



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2018

CORAM:

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P(MD)No.20363 of 2017

S.Senthil Kumar

... Petitioner

Vs.

1.The Chief Secretary,
Government of Tamil Nadu,
Chennai.

2.The Inspector General of Police,
Government of Tamil Nadu,
South Zone,
Madurai.

3.The Superintendent of Police,
Office of the Superintendent of Police,
Tirunelvelil,
Tirunelveli District.

4.The Assistant Commissioner of Police,
Palayamkottai,
Tirunelveli District.

5.The Inspector of Police,
Palayamkottai Police Station,
Palayamkottai,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first and second respondents to take action on the duty police officials and other concerned Government officials and the current District Collector, Tirunelveli District and to order collecting the salaries and benefits of those responsible officials and giving those with the next relatives of the deceased and affected in that immolation occurrence.

For Petitioner

: Mr.B.Char Murugan

For Respondents

: Mr.A.K.Baskarapandian,
Special Government Pleader.

ORDER

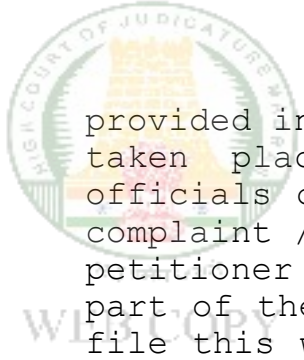
(Order of the Court was made by M.SATHYANARAYANAN,J.)

This Writ Petition is styled as a 'Public Interest Litigation' filed by a practising lawyer of Tirunelveli Bar, who also claims that he is the Vice-President of Bharathiya Janata Party in Tirunelveli District.

2.The petitioner in the affidavit filed in support of this Writ Petition would aver among other things that he is concentrating in welfare activities of the society and on every Monday, he used to help the people coming to the District Collectorate on the grievance day to present the petitions with the District Collector. The petitioner would further aver that on 23.10.2017 in the Collectorate campus, self-immolation of a family consisting of husband, wife and two children affected very much so also their demise.

3.The petitioner has also pointed out that one Essakimuthu, a native of Kasi Dharmam, which falls under Achanpudur Police Station, had lodged complaint with regard to the harassment and unbearable torture regarding exorbitant interest and the Station House Officer of the said police station have been enquired the complaint and not taken any action against the concerned accused and that apart, the complainants were threatened with dire consequences by the police officer to part with some exorbitant interest to the accused persons. The petitioner also pointed out that Essakimuthu has submitted four petitions before the present District Collector regarding the claim of exorbitant interest by the concerned person and despite receipt and acknowledgment, no action has been taken to alleviate the grievance of those persons. The petitioner, after occurrence, has also submitted representation dated 24.10.2017, to the Inspector General of Police, South Zone, Madurai praying for appropriate action against the concerned police officials, who failed to discharge their lawful duties and to dismiss the concerned police officials and also to suspend the Collector of Tirunelveli District and to pay the compensation out of the monthly salary of the concerned officials and also to take necessary steps to provide sufficient security and also effect physical check, who are coming to the Collectorate for submitting petitions. According to the petitioner, though the said representation was received by the second respondent, no further action has been taken and hence, he came forward to file this writ petition.

4.Mr.B.Char Murugan, learned counsel appearing for the petitioner, has invited the attention of this Court to the affidavit filed in support of this writ petition as well as typed set of documents and would submit that the present writ petition is filed purely as a 'Public Interest Litigation' on account of the self-immolation of the family consisting of four persons including two children died and if enough and sufficient security would have been



provided in the Collectorate, such a kind of incident would not have taken place and would further add that the concerned police officials colluded with the accused and not taken any action on the complaint / representation submitted by the late Essakimuthu and the petitioner is very much hurt by the incident and inaction on the part of the officials and therefore, the petitioner came forward to file this writ petition praying for appropriate action and remedial measures.

5. The third respondent has filed a detailed counter affidavit, dated 02.01.2018 and a perusal of the same would indicate that one Kannammal, wife of Paramasivam, a resident of MGR Nagar, Kasidharmam village had preferred a complaint, dated 21.04.2017 on the file of Achanpudur Police Station alleging that prior to three months, she had borrowed Rs.65,000/- from one Subbulakshmi (one of the victims) for interest at the rate of Rs.6,500/- for ten days and for that loan, she deceitfully got her three gold chains weighing 48 grams and the said Subbulakshmi pledged the same in a bank and got a loan of Rs.95,000/- in her name and subsequently refused to hand over the said receipt in her favour and there was a quarrel between them and both of them had given complaint on the file of the Achanpudur Police Station. The station house officer of the said police station summoned both the petitioner and the counter-petitioner and both of them were directed to seek their remedy through Civil Court and the said petition was disposed of on 21.04.2017. It is further averred that on 18.08.2017, one Muthulakshmi had submitted a petition before Achanpudur police station against four persons, namely, Palavesam, Petchiammal, Essakkimuthu and Subbulakshmi @ Sudha and it was assigned with C.S.R.No.339 of 2017. According to the complaint, the counter petitioners had borrowed Rs.60,000/- from her on the pretext of their daughter's ear-boring ceremony and again borrowed a sum of Rs.85,000/- for the purchase of land and later on the said Subbulakshmi @ Sudha got a jewel from her and obtained a loan for a sum of Rs.30,000/- to settle her dues to one Esakkiammal. Despite the repeated request made by Muthulakshmi, they were not inclined to settle the same and Essakimuthu, his wife Subbulakshmi and his parents Palavesam and Petchiammal had all cheated her and in this regard both the parties were summoned for an enquiry and however, Palavesam, father of the deceased Essakimuthu, along with others did not turn up for enquiry and later on, Palavesam had given assurance to appear for enquiry along with his son and daughter-in-law and further assured that they would not create any problem and however, they did not turn up for the enquiry. Muthulakshmi once again appeared before the District Police Officer, Tirunelveli on 11.09.2017 and presented a petition against Essakimuthu and Subbulakshmi alleging the said act and it was forwarded to the Deputy Superintendent of Police, Tenkasi vide reference in C.No.G7/1381/44827/2017 and once again steps were taken to summon them for enquiry and however, it was found that Essakimuthu and his wife Subbulakshmi were not residing at Kasidharmam Village and they had absconded from the Village and in this regard, Muthulakshmi also attempted to commit suicide on 30.09.2017 by consuming poison and



she was admitted in Government Hospital, Kadayanallur and she was discharged later on and during the period of her admission in the hospital, her statement was also recorded.

6. It is further stated in the counter affidavit that Essakimuthu and his wife Subbulakshmi started presenting petitions before the Collector, Tirunelveli District during the Collector's Grievance Day on 04.09.2017, 18.09.2017, 25.09.2017 and 09.10.2017, alleging that they were being harassed by the said Muthulakshmi and her brother-in-law Karthick. The above said petitions were forwarded to the Inspector of Police, Achanpudur police station through Deputy Superintendent of Police, Tenkasi for enquiry vide reference in C.Nos.G6/1047/43480/2017; G6/1094/46363/2017; G6/1124/47921/2017 and G6/1158/50136/2017 dated 04.09.2017, 18.09.2017, 25.09.2017 and 09.10.2017 respectively and the counter-petitioner namely Muthulakshmi also produced a promissory note for Rs.60,000/-, dated 12.12.2016 executed by Subbulakshmi in her favour and also submitted a typed stamp paper for Rs.1,45,000/- by Essakimuthu on 22.04.2017 and in the promissory note, one M.Mariammal and Muthu had signed as witnesses and in the debt deed M.Mariammal and P.Muthulakshmi had attested as witnesses. However, Subbulakshmi had never appeared before the enquiry officer for enquiry and the notices sent were also returned with an endorsement "addressee left".

7. The Inspector of Police, Kasidharmam Village also recorded the statement of the counter-petitioner Muthulakshmi on 16.10.2017 that she will avail her remedy through civil process. In paragraph No.10 of the counter affidavit, the third respondent would aver, besides the above said borrower Essakimuthu and Subbulakshmi (victims of self-immolation) had also obtained a huge sum of money and jewels from several persons and details of which have been enumerated in the said paragraph and it is relevant to extract the same:-

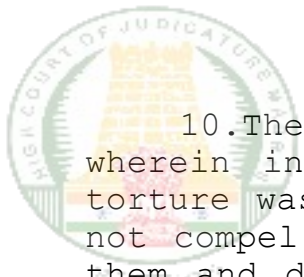
"I further submit that besides the said Kannammal and Muthulakshmi the deceased couple Esakkimuthu and Subbulakshmi had obtained a huge sum of money and jewels from several persons viz., (i) Rs.5,000/- from one Sankareswari, w/o.Kottaisamy, Kasidharmam Village (ii) Rs. 35,000/- from one Kutti, w/o.Raju (iii) Rs.10,000/- from one Esakkiammal, w/o.Esakkimuthu, (iv) Rs.25,000/- from one Thangarani, w/o.Kadarkarai (v) Rs.15,000/- from one Naalayiram @ Nandhini, w/o.Murugesan (vi) Rs.15,000/- from one Mani, w/o.Sudalai (vii) Rs.15,000/- from one Mariammal, w/o.Murugesan and (viii) Rs.40,000/- from one Madhuri @ Madhavi, w/o.Karuppasamy all from the same Kasidharmam Village. The deceased Subbulakshmi who was acting as the president of the "Mahashemam Self-Help Group", had procured loan under the Self-Help Scheme in the name of the above said persons, who were the members of the said Self-Help Scheme in the name of the above said persons, who were the members of the said Self-Help Group, and



received the same from them with the promise to settle the same in installments. But in due course she had made part settlement by paying only few installments and left the Village without settling the remaining dues which was subsequently settled by the concerned. It is further understood that the deceased couple have taken over two houses on lease each for Rs. 50,000/- and let them for rent and they have also purchased 1-1/2 cents of land for a sale consideration of Rs.1,80,000/- from one Anaikutti Thevar, Ex-Panchayat President of Kasidharmam Village".

8. In paragraph No.11 of the counter affidavit, it is averred that Essakimuthu and Subbulakshmi could not discharge the dues on account of the borrower and therefore they had vacated and they had gone from Kasidharmam Village and settled at Coimbatore and started working in a knit-wear company and whenever they came to Tirunelveli, they presented petition before the Collector and on 23.10.2017, they came from Coimbatore to Tirunelveli by Train and in Tirunelveli Junction, his mother Petchiammal, his younger brother Gopi @ Gomu and their second daughter and they joined with them and they all came together to Tirunelveli Collectorate, wherein unfortunately, the extent of self-immolation took place. The third respondent would further aver that with regard to the self-immolation, the Station House Officer of Palayamkottai, has registered a case in Crime No.825 of 2017 for the commission of the offences under Sections 306, 511 I.P.C and Sections 4 and 9 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003 and on the same day, Muthulakshmi and her husband Thalavai Raj were arrested and remanded to judicial custody and investigation has been transferred to the Assistant Commissioner of Police, Palayamkottai and it is under investigation.

9. The third respondent also took a stand that an unexpected event took place near the Southern side of the Collectorate complex in front of the District Rural Development Office and it is some distance from the Collectorate main building as well as from the main road. With regard to the allegations levelled against the police personnel, the third respondent vide memo in C.C.No.79/Memo/Conf./SB/TIN/2017, dated 23.10.2017, directed the Deputy Superintendent of Police, Tenkasi Sub-Division, to conduct a detailed enquiry and depending upon the outcome of the enquiry, suitable action will be initiated against the police personnel. The third respondent also took a stand that the 'Public Interest Litigation' petition has not been filed in the light of the various decisions rendered by the Honourable Supreme Court of India and insofar as demand of Kandhuvatti/exorbitant interest is concerned, in the year 2017, severe drive was conducted and in this regard, 54 cases were registered under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, in which, 30 accused were arrested and remanded to judicial custody and for the reasons, prayed for dismissal of the Writ Petition.

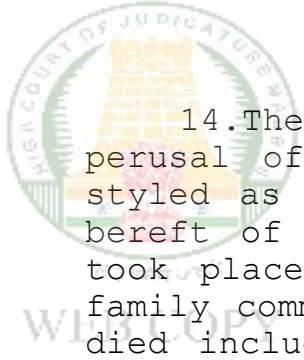


10.The third respondent has also filed the status report, wherein in paragraph No.4, he would state that no harassment or torture was inflicted on them by the police personnel and even did not compel them to settle the money transactions developed between them and during enquiry, it was also revealed that the brother of the deceased Essakimuthu namely Gopi @ Gomu did not have any sort of contact with them for the last few years and as per the report of the Deputy Superintendent of Police, Tenkasi Sub-Division, concluded his report that none is held responsible for the death of the deceased by means of self-immolation, which took place on 23.10.2017 in the Collectorate premises in Tirunelveli.

11.The learned counsel appearing for the petitioner would submit that in order to shield the police personnel, a name-sake enquiry has been conducted by the Deputy Superintendent of Police, Tenkasi and if an independent body or higher police personnel conducted the enquiry, the truth would have definitely come out as to the role played by the concerned police personnel with the accused, which had driven the said family to commit self-immolation. It is also the further submission of the learned counsel appearing for the petitioner that only after the incident, necessary Pandopastu have been provided in Tirunelveli Collectorate and if the Rules and Regulations are strictly followed, the tragic incident would not have definitely taken place and prays for appropriate direction against the concerned police officials as well as against the present District Collector of Tirunelveli District and with a further direction to pay a compensation to family of the victims out of their salary.

12.Per contra, the learned counsel appearing for the respondents has invited the attention of this Court to the counter-affidavit as well as the status report filed by the third respondent and would submit that the incident had taken place all of a sudden, far away from the main building of the Collectorate and as on date, all security measures are placed to prevent the recurrence of such kind of incidents/events. Insofar as the prayer sought for by the petitioner, to take appropriate action against the police officials as well as the Collector of Tirunelveli District, is concerned, it is the submission of the learned Special Government Pleader appearing for the respondents that the Deputy Superintendent of Police, Tenkasi Sub-Division has conducted enquiry and concluded that no harassment or torture was inflicted, on the persons who died, by the police personnel.

13.It is also the submission of the learned Special Government Pleader appearing for the respondents that the petitioner being a practising lawyer has filed this Public Interest Litigation without conducting any proper research and not even quoted the relevant Rules/Regulations/norms for seeking such a kind of prayer and it is nothing but a 'Publicity Interest Litigation' and prays for dismissal of the Writ Petition with exemplary costs.



14. The petitioner is a practising lawyer of Tirunelveli Bar and perusal of the affidavit filed in support of this Writ Petition styled as a 'Public Interest Litigation' would reveal that it is bereft of any material particulars. No doubt, the incident which took place on 23.10.2017, in which, four persons belonging to a family committed self-immolation and as a consequence, all of them died including two children and it also shocks the conscience of this Court. The counter affidavit of the third respondent would disclose in this regard that a case in Crime No.825 of 2017 was registered by the Palayamkottai Police Station against Muthulakshmi and her husband Thalavai Raj for the commission of the offences under Sections 306, 511 I.P.C and Sections 4 and 9 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, and both of them were arrested and remanded to judicial custody.

15. The counter affidavit filed by the third respondent would also disclose that the deceased persons, namely Essakimuthu and Subbulakshmi, had also borrowed amounts from the said accused and they were not in a position to repay the debts and unable to bear with the demand of repayment and harassment, they left their native place and settled at Coimbatore. However, this Court is not inclined to go into the merits of the same for the reasons that a case in Crime No.825 of 2017 has also been registered by the Palayamkottai Police Station with regard to the incident took place on 23.10.2017, the second and third respondents shall also monitor the progress of the investigation and guide the Investigation Officer accordingly. The petitioner, prior to the filing of the Writ Petition, has submitted his representation, dated 24.10.2017 and it appears that it was submitted to the second respondent. Though the addressee name is stated as “உயர்திரு காவல்துறை தலைவர் அவர்கள், பாரதிஉலா தெரு, மதுரை - 625 001”, if it is translated it would read as “the Honourable Director General of Police, Bharathiula Street, Madurai - 625 001”. However, this Court would take it that it has been submitted to the second respondent. The request/prayer sought for by the petitioner, who is a practising lawyer in the said representation, is that the concerned police officials are to be dismissed and the Collector of Tirunelveli District is to be suspended and recovery have to be effected out of their salary and it should be paid to the family of Essakimuthu and further that the measures should be taken to prevent the recurrence of such kind of incidents.

16. In the considered opinion of this Court, the second respondent, who is the Inspector General of Police, South Zone, Madurai cannot pass any order to suspend the Collector of Tirunelveli District, who belongs to the Indian Administrative Service and as regards, dismissal of the police personnel, it cannot be done straightaway, as due process of law is to be followed. As already pointed out, the petitioner, who is a practising lawyer and belonging to the Tirunelveli Bar, filed this Writ Petition without working out the Rule position and merely filed the affidavit based on sentiments, surmises and conjectures.

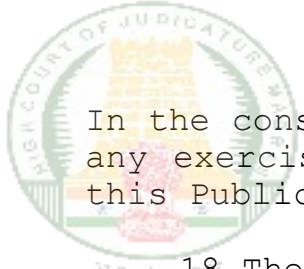


17. The Honourable Supreme Court of India in the decision in *State of Uttaranchal Vs. Balwant Singh Chaufal and others* reported in (2010) 3 SCC 402, has dealt with the issue with regard to the filing of 'Public Interest Litigation' by a practising lawyer and it is relevant to extract the same:-

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"It was expected from a member of noble profession not to invoke jurisdiction of the Court in a matter where controversy itself is no longer *res integra*. The petitioner, a local practising lawyer, ought to have bestowed some care before filing his writ petition in public interest under Article 226 of the Constitution. The controversy raised by the petitioner was decided 58 years ago by the High Court in *Karkare*, AIR 1952 Nag 330, which was approved by the Constitution Bench way back in 1962 in *Atlas Cycle*, AIR 1962 SC 1100. When the controversy is no longer *res integra* and the same controversy is raised repeatedly, then it not only wastes precious time of the Court and prevents the Court from deciding other deserving cases, but also has immense potentiality of demeaning a very important constitutional office, and the person who has been appointed to that office. This is a clear case of abuse of process of the Court in the name of public interest litigation. A degree of precision and purity in presentation is a *sine qua non* for a petition filed by a member of the Bar under the label of public interest litigation. It is expected from a member of the Bar to at least carry out the basic research whether the point raised by him is *res integra* or not. The lawyer who files such a petition cannot plead ignorance. This is a classic case of abuse of process of Court. A practising lawyer has deliberately abused process of the Court. In that process, he has made a serious attempt to demean an important constitutional office. The petitioner ought to have refrained from filing such a frivolous petition.

This however does not mean that a petitioner cannot ask the Court to review its own judgment because of flaws and lacunae, but there should have been a bona fide presentation with listing of all relevant cases in a chronological order and a brief description of what judicial opinion has been and cogent and clear request why there should be reconsideration of the existing law. The petitioner in the present case has not done this exercise. The petition has been filed for extraneous considerations. Such petition deserves to be discarded and discouraged so that no one in future would attempt to file a similar petition".



In the considered opinion of this Court, the petitioner failed to do any exercise or research before filing the affidavit in support of this Public Interest Litigation.

18. The learned counsel appearing for the petitioner would submit that the incident which took place on 23.10.2017 is really unfortunate and therefore prays for appropriate direction, directing the Court to issue certain guidelines as to the prevention/recurrence of such kind of incidents. In response to the same, the learned Special Government Pleader appearing for the official respondents would submit that necessary measures were already taken, especially in Tirunelveli Collectorate and suitable instructions and advise have also been given to the other Collectorates to put in, to place the mechanism to prevent occurrence of such kind of incidents and also pointed out that in the light of E-Seva Project launched by the Government of Tamil Nadu, it is unnecessary on the part of any persons to go in person to the Collectorate and submit their grievance, since through on-line portal also, it can be done and the time limit has also been prescribed for redressal of the said grievance. This Court is optimistic that the system should be fine tuned in the light of the guidelines and the concerned authorities, have to take immediate and appropriate steps to address the grievance of the common man, especially the people hailing from down-trodden Community and poor, who are also living below poverty line.

19. This Court nowadays come across very many Public Interest Litigations' seeking all kinds of directions. In effect, the concerned litigant wants this Court to run the administration. It is relevant and useful to refer to the decision rendered by the Supreme Court in Common Cause (A Registered Society Vs. Union of India and others reported in 2008 (4) Scale SCC 848 and it is relevant to extract the same:-

"(63)53. The people must know that Courts are not the remedy for all ills in society. The problems confronting the nation are so huge that it will be creating in illusion in the minds of the people that the judiciary can solve all the problems. No doubt, the judiciary can make some suggestions/recommendations cannot be binding on the legislature or the executive, otherwise there will be violation of the seven-Judge Bench decision of this Court in P. Ramachandra Rao's case (supra), and violation of the principle of separation of powers. The judiciary must know its limits and exercise judicial restraint vide Divisional Manager, Aravali Golf Course & Another vs. Chander Hass, JT 2008(3) SC 221. The people must also realize that the judiciary has its limits and cannot solve all their problems, despite its best intentions.



4.The Assistant Commissioner of Police,
Palayamkottai,
Tirunelveli District.

5.The Inspector of Police,
Palayamkottai Police Station,
Palayamkottai,
Tirunelveli District.

+1cc to M/S.B.Charmurugan, Advocate SR.No. 45915

+1cc to Special Government Pleader, SR.No. 46404

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ps/mr

JM/SKN RSK/SAR 1/19.02.2018/11P/8C