a disputed question of fact in this Writ Petition and that the 1st Petitioner/Amrutha will have to establish that she is the Class-I heir of Late Ms.J.Jayalalithaa before the appropriate forum and that the Writ Court is not the alternative forum.

15. What could be culled out from the averments of the 1st Petitioner/Amrutha made in her Affidavit and Additional Affidavit is that, the 1st Petitioner/Amrutha was certainly not aware that Late Ms.J.Jayalithaa was her biological mother till her foster father viz. Late Sarathy disclosed the said information to her, before his death and that, she had visited Late Ms.J.Jayalalithaa at her residence in Poes Garden and stayed with her and also, Late Ms.J.Jayalalithaa had stayed with the 1st Petitioner/Amrutha, during her visits to Bangalore.

16. In support of her averment that Late Ms.J.Jayalalithaa visited her during her stay in Bangalore, the 1st Petitioner/Amrutha has relied on the Protocol Register of the 2nd Respondent for the years 2007 and 2008 and she has furnished the Telephone Bills pertaining to the years 2002 and 2003, to prove that she was in frequent touch with Late Ms.J.Jayalalithaa over Landline at Poes Garden.

17. The stand of the 2nd Respondent/State of Tamil Nadu is that due to efflux of time, the Protocol Register for the years 2007 and 2008 could not be retained. As regards the Telephone Bills furnished by the 1st Petitioner/Amrutha, it is stated by the 2nd Respondent that as per the rules of the Telecom Regulatory Authority of India, records pertaining to Telephone Calls are maintained for one year only and thereafter, they are destroyed.

18. Except relying on the Protocol Register of Late Ms.J.Jayalalithaa maintained by the 2nd Respondent for the years 2007 and 2008 and furnishing Telephone Bills for the years 2002 and 2003, the 1st Petitioner/Amrutha has not produced any document in support of her claim nor has relied on any living witness, who could corroborate the averments of the 1st Petitioner/Amrutha. In this regard, the submission of the



learned Advocate General appearing for the 2nd Respondent/State of Tamil Nadu that even assuming that the 1st Petitioner/Amrutha had stayed with Late Ms.J.Jayalalithaa at Poes Garden, she should have at least had a photograph of herself and Late Ms.J.Jayalalithaa taken together, cannot be brushed aside.

19. Though this Court finds no clinching materials in favour of the 1st Petitioner/Amrutha's claim, the learned Senior Counsel appearing for the Petitioners, relying on the decision rendered by the Apex Court in N.D.Tiwari's case (cited supra), submitted that the Apex Court came to a conclusion that there was a compelling circumstance and that this Court is empowered to direct the authorities concerned to grant blood samples of Late Ms.J.Jayalalithaa to conduct DNA Test, by matching the same with that of the 1st Petitioner/Amrutha. That apart, in N.D.Tiwari's case (cited supra), the issue proceeded from Civil Court, where the parties tried to establish the relationship and others tried to dispute it.

20. In this regard, this Court, on 23.02.2018, in W.M.P.No.4955 of 2018 in W.P.No.33762 of 2017, sent notice to Apollo Hospitals, Greams Road, Chennai, where Late Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu, underwent treatment in her last days, to ascertain as to whether her blood samples are available or preserved, it was reported that no biological samples belonging to Late Ms.J.Jayalalithaa are kept frozen with the Hospital.

21. At this stage, learned Senior Counsel appearing for the Petitioners submitted that the 1st Petitioner/Amrutha is willing for a DNA Test by matching the blood samples of herself with that of the 3rd Respondent/Deepa Jayakumar, who is the niece of Late Ms.J.Jayalalithaa.

22. Civil Procedure Code is a self-contained Code and there is a procedure contemplated for establishing a case before the appropriate forum with regard to Class I heirs, when there is a dispute. Also, it is no doubt true that this Court is empowered to order DNA Test in an extraordinary circumstance. But, in this case, the 1st Petitioner/Amrutha has not established any extraordinary circumstance for conducting DNA Test and hence, she cannot compel the 3rd Respondent/Deepa Jayakumar to give her blood samples for DNA matching. If the 1st Petitioner/Amrutha is able to establish her case before the appropriate Civil forum, then the Civil Court can direct the 3rd Respondent/Deepa Jayakumar to give her blood samples for DNA matching with the 1st Petitioner/Amrutha. Hence, the decision relied on by the learned Senior Counsel appearing for the Petitioner in N.D.Tiwari's case (cited supra) may not be applicable to the



case on hand.

23. In this case, there is no living witness to support the 1st petitioner's claim, as her foster parents had already passed away and at this stage, I am reminded of a story of Lord Siva's Thiruvilayadalgal, whereby, a Vanni Tree, a Well and Sivalingam have adduced evidence to prove the chastity of a Girl. For better appreciation, the story, in brief, is as under:

"A girl named Vellinilavu was to be given in marriage to her aunt's son as the second wife. Unfortunately her parents died and a message was sent to the proposed bridegroom in Madurai to come and take back Vellinilavu as his bride. The bridegroom performed all the rites due to Vellinilavu's dead parents and after the period of lamentation, he set off to Madurai with the bride Vellinilavu.

On the way back to Madurai, when the bride and the bridegroom halted at Thirupurambayam under a Vanni Tree's shade, the bridegroom was bitten by a cobra and died on the spot. When Saint Gnana Sambandhar, who was camping nearby, was informed of this incident, he rushed to the spot immediately and by praying to Lord Siva, brought the dead bridegroom back to life. The man sat up as though from sleep. Thereafter, Gnana Sambandhar asked the man to marry the girl then and there. But, the young man was hesitant to agree for the instant marriage, without informing his first wife and without the priest and the observance of the wedding rituals. However, Gnana Sambandhar exhorted the man to marry Vellinilavu, because the time was auspicious and there were three witnesses readily available nearby. They were the Vanni Tree, the Well and Sivalingam. In the presence of the said witnesses and with the blessings of Gnana Sambandhar, their marriage was performed.

As man and wife, they reached their home in Madurai. The first wife had many children and Vellinilavu had only one child. The first wife's children bullied the second wife's son, which led to quarrel between the two women. During the verbal warfare, the first wife questioned the chastity of Vellinilavu, since her marriage was not performed with the religious rites and there



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were no witnesses. Vellinilavu felt hurt. She prayed Lord Siva in the Temple and demanded that Lord Siva should bring the three witnesses and tell before all about her marriage.

The very next morning before everybody's eyes, the three witnesses, i.e. the Vanni Tree, the Well and Sivalingam appeared and the chastity of Vellinilavu was proved and she was happy."

24. In Mythology, devotion to God made everything possible and in the story narrated above, God was gracious enough to the Girl, Vellinilavu and brought Vanni Tree, Well and Sivalingam as witnesses to prove her chastity. In the case on hand, unfortunately, the witnesses on the side of the 1st Petitioner/Amrutha had already attained mortality and since we are living in the age of Kali Yuga, we cannot expect a dead person to come alive and stand as a witness, as Hindus believe that human civilization degenerates spiritually during the Kali Yuga, which is referred to as the Dark Age, because in Kali Yuga people are as far away as possible from God. When there is no cogent material or reason, the 1st Petitioner/Amrutha cannot ask the Court to conduct a roving enquiry that too on persons who are not alive.

25. In this case, though we are able to see a lot of twists and turns, creating moments of excitement and anxiousness, that alone cannot be sufficient to arrive at a definite conclusion in the absence of any supporting documents thereof. It is saddening to note that the death of Late Ms.J.Jayalalithaa is still a mystery, though her photographs were then and there published by Apollo Hospitals, showing as if she was taking Idlydoing physical exercise, cracking jokes, conducting Meetings with the Officials of the State Government, etc., thereby portraying Apollo Hospitals and others, who have given an untrue story, as villains. It is the further averment of the 1st Petitioner/Amrutha that Late Shylaja, her foster mother is the younger sister of Late Ms.J.Jayalalithaa. It is not in dispute that one Late Sarathy is the husband of Late Shylaja. A reading of the Will, dated 1.11.1971, said to have been executed by Late Sandhya, mother of Late Ms.J.Jayalalithaa, would make it very clear that she had only two children, viz. Jayakumar and Jayalalithaa and there is no mention about the 1st Petitioner/Amrutha's foster mother Late Shylaja in the said Will.

26. What has to be noted is that, Late Shylaja did not take any steps to establish that she is the daughter of Late Sandhya. In fact, a defamation case has been instituted against Late Shylaja by Late Ms.J.Jayalalithaa, former Chief Minister of



Tamil Nadu, to prosecute her for a defamatory Article published in the Tamil Bi-weekly 'Junior Vikatan', in its Issue dated 23.07.2014, for claiming that Late Ms.J.Jayalalithaa was her sister and accordingly, Criminal Complaint No.29 of 2014 was filed in the Court of the Principal District and Sessions Judge, Chennai by the City Public Prosecutor, Chennai and the same was dismissed for non-prosecution. Merely because the said case was dismissed for non-prosecution, it does not mean that the averment of the 1st Petitioner/Amrutha that Late Shylaja was the sister of Late Ms.J.Jayalalithaa, has to be accepted.

27. In this regard, learned counsel appearing for the 4th Respondent/Deepak Jayakumar, relying on G.O.No.673, dated 19.07.2014, submitted that Late Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu filed a Defamation case against Late Shylaja and that Late Shailaja was not the sister of Late Ms.J.Jayalalithaa.

28. As regards the averment of the 1st Petitioner/Amrutha that she was born to Late Ms.J.Jayalalithaa on 14.08.1980 at her residence, the learned Advocate General appearing for the 2nd Respondent/State of Tamil Nadu submitted that the averment of the 1st Petitioner/Amrutha that she is the daughter of Late Ms.J.Jayalalithaa is absolutely false, as the Video clipping taken in the Film Fare Award Function on 06.07.1980 clearly shows the active participation of Late Ms.J.Jayalalithaa.

29. If the averment of the 1st Petitioner/Amrutha that she was born to Late Ms.J.Jayalalithaa on 14.08.1980 is true, then Late Ms.J.Jayalalithaa would not have actively participated in the Film Fare Award function held in Chennai on 06.07.1980 and the Video Clipping of the said function clearly shows that Late Ms.J.Jayalalithaa was not in the later stage of pregnancy and was not carrying any fetus in her womb. It is to be noted that the 1st Petitioner/Amrutha has not disputed the said Video Clipping, as she is aware that if it is disputed, even the pleadings made by her will have to be rejected, as she has taken a different stand.

30. As regards the claim of the 1st Petitioner/Amrutha that she and her family members wish to cremate the remains of Late Ms.J.Jayalalithaa as per rites, rituals and customs of Sri Vaishnava Iyengar Brahmin Community, it is stated by the 2nd Respondent/State of Tamil Nadu in their Counter Affidavit that Late Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu was laid to rest at Marina Beach with full State honours by the State Government and at the time of funeral, neither the 1st Petitioner/Amrutha nor the said relatives made a request for following the rites, rituals and customs as mentioned by the 1st Petitioner/Amrutha.



31. Admittedly, the State has control over the mortal remains of the deceased Chief Minister in conducting a honourable funeral. Late Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu had no direct Legal Heirs except Class II Heirs, who are the 3rd and 4th Respondents herein. It is seen that the 3rd and 4th Respondents did not evince any interest in cremating the mortal remains of Late Ms.J.Jayalalithaa as per the Customs of Iyengar Tamil Brahmin Community. Furthermore, it is to be noted that the 4th Respondent/Deepak Jayakumar, who took part in the funeral of Late Ms.J.Jayalalithaa, had never raised this issue. When the claim of the 1st Petitioner/Amrutha that she is the direct legal heir of Late Ms.J.Jayalalithaa remains unestablished by means of substantial evidence, the question of cremating the remains of Late Ms.J.Jayalalithaa as per rites, rituals and customs of Sri Vaishnava Iyengar Brahmin Community does not arise.

32. The contention of the learned Advocate General appearing for the 2nd Respondent/State of Tamil Nadu that the 1st Petitioner/Amrutha is trying to defame Late Ms.J.Jayalalithaa, cannot be ruled out. According to Puranas, even dead persons have got a right of privacy and their souls should not be disturbed, as they have immortal life after their death.

33. In fine, the 1st Petitioner/Amrutha has not produced any photograph to establish that she had stayed with Late Ms.J.Jayalalithaa. The averment of the 1st Petitioner/Amrutha that she made several phone calls to Late Ms.J.Jayalalithaa, cannot be a good ground for this Court to accept her contention. Though the 1st Petitioner/Amrutha has averred in her Affidavit that Late Ms.J.Jayalalithaa was so clannish to her and she used to hug the 1st petitioner, whenever she saw her, it would only be considered as spoken in the air, mere showing her delusive quality and this Court cannot take the same into account for the purpose of granting relief.

34. DNA Test can be ordered to be conducted, only if there are strong grounds. In this case, no strong ground has been established by the 1st Petitioner/Amrutha, by producing appropriate documentary evidence. The averment of the 1st Petitioner/Amrutha that she sent representations to all public authorities including Hon'ble Judges of the Supreme Court, seeking to cremate the mortal remains of Late Ms.J.Jayalalithaa as per rites, rituals and customs of Sri Vaishnava Iyengar Brahmin Community, does not sound good and there is no need for the Judges to look into such representation concerning the private affairs of a person.

35. Though, it has been contended by the 1st



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Petitioner/Amrutha that the blood samples of herself and the 3rd Respondent/Deepa Jayakumar have to be sent for DNA matching to ascertain her maternity, there is no iota of evidence, more particularly, strong and cogent reasons to substantiate her claim. In the absence of substantial evidence to support the claim of the 1st Petitioner/Amrutha, this Court cannot grant the relief sought by her. If the said relief is granted, it will not only open the Pandora's box, but also the coffin of Late Ms.J.Jayalalithaa. This Court, in the present Writ Petition is not inclined to do so, as stated and discussed supra, as it is for the 3rd and 4th Respondents, who are the Class-II Legal Heirs of Late Ms.J.Jayalalithaa to seek for cremation of her mortal remains, even now.

36. It cannot also be lost sight of the fact that the 1st Petitioner/Amrutha has not made any request for Paternity Test on earlier occasions. Though, in paragraph 17 of her Additional Affidavit, the 1st Petitioner/Amrutha has stated that she is willing to have her biological sample to be compared with the biological sample of any of the children of Late Shoban Babu to establish her paternity, she has made such an averment only after this Court posed a question with regard to her real parentage to the learned Senior Counsel appearing for the Petitioners. Also, it is to be noted that the 1st Petitioner/Amrutha has not filed any case before any Court of Law for the conduct of Paternity Test.

37. From the narration of events, it is very clear that there is no unity between the 3rd and 4th Respondents and certainly, this Court doubts whether such request for cremating the mortal remains of Late Ms.J.Jayalalithaa as per the rites, rituals and customs of Sri Vaishnava Iyengar Brahmin Community will be made by the 3rd and 4th Respondents, unless they have some vested interest. Further, from the huge hue and cry made by the 1st Petitioner/Amrutha and the silence of the Class II Legal Heirs of Late Ms.J.Jayalalithaa, an inference can be drawn that they only try to grab the property of Late Ms.J.Jayalalithaa and not for any other purpose, as the 3rd Respondent/Deepa Jayakumar has been dreaming of usurping the sensitive post.

38. The climax of the entire episode is that the second portion of the amended prayer can be sought for only by the 3rd and 4th respondents, as, as on date, the 1st petitioner/Amrutha has not made out any case that she is the biological daughter of Late Ms.J.Jayalalithaa, former Chief Minister of Tamil Nadu.

39. In view of the foregoing discussion, this Writ Petition



fails and stands dismissed. No costs. Consequently, connected W.M.P.No.37662 of 2017, W.M.P.Nos.4955, 4957 of 2018, W.M.P.Nos.272, 3228 and 4954 of 2018 are closed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

aeb/ar

To:

1. The Commissioner,
Greater Chennai Corporation,
Chennai 600 003.
2. The Chief Secretary,
State of Tamil Nadu,
Fort St. George,
Chennai 600 009.

+1cc to Mr.T.C.Gopalakrishnan, Advocate, S.R.No.71228
+2cc to Mr.A.Arumuga Nainar, Advocate, S.R.No.70878, 71417
+1cc to the Government Pleader, S.R.No.71357

W.P.No.33762 of 2017

CS/17/10/2018