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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P(MD)No.1290 of 2018

Abimani @ R.Chandrasekaran

... Petitioner

Vs.

- 1.The Government of India,
Rep. by its Secretary to President,
President of India, Rashtrapati Bhavan,
New Delhi-110 004.
- 2.The Government of India,
Rep. by its Principal Secretary to Prime Minister,
Prime Minister's Office,
South Block, Raisina Hill,
New Delhi-110 001.
- 3.The Government of India,
Rep. by its Home Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
- 4.The Government of India,
Rep. by its Secretary,
Ministry of Law and Justice,
Shastri Bhawan,
New Delhi-110 115.
- 5.The Hon'ble Chairman,
Law Commission of India,
Government of India,
Hindustan Times House,
K.G.Marg,
New Delhi-110 001.
- 6.The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi-110 001.



7.The Chief Election Officer (CEO),
Tamilnadu,
Fort St.George, Secretariat,
Chennai-600 009.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the fifth respondent to consider the issue of modifying the public voting system in India as mandatory one for Indian voters as Electoral Reforms and suggest comprehensive measures for changes in the law and submit a report to the respondents 3 and 4 and on the basis of the report, the respondents 3 and 4 should take appropriate action within a stipulated time limit as fixed by this Court by considering the representation, dated 15.12.2017.

For Petitioner : Abimani Alias Chandrasekaran
(Party-in-person)

For RR 1 to 4 : Mr.V.Kathirvelu,
Assistant Solicitor General of India.

For RR 6 & 7 : Mr.K.K.Senthil
for M/s.G.R. Associates

ORDER

(Order of the Court was made by M.SATHYANARAYANAN,J.)

The present Writ Petition is filed as a 'Public Interest Litigation' praying for appropriate direction, directing the fifth respondent, namely Law Commission of India, to consider the issue relating to public voting system with suitable modification and also to suggest comprehensive measures for effecting changes in law and submit a report to the respondents 3 and 4, who, in turn, shall take appropriate action within a stipulated period as per the representations/suggestions made by the fifth respondent.

2.The petitioner in the affidavit filed in support of this Writ Petition would state among other things that at present, the voting system in India is the main route cause for the maximum corruption and bribery, as political parties and candidates fight with each other and are spending huge money to lure the voters to caste vote by indirect compulsion in favour of the particular candidate and in the process also, resorting to all immoral methods. The petitioner in this regard has also quoted instances in paragraph Nos.12 to 15 as to the method adopted by the major political party in Thirumangalam By-election as well as Parliamentary Election held during the year 2009. The petitioner has also submitted a detailed representation, dated 15.12.2017 to all the respondents by ordinary post as well as through E-mail praying for issuance of appropriate guidelines/modification of the public voting system in India as



mandatory one for Indian voters and suggest comprehensive measures for effecting changes in law.

3.The matter was listed on 24.01.2018 and this Court has brought to the knowledge of the petitioner/party-in-person about the order, dated 12.01.2018 passed in *W.P(MD)No.331 of 2018-K.K.Ramesh Vs. The Government of India, Rep. By its Home Secretary, Ministry of Home Affairs, North Block, New Delhi and three others*. The petitioner/party-in-person prays for short time to go through the said order and to make his submissions accordingly.

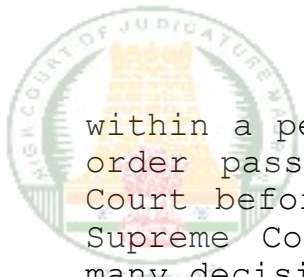
4.The petitioner/party-in-person would submit that this Court in its special original jurisdiction under Article 226 of the Constitution of India can issue any direction, in order to meet the ends of justice and would further add that the present voting system has become a mockery and cash and free articles were given to lure the voters to vote in a particular manner in favour of a third party candidate and it is not through the power of democracy and if these things are allowed to continue the democracy would definitely be in peril and if those persons are elected, there may not be any free transparency and functional Government and hence prays for appropriate direction to the Law Commission of India to suggest suitable amendment/guidelines to the respondents 3 and 4, who, in turn, shall implement the same by making appropriate amendment or pass a fresh enactment or legislation.

5.Per contra, Mr.K.K.Senthil, learned counsel representing for M/s.G.R.Associates, appearing for the respondents 6 and 7, would submit that this Court in *W.P(MD)No.331 of 2018* had culled out the legal position and ultimately conclude that a positive direction cannot be issued to pass a legislation in a particular manner and would further add that the reports filed by the Law Commission of India, have to be taken note and cognizance and in fact, the suggestions made by the Law Commission of India are also implemented in the form of legislation or making suitable amendment from time to time and as such, there cannot be any direction to the respondents to act in a particular manner. The learned counsel has also drawn the attention of this Court to the Judgment rendered by the Honourable Supreme of India in *State of Himachal Pradesh and others Vs. Satpal Saina* reported in (2017) 11 SCC 42.

6.This Court has heard the rival submissions and perused the materials placed before this Court.

7.This Court, in similar circumstances, has repelled the submissions made by the petitioner/party-in-person and dismissed *W.P (MD)No.331 of 2018*.

8.The Honourable Supreme Court of India in the above cited decision has taken into consideration certain directions issued by the Division Bench of the Himachal Pradesh High Court in *Satpal Saina Vs. State of Himachal Pradesh* (2016 SCC Online HP 2161), calling upon the State Government to amend the provisions of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972



within a period of ninety days and a challenge was made to the said order passed by the Division Bench of the Himachal Pradesh High Court before the Honourable Supreme Court of India, the Honourable Supreme Court of India, after taking into consideration the very many decisions, has observed as follows:-

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"6. The grievance, in our view, has a sound constitutional foundation. The High Court has while issuing the above directions acted in a manner contrary to settled limitations on the power of judicial review under Article 226 of the Constitution. A direction, it is well settled, cannot be issued to the legislature to enact a law. The power to enact legislation is a plenary constitutional power which is vested in Parliament and the State Legislatures under Articles 245 and 246 of the Constitution. The legislature as the repository of the sovereign legislative power is vested with the authority to determine whether a law should be enacted. The doctrine of separation of powers entrusts to the Court the constitutional function of deciding upon the validity of a law enacted by the legislature, where a challenge is brought before the High Court under Article 226 (or this Court under Article 32) on the ground that the law lacks in legislative competence or has been enacted in violation of a constitutional provision. But judicial review cannot encroach upon the basic constitutional function which is entrusted to the legislature to determine whether a law should be enacted. Whether a provision of law as enacted subserves the object of the law or should be amended is a matter of legislative policy. The Court cannot direct the legislature either to enact a law or to amend a law which it has enacted for the simple reason that the constitutional function lies in the exclusive domain of the legislature. For the Court to mandate an amendment of a law - as did the Himachal Pradesh High Court - is a plain usurpation of a power entrusted to another arm of the State. There can be no manner of doubt that the High Court has transgressed the limitations imposed upon the power of judicial review under Article 226 by issuing the above directions to the State Legislature to amend the law. The Government owes a collective responsibility to the State Legislature. The State Legislature is comprised of elected representatives. The law enacting body is entrusted with the problems faced by society and to resolve issues of concern. The Courts do not sit in Judgment over legislature expediency or upon legislative policy. The position is well settled. Since the High Court has failed to notice it, we will briefly recapitulate the principles which emerge from the precedent on the subject."



12. The Judiciary is one amongst the three branches of the State; the other two being the executive and the legislature. Each of the three branches is coequal. Each has specified and enumerated constitutional powers. The judiciary is assigned with the function of ensuring that executive actions accord with the law and that the laws and executive decisions accord with the Constitution. The Courts do not frame policy or mandate that a particular policy should be followed. The duty to formulate policies is entrusted to the executive whose accountability is to the legislature and, through it, to the people. The peril of adopting an incorrect policy lies in democratic accountability to the people. This is the basis and rationale for holding that the Court does not have the power or function to direct the executive to adopt a particular policy or the legislature to convert it into enacted law. It is wise to remind us of these limits and wiser still to enforce them without exception."

9. In the considered opinion of this Court, the order, dated 12.01.2018 passed in W.P(MD)No.331 of 2018 as well as the decision in *State of Himachal Pradesh and others Vs. Satpal Saina* reported in (2017) 11 SCC 42, squarely applicable to the facts and circumstances of this case. This Court cannot issue any positive direction to the respondents to legislate or to make an amendment in a particular manner and the constitutional bodies are also alive to their responsibilities and would definitely act within the frame work of the Constitution.

10. If the petitioner is so advised and if it is open to him under law, he is always at liberty to work out his remedy administratively.

11. In the result, this Writ Petition is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub-Assistant Registrar

To

1. The Secretary to President, The Government of India,
President of India, Rashtrapati Bhavan,
New Delhi-110 004.



2. The Principal Secretary to Prime Minister,
The Government of India,
Prime Minister's Office, South Block, Raisina Hill,
New Delhi-110 001.

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3. The Home Secretary, The Government of India,
Ministry of Home Affairs,
North Block, New Delhi.

4. The Secretary, The Government of India,
Ministry of Law and Justice,
Shastri Bhawan, New Delhi-110 115.

5. The Hon'ble Chairman,
Law Commission of India,
Government of India,
Hindustan Times House,
K.G.Marg, New Delhi-110 001.

6. The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi-110 001.

7. The Chief Election Officer (CEO),
Tamilnadu, Fort St. George, Secretariat,
Chennai-600 009.

+One cc to M/s. Abimani D. Chandrasekar, Advocate, SR.No.44195

ps/vsg
RL/9C/6P/KK/SAR1/14/2/2018

W.P(MD)No.1290 of 2018

25.01.2018