



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.05.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.[MD].No.10690 of 2018

and W.M.P. (MD) Nos. 9784 & 9785 of 2015

S. Selvagamathi

: Petitioner

Vs.

1.The Chancellor/Governor of Tamil Nadu
Madurai Kamaraj University,
Raj Bhavan, Chennai - 600 022.

2.The State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Higher Education,
Higher Education Department,
Secretariat, Chennai - 600 009.

3.The University Grants Commission,
Rep. its Chairperson,
Bahadur Shah Zafar Marg,
New Delhi - 110002.

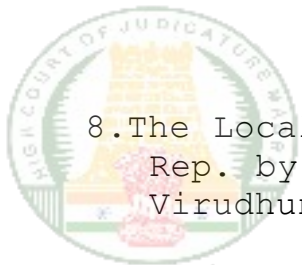
4.Madurai Kamaraj University,
Rep. by its Registrar,
Palakalai Nagar,
Madurai - 625 021.

5.Devanga Arts College,
Rep. by its Secretary.

6.Mr.R.Santhanam, I.A.S, (Retd.),
High Powered Enquiry Committee,
appointed by the Chancellor,
Madurai Kamaraj University,
Palakalai Nagar,
Madurai - 625 021.

7.Ms.S. Rajeswari, I.P.S.,
Superintendent of Police,

<https://hcservices.ecms.govtamilnadu.org/> - Crime Investigation Department,
Chennai.



8.The Local Complaints Committee,
Rep. by its Chairperson,
Virudhunagar District.

9.The Local Complaints Committee,
Rep. by its District Officer,
Virudhunagar District.

10.The Local Complaints Committee,
Rep. by its Chairperson,
Madurai District.

11.The Local Complaints Committee,
Rep. by its District Officer,
Madurai District.

12.The Tamil Nadu State Commission for Women,
Rep. by its Chairperson,
No.735, LLA Building 2nd Floor,
Anna Salai, Chennai - 600 002.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Declaration to declare the appointment of the Respondent No.6 by the Respondent No.1 as null and void and consequently direct the Respondent No.4 University to discharge its functions under Regulation 3 of the University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 and to direct the issue of sexual harassment of students at the Respondent No.5 College to be enquired by the Respondent No.8 Local Complaints Committee as required under Section 6 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and further direct the Respondent No.3 Commission to take action against the Respondent No.4 University as mandated by Regulation 12 of the University Grants Commission ((Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 and to take any further action within the time period stipulated by this Court.

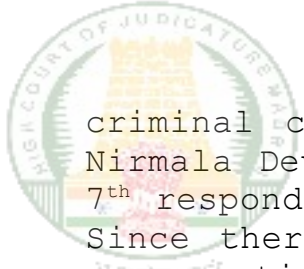
For Petitioner

: Mr.T. Lajapathi Roy

O R D E R

[Order of the Court was made by G.R.SWAMINATHAN, J]

It was reported in the media that one Ms.Nirmala Devi, an Assistant Professor working in the 5th respondent College, attempted to lure four girl students into giving sexual favours in return for academic and financial benefits. In this regard, a



criminal case was registered followed by the arrest of the said Nirmala Devi. The case has since been handed over to CBCID. The 7th respondent herein is presently in-charge of the investigation. Since there were references to Madurai Kamaraj University in the conversation said to have taken place between the said Nirmala Devi and the students in question, the first respondent thought it important to hold an enquiry into the matter. In his capacity as the Chancellor of Madurai Kamaraj University to which the 5th respondent College is affiliated, he directed that a high powered enquiry be conducted by the 6th respondent herein. The 6th respondent herein had worked as Collector of composite Ramnad District and held several senior positions before retiring in the cadre of Chief Secretary to Government. He had also functioned as member of Central Administrative Tribunal after his retirement. The said High Powered Enquiry Committee has since taken up the work in right earnest. Two women Professors have also been appointed to assist the 6th respondent in the discharge of his functions.

2. At this stage, the petitioner has moved this Court by filing this writ petition. The petitioner seeks issuance of a writ of declaration to declare the appointment of the 6th respondent by the first respondent as null and void. Certain consequential directions have also been sought against the 4th respondent University.

3. Heard Mr. T. Lajapathi Roy, learned counsel for the petitioner.

4. The learned counsel for the petitioner would draw the attention of this Court to the University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015 (hereinafter referred to as 'the Regulations') issued by the 3rd respondent Commission. The said Regulations have been issued to prevent and prohibit the sexual harassment of women employees and students in higher educational institutions. The said Regulations fix certain responsibilities on the higher educational institutions. As per Clause 2(h), 'higher education institution' mean a University within the meaning of clause (j) of section 2, a college within the meaning of clause (b) of sub-section (1) of section 12 A and an institution deemed to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956).

5. Supportive measures as well as grievance redressal mechanisms have also been put in place. The Regulations envisage constitution of Internal Complaints committee. The process for receiving complaints and conducting enquiry have also been laid down. If the mandate set out in the Regulations is not complied with, certain consequences ensue. It can go as far as authorizing the



third respondent Commission to recommend to the appropriate State Government for withdrawal of status as University, in case of University established or incorporated under a State Act. The learned counsel raised the contention that in this case there has been a gross default on the part of the 4th respondent in discharging its obligations under the said 2015 Regulations. He, therefore, wanted this Court to issue appropriate directions in this regard.

6.The submissions of the learned counsel appearing for the petitioner are basically three fold. He would contend that the first respondent stands implicated in the instant case and that therefore it is grossly improper on his part to constitute an enquiry committee by himself. That would be a clear violation of the principles of the natural justice. Secondly, when the CBCID is already seized of the matter and is conducting an investigation, it is not open to the first respondent to set up a parallel enquiry. Thirdly and most importantly, the provisions of the Madurai Kamaraj University Act, 1965 do not confer any statutory power on the first respondent to constitute an enquiry committee. The order of the first respondent appointing the sixth respondent as high powered enquiry committee is patently illegal and without jurisdiction. Even the first respondent has not referred to any particular provision of law authorizing him in this regard.

7.The writ petitioner has filed this writ petition claiming to be in public interest. The credentials of the writ petitioner have been set out in Paragraph No.5 of the affidavit filed in support of the writ petition. The standing of the writ petitioner is not in doubt. But, that by itself will not make the writ petition maintainable. An applicant for declaratory relief must show that some legal right is in issue. Since the present writ petition has been claimed to have been filed in public interest, it is not necessary that the writ petitioner's rights should be shown as having been infringed. But then, the writ petitioner is bound to show the infringement of the legal right of a class of persons, who are by themselves unable to access this Court directly and whose cause the writ petition is claiming to espouse.

8.The Hon'ble Supreme Court of India in the decision reported in (2001) 4 SCC 734 (Vinoy Kumar vs. State of U.P) held as follows :

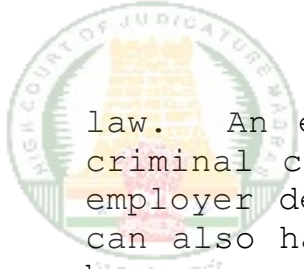
"Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the constitution is based on the



existence of a right in favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas- corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organization which can take care of such cases. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason or poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief."

9. In the affidavit filed in support of the writ petition, the petitioner has taken as many as eight grounds. This Court carefully went through all the eight grounds. Nowhere has it been contended as to how the conduct of enquiry by the 6th respondent at the instance of the first respondent would infringe the rights of anybody. The petitioner has referred to the circular issued by the 4th respondent University warning the staff and faculty of disciplinary action, if they participate in protest meetings in this connection. But that does not advance the case of the writ petitioner in any manner.

10. Likewise, there is no merit in the contention that there cannot be a parallel enquiry by the 6th respondent, when the CBCID police are already seized of the matter. This argument suffers from the vice of self contradiction. The petitioner is fully aware that the police have registered a criminal case in this regard and that the investigation has since been handed over to CBCID headed by the 7th respondent herein. But one of the reliefs sought for in the writ petition is that the issue on hand must be enquired into by the Local Complaints Committee as required under Section 6 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The petitioner also wants the University to discharge its functions under Clause 3 of the 2015 Regulations. Thus, even according to the writ petitioner, there must be enquiry by the University and also by the Local Complaints Committee in this regard. According to the petitioner, such enquiry is by the University and the Local Complaints Committee, it would not prejudice criminal services to its own in-house CBCID. Applying the very same logic, the enquiry by the 6th respondent also cannot have any effect on investigation by the CBCID. In any event, parallel enquiry is not unknown to



law. An employee committing an offence might land himself in a criminal case. Such an employee can be proceeded against by his employer departmentally also. An issue having a criminal profile can also have other facets. If defamation is committed, there can be prosecution as well as a civil action for damages. Therefore, there is absolutely no substance in the petitioner's contention that parallel enquiries cannot be permitted.

11. Another contention of the petitioner is that the first respondent is disqualified from directing an enquiry, as he himself is implicated. We have no doubt in our minds that this contention has been advanced recklessly. The Hon'ble Supreme Court of India in the decision reported in (1988) 4 SCC 534 (*Bharath Singh Vs. State of Haryana*) held that the petitioner raising a point must plead and prove such facts by evidence which must appear from the writ petition. If the evidence in support of the facts is not pleaded and annexed to the writ petition, the Court will not entertain the point. It was observed that there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter affidavit. While in a plaint or a written statement the facts and no evidence are required to be pleaded in a writ petition or counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

12. This decision has been followed by the Hon'ble Division Bench of this Court in the decision reported in 2016 (2) LW 730 (*Registrar of Co-operative Societies vs. M. Panner Losini*). In other words, it is not sufficient for the petitioner to merely make an allegation and leave it at that. The petitioner has not filed a plaint before this Court. Rather she has filed a Public Interest Litigation. Therefore, in the affidavit filed in support of the writ petition and in the typed set of papers annexed to the affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. In yet another decision reported in 2005 (13) SCC 452 (*Prabir Kumar Das Vs. State of Orissa*), the Hon'ble Supreme Court dismissed a Public Interest Litigation as it was filed merely after reading a newspaper report and without making an effort to verify the facts set out therein. In this case, the petitioner has not claimed that the facts set out in the newspaper reports were verified to be true.

13. The petitioner has filed a typed set of papers containing 56 pages. Pages 1 to 9 contains the 2015 UGC Regulations. Page No. 10 contains the press release of the first respondent appointing the 6th respondent as the high powered enquiry Committee. Pages 11 to 37 contain newspaper clippings. Page No. 38 contains the circular issued by the 4th respondent. Pages 39 to 49 again contain photocopies of news extracts. The petitioner's representation dated 26.04.2018 is enclosed from Page Nos. 50 to 56. There is no other material



before us. Stray references in the paper reports cannot be relied upon. They do not constitute proof. There is no ground to come to the conclusion that the first respondent himself is implicated in the instant case. The petitioner appears to have conveniently forgotten that the first respondent is holding the high office of the Governor of Tamil Nadu. It is a constitutional post. By virtue of his being the Governor of Tamil Nadu, he is also the Chancellor of the 4th respondent University. Against such a high constitutional authority, allegations cannot be recklessly or casually made. We are of the view that the writ petitioner has scandalized the first respondent without any basis. We, therefore, hold that the first respondent is not disqualified from appointing the 6th respondent as the high powered enquiry committee.

14. The learned counsel for the petitioner submitted that the 4th respondent University was constituted by Tamil Nadu Act 33 of 1965. As per the statutory Scheme, the Governor of Tamil Nadu shall be the Chancellor of the University. Section 9 of the said Act reads as under:

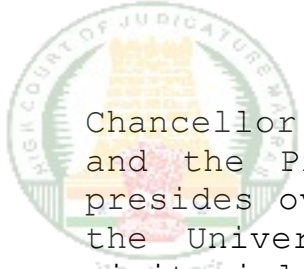
"9. The Chancellor - (1) The Governor of Tamil Nadu shall be the Chancellor of the University. He shall be virtue of his office, be the head of the University and the President of the Senate and shall, when present, preside at meetings of the Senate and at any convocation of the University.

(2) The Chancellor shall exercise such powers as may be conferred on him by or under this Act.

(3) Where power is conferred upon the Chancellor to nominate persons to authorities, the Chancellor shall, to the extent necessary, nominate persons to represent interests not otherwise adequately represented."

The learned counsel would contend that the Chancellor shall exercise such powers as may be conferred on him by or under this Act. He, therefore, argued that since no power has been conferred on the first respondent to constitute an enquiry committee, the appointment of the 6th respondent is not only illegal, but also patently without jurisdiction.

15. Again, this Court is unable to agree with the aforesaid submission. It is true that Section 9(2) of the said Act is to the effect that the Chancellor shall exercise such powers as may be conferred on him by or under the said Act. But this cannot mean that the Chancellor cannot engage in any action that is not statutorily authorised. Section 9(2) does not say that the Chancellor shall not exercise any power that is not specifically conferred on him by or under the said Act. As per Section 8 of the Tamil Nadu Universities Act, 1965, the Chancellor is an Officer of the University. As already pointed out, he as the Governor of Tamil Nadu and by virtue of his office, holds the post of



Chancellor of University. He is also the Head of the University and the President of the Senate. When present, it is he who presides over the meetings of the Senate and in any convocation of the University. It is true that in the statute in question, visitorial jurisdiction has been conferred not on the Chancellor but on the Government. Likewise, power to obtain information is also conferred on the Government. But then, to insist that all actions of a statutory authority must be referable to some statutory provision or the other would only lead to administrative paralysis. In the very nature of things, no statute can be exhaustive. Even a consolidating Act is exhaustive only in respect of matters specifically dealt with therein. Inadequacy is an intrinsic feature of everything. Even language is inadequate. It cannot express everything that one wants to. Otherwise the legislative enactments would speak for themselves and there would be no need for judicial interpretation. Even in the Seventh Schedule of the Constitution of India after cataloguing the various subjects, there is a residual entry. Legislature cannot conceive of every situation and provide therefor. That is why, beyond delegated legislations, the executive resorts to issuing guidelines and instructions and circulars. The expression "non-statutory" is pregnant not only with meaning but also immense practical significance.

16.H.W.R. Wade and C.F.Forsyth in their book "Administrative Law" (10th Edition) at Page No.540, speak of 'REALMS BEYOND THE LAW'. A Chapter is devoted to non statutory action. The learned authors would refer to the expanding scope of judicial review, which has been extended even to non statutory action. Bodies, which are unquestionably governmental do things for which no statutory power is necessary, such as issuing circulars or other forms of information. P.P.Craig in his "Administrative Law" referring to "Public Inquiries by Wraith and Lamb" remarks that inquiries which do not have a statutory base may be used for a variety of purposes. (Third Edition, Page 171).

17.In the present case, the action of the first respondent, even according to the writ petitioner is not traceable to any express provision in the statute. But there can be action de-hors the Statute. Everything need not have to be within the framework of the Act. The question to be posed is if there is any statutory prohibition. Another relevant consideration would be if any civil or legal right is affected. One of the definitions of "illegality" in Black's Law Dictionary is that it is an act that is forbidden in law. In this case, there is no provision forbidding the first respondent from constituting an enquiry committee. No one has complained of any right-violation. In these circumstances, the question of seeking a declaration that the action is null and void will not arise. The first respondent by virtue of being the Chancellor of the University is entitled to seek a report as to what happened in the instant case,



since the reputation of the University is involved. The course of action adopted by the first respondent cannot be termed as lacking in jurisdiction or illegal.

18. The petitioner has miserably failed to point out whose legal or statutory or civil right has been infringed by the impugned appointment of the 6th respondent. If according to the petitioner, the 6th respondent cannot be statutorily appointed as an enquiry officer, then, his report will not have any legal force. Taking the premises of the writ petitioner to their logical conclusion, the only inference can be that the enquiry report submitted by the 6th respondent will also not be having a statutory character. In respect of a non statutory document, there is no need to issue a writ of declaration as sought for by the writ petitioner.

19. Useful reference can be made to the decision of this Court reported in (1993) 2 LLN 220 (*Spencer International Hotels Ltd., vs. Assistant Commissioner of Labour*). The writ petitioner therein had entered into a settlement under Section 12(3) of the Industrial Disputes Act, 1947 and agreed that the issue of suspension of certain workers will be decided by the Commissioner of Labour which will be final and binding. Meanwhile, the Labour Commissioner was transferred as Sub Collector. But the parties continued to present themselves before him from time to time to make their submissions. Enquiry was conducted and the result was intimated to the parties. But the implementation of the award was delayed by the management. Therefore, the Assistant Commissioner of Labour issued show cause notice to the management asking why action should not be taken against the management for the alleged violation of the settlement and for non implementation of the resultant award. Therefore, writ petitions came to be filed contending that the settlement was only an agreement and not a settlement under the Industrial Disputes Act, 1947 as it did not conform to the requirements of Section 2(p) of the Act. The person who issued the award had ceased to be Labour Commissioner during the material time. The Hon'ble High Court after noting the plea of the management that the settlement as well as the award could not be considered to be one as contemplated in law and not referable to any provisions of the Industrial Disputes Act, held that the writ petition has to be rejected as not maintainable, because the Court cannot enter upon an adjudication of the validity of a non statutory order.

20. We are of the view that the very same reasoning will hold equally good in the present case also. Merely because a non statutory action was taken de-hors the provisions of the Act, the same need not necessarily be invalidated. At the cost of <https://hccasesearch.com/hccasesearch> we state that the petitioner has placed zero material before us to come to the conclusion that the first respondent stands implicated in the instant case. The petitioner has not



demonstrated as to how the conduct of enquiry by the sixth respondent would affect the rights of anybody. The learned counsel appearing for the petitioner has not drawn our attention to any statutory provision prohibiting the impugned appointment by the first respondent. What has not been prohibited by the Act or the rules cannot be prohibited by a judicial fiat.

21.As the main relief sought for by the writ petitioner has been found to be not maintainable, the consequential reliefs also will have to be negatived. This follows as a matter of corollary. But, then, this Court would leave it open to the writ petitioner to work out the consequential relief sought for in this writ petition separately and in independent proceedings. The challenge of the writ petitioner to the appointment of the 6th respondent as the High Powered Enquiry Officer by the first respondent alone fails. This Court expresses no opinion as regards the other reliefs sought for.

22.With these observations, this writ petition stands disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

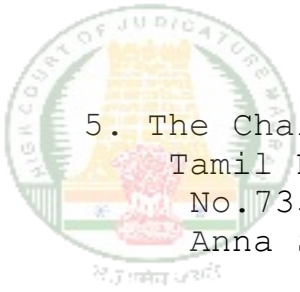
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Vacation officer

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Sub Assistant Registrar

To

- 1.The Chancellor/Governor of Tamil Nadu
Madurai Kamaraj University,
Raj Bhavan,
Chennai - 600 022.
- 2.The Principal Secretary to Government of Tamil Nadu,
Department of Higher Education,
Higher Education Department,
Secretariat, Chennai - 600 009.
3. The Chairperson,
University Grants Commission,
Bahadur Shah Zafar Marg,
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4. The Registrar
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Palakalai Nagar,
Madurai - 625 021.



5. The Chairperson,
Tamil Nadu State Commission for Women,
No.735, LLA Building 2nd Floor,
Anna Salai, Chennai - 600 002.

+1cc to M/s.ISSAC CHAMBERS, Advocate, SR.No. 65286
+1cc to M/s.Special Government Pleader, SR.No. 65325

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