

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 12.03.2019

Orders Pronounced on : 04.04.2019

Coram

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Krishnan Ramasamy

Writ Petition No. 3947 and 3953 of 2019

M/s. Apollo Hospitals Enterprises Limited
represented by its Manager - Legal
No.21, Greams Lane, Off Greams Road
Chennai - 600 006

.. Petitioner in both the
Writ Petitions

Versus

1. State of Tamil Nadu
rep. by the Principal Secretary to the Government
(Public Department)
Fort St. George, Chennai - 600 009
2. Justice Thiru. A. Arumughaswamy Commission of Inquiry
Represented by its Secretary
1st Floor, Kalas Mahal Heritage Building
Chepauk, Chennai - 600 005
3. Mrs. V.K. Sasikala
Parappana Agrahara Jail
Central Jail Road
Bangalore - 560 100

.. Respondents in both
the Writ Petitions

WP No. 3947 of 2019:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the proceedings, findings and recording of evidence before the second respondent, pursuant to G.O. Ms. No.817 dated 25.09.2017 and G.O. Ms. No.829 dated 27.09.2017, relating to the correctness, adequacy and inadequacy of medical treatment, and quash the same and direct the second respondent to forbear itself from going into the correctness, adequacy and inadequacy of medical treatment, as it is in violation of the Commission of Inquiry Act, 1952 and Rules framed thereunder as well as violative of Article 14 and 21 of The Constitution of India.

WP No. 3953 of 2019:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the second respondent to forbear from an inquiry into the correctness, adequacy/inadequacy of medical

treatment of the late. Hon'ble Chief Minister as it is in violation of the Commission of Inquiry Act, 1952 and Rules framed thereunder as well as violative of Article 14 and 21 of The Constitution of India; in the event that this Honourable Court finds that the terms of Reference include an inquiry into the correctness, adequacy/inadequacy of medical treatment rendered to the late Hon'ble Chief Minister, this Hon'ble Court may appoint an independent medical board with specialist, doctors unassociated with the first respondent and any of the parties hereto, in the manner prayed for in Application No. 213 of 2018 dated 28.12.2018, which shall submit its report before this Honourable Court in a time bound manner.

For Petitioner : Mr. P.S. Raman, Senior Advocate
for Ms. Maimoona Badsha in WP 3947 of 2019

Mr. C. Aryama Sundaram, Senior Advocate
for Ms. Maimoona Badsha in WP 3953 of 2019

For Respondents : Mr. Vijay Narayan
Advocate General
assisted by Mr. V. Jayaprakash Naryanan
Special Government Pleader for R1
in both the writ petitions

Mr. Ar.L. Sundaresan, Senior Advocate
for Mr. R. Vijayakumar for R2
in both the writ petitions

Mr. N. Raja Senthoo Pandian for R3
in both the writ petitions

COMMON ORDER

R. SUBBIAH, J

The issue that arise for consideration in these writ petitions are inter-twinned and are inter-related, therefore, both the writ petitions are taken up for hearing together and are disposed of by this common order.

2. The petitioner has filed the first writ petition, being WP No. 3947 of 2019 to issue a Writ of Certiorarified Mandamus challenging the proceedings, findings and recording of evidence before the second respondent, pursuant to G.O. Ms. No.817 dated 25.09.2017 and G.O. Ms. No.829 dated 27.09.2017, in so far as

it relates to the second respondent causing an inquiry into the correctness, adequacy and inadequacy of medical treatment extended to the late Chief Minister of Tamil Nadu in contravention of the provisions of The Commission of Inquiry Act, 1952 and Rules framed thereunder as it is in violation of Article 14 and 21 of The Constitution of India.

3. The second writ petition namely WP No. 3953 of 2019 has been filed for a Writ of Mandamus to forbear the second respondent from causing an inquiry into the correctness, adequacy/inadequacy of medical treatment of the late. Chief Minister of Tamil Nadu. However, a consequential prayer has been sought for to the effect that if this Court holds that the terms of Reference include an inquiry into the correctness, adequacy/inadequacy of medical treatment rendered to the late Chief Minister, an independent medical board with specialist, doctors un-associated with the first respondent and any of the parties hereto shall be constituted as prayed for in Application No. 213 of 2018 dated 28.12.2018 filed before the second respondent and to direct such medical Board to be constituted to submit its report to this Court within a time to be specified.

4. The facts that are necessary for disposal of these writ petitions are briefly stated hereunder.

5. The petitioner hospital is a super-speciality hospital established in the year 1983 and it has emerged as Asia's foremost integrated healthcare service provider. The petitioner hospital is having branches throughout the length and breadth of the Country and also abroad. The petitioner hospital is equipped with

start-of-the-art facilities offering treatment with cutting edge technology in the field of medicine to the patients. The founder Chairman of the hospital Dr. Pratap C. Reddy has been conferred with the prestigious Padma Vibushan, India's second highest Civilian Award for his contribution in the field of Medicine. That apart, the petitioner hospital has been adjudged as the best hospital in India and was recipient of 7 awards, which includes the prestigious Joint Commission International Accreditation award, which is an independent non-government and not for profit organisation based in United States of America that independently assess and accredits hospitals offering global health care.

6. According to the petitioner, on 22.09.2016, the Chief Minister of Tamil Nadu Selvi J. Jayalalitha was admitted in their hospital with several medical issues and she was admitted in the Critical Care Unit. During the hospitalisation of the Chief Minister of the State, she was given the best medical attention by a host of Doctors attached to the petitioner hospital. In fact, a medical team consisting of highly qualified and experienced Specialists was constituted by the petitioner hospital to provide the best medical care to the Chief Minister of the State and the team consists of 18 Consultants, which include Critical Care Consultants, Pulmonologists, Cardiologists, Cardio-thoracic Surgeons, Nephrologists, Gynaecologists, Endocrinologists, Infective Disease Specialists etc.,. That apart, the Chief Minister of the State was also attended by close to 13 external Specialists and consultants from renowned hospitals in India which include a team of specialists from All India Institute of Medical Science (AIIMS), New Delhi. Above all, Dr. Richard Beale, Professor of Intensive Care Medicine and Consultant, Guy's Hospital and St. Thomas Hospital, United Kingdom; Dr. Stuart Russel, Cardiologist,

John Hopkins Hospital, United States of America and Dr. K.M. Cherian, Senior Thoracic Surgeon, Founder of Life Line and K.M. Cherian Heart Foundation have treated and/or evaluated the treatment given to the former Chief Minister. Above all, at the instance of the first respondent herein, the Central Government had deputed a team of six doctors from AIIMS specifically to monitor, evaluate and support the medical treatment given by the petitioner hospital to the Chief Minister of the State. The team of Doctors have independently monitored, evaluated and supported the treatment given to the Chief Minister at several critical points. Furthermore, the Government has passed G.O. (D) No. 1368 dated 30.09.2016 to provide required assistance to coordinate with the team of specialists giving medical treatment to the Chief Minister of the State. When the Chief Minister was in the petitioner's hospital for medical treatment, she was met by the Senior Ministers of the State and Central Government and other bureaucrats and they were appraised of the treatment given to the Chief Minister on a day to day basis. Even though the Chief Minister of the State had shown signs of recovery due to the intensive treatment extended to her by the petitioner hospital, on 04.12.2016, she suffered a massive cardiac arrest and immediately, she was connected to Extracorporeal Membrane Oxygenation (ECMO) to revive the heart beat. But even such an effort proved futile and therefore the ECMO support was withdrawn. Thus, inspite of the best treatment given by a team of Doctors, the Chief Minister of the State breathed her last on 05.12.2016 at 11.30 p.m.

7. After the death of the Chief Minister of the State, there were wide spread speculation among the general public as to whether sufficient treatment was in fact given to the late Chief Minister by the petitioner hospital or there is any laxity

in providing treatment to the late Chief Minister, even though, according to the petitioner hospital, they have given the best medical care and attention to the demised Chief Minister. At this stage, in order to put an end to such speculation, the Health Secretary of the Government of Tamil Nadu issued a press release in P.R. No. 140 dated 06.03.2017 allaying the apprehensions of the public that best treatment was in fact accorded to the demised Chief Minister by the petitioner hospital. At the same time, it was stated that in order to put at rest the needless speculation relating to the circumstances surrounding the hospitalisation, treatment and the sad demise of the Chief Minister of the State, the Government have decided to make public the discharge summary received from the petitioner hospital and the medical reports received from AIIMS, New Delhi with respect to the manner in which treatment was given. According to the petitioner, such a statement made by the Health Secretary of the Government would only indicate that the treatment given by the petitioner hospital was adequate and proper and there is no reason to doubt the credibility of the medical treatment given by the petitioner institution.

8. While the facts are so as stated above, after nine months of the demise of the Chief Minister of the State, the Government of Tamil Nadu has passed G.O. Ms. No.817 dated 25.09.2017 appointing the second respondent herein, a retired Judge of this Court, as a one member Commission of Inquiry, in exercise of the power conferred under Section 3 of The Commission of Inquiry Act, 1952 (hereinafter called as The Act) to cause an inquiry into the circumstances surrounding the demise of the Chief Minister of the State. Subsequently, the Government issued G.O. Ms. No.829 dated 27.09.2017 setting out the terms of reference to the effect that the second respondent shall inquire into "*the*

circumstances and situation leading to the hospitalisation of the demised Chief Minister from 22.09.2016 and the subsequent treatment given till her unfortunate demise on 05th December 2016". As per the aforesaid order passed by the Government, the second respondent shall cause an inquiry as per the terms of reference and submit a report within a period of three months.

9. It is the contention of the petitioner that pursuant to the appointment of the second respondent, as Commission of Inquiry, summons were issued to the petitioner hospital under Section 8-B of The Act. In response, the petitioner hospital entered appearance through their counsel and subjected themselves to the inquiry conducted by the second respondent. The petitioner hospital also submitted documentary evidence such as ECG reports, X-rays, Micro-biology and Bio-chemistry Tests. Several other test reports were also furnished by the petitioner hospital to the second respondent in the form of compact discs containing the medical reports, including CT scan report etc., Further, 55 Doctors, 11 nurses and 6 technicians, dieticians and other paramedical staff attached to the petitioner hospital have deposed before the second respondent and cooperated fully for the conduct of the inquiry. The petitioner would further contend that during the 75 days of hospitalisation of the Chief Minister of Tamil Nadu, she suffered from a complex matrix of diseases for which she was given specialised and best treatment with the cutting edge technology. The treatment so rendered by the petitioner can be inferred from the medical records produced before the second respondent.

10. The petitioner would state that the second respondent, during the course of inquiry, recorded the depositions of the Doctors and other paramedical

staff in Tamil, but most of the Doctors were not acquainted with the Tamil Language. During the course of inquiry, the deposition of the Doctors were erroneously recorded by the second respondent Commission especially when the deposition of the Doctors pertains to a complex medical treatment extended to the late Chief Minister, which cannot be inferred by non-medical professionals. Thus, the depositions of the Doctors attached to the petitioner hospital were not accurately recorded by the second respondent commission and the depositions contains errors. For example, the words 'catheter' and 'incubate' have been erroneously recorded as 'cathedral' and 'intubate'. Further, the life-saving time line has been recorded as 'minutes' instead of 'seconds' and despite the objection raised by the concerned witness then and there with respect to the error in recording the medical term properly, the second respondent refused to carry out appropriate corrections in the deposition recorded. The petitioner hospital also filed a detailed affidavit praying for deletion of the misquoted statement. However, the second respondent refused to delete the misquoted statements recorded by it. In fact, the medical witnesses have pointed out to the incorrect recording of deposition only to help the second respondent Commission to arrive at a just conclusion, but they were refused. According to the petitioner, if these faulty depositions are relied on, it will mislead the second respondent on scientific and medical facts which would result in an inappropriate conclusion. Further, the Doctors who have deposed before the second respondent were Specialists in various fields of Medicine and Surgery and during the course of deposition, they find it challenging to explain the nuances and complex medical and scientific facts to the second respondent. The medical treatment extended to the late. Chief Minister could not be effectively and properly explained by the Doctors especially when the second

respondent did not possess any specialised knowledge in the field of medicine. In fact, the second respondent, during the course of inquiry, posed certain irrelevant and unwarranted questions to the witness examined on behalf of the petitioner hospital which clearly revealed that the second respondent had pre-judged and/or pre-determined the outcome of the inquiry to implicate the petitioner hospital in some form or the other. It is also the grievance of the petitioner that inspite of genuine reasons adduced by the petitioner hospital with respect to the non-availability of a particular Doctor for being examined on a date, the second respondent refused to grant adjournment even for a week, rather, at the instance of third respondent, if any similar request is made, the second respondent adjourned the case. The second respondent also failed to appreciate the busy schedule and pre-occupation of the Doctors who have given appointment to patients atleast a month ahead and they cannot cancel such appointments given to his or her patients. Further, the questions posed to the Doctors as if "*whether they are deposing only to save the petitioner institution*" or "*to cover up the lacuna in the medical treatment provided to the demised chief minister*" would amply makes it clear that the second respondent has only pre-determined the outcome of the inquiry with an intention only to implicate the petitioner hospital and thereby bring down the reputation it had built all through these years. Since the second respondent proceeded as if the petitioner hospital had engaged in a conspiracy with the third respondent to render inappropriate medical treatment to the chief minister, the petitioner institution filed Application No. 3 of 2019 before the second respondent to record and/or videograph with audio the deposition of the witnesses but it was also declined by an order dated 22.01.2019 without assigning any reason.

11. It is the vehement contention of the petitioner that the second respondent is not competent to adjudge or adjudicate the quality or nature of treatment given to the demised Chief Minister during her hospitalisation for 75 days inasmuch as the second respondent is not a specialist or expert in the field of medicine so that he could go into the veracity or adequacy of treatment extended to the late Chief Minister. Further, the terms of reference does not empower the second respondent to go into the efficacy, appropriateness, adequacy or inadequacy of treatment extended to the demised Chief Minister. However, the second respondent, by enlarging the scope of the inquiry traversed beyond the terms of reference and the second respondent is also venturing to go into the efficacy, appropriateness, adequacy or inadequacy of the treatment given to the Chief Minister without any specialised knowledge or acquaintance with the medical procedure. If at all, the second respondent intends to go into the adequacy or inadequacy of treatment given to the demised Chief Minister, it can appoint an independent medical board consisting of experts and without doing so, the second respondent is jurisdictionally incompetent to enter into an arena in which he has no specialised knowledge. With these averments, the petitioner hospital has come forward with the above writ petitions.

12. Mr. Aryama Sundaram, learned Senior counsel appearing for the petitioner would contend that the Chief Minister of the State was admitted in the petitioner hospital with a primary condition of septicaemia and acute respiratory disease syndrome. Immediately after her admission in the hospital, the team of Doctors and para-medical staff swung into action, attended to the Chief Minister and extended all possible medical treatment to her. The efficiency and efficacy

with which the treatment was given to the late. Chief Minister on the first day of her admission continued till she breathed her last and there is no lacuna or short-fall in the treatment given to her. The Chief Minister was attended by a host of specialists in the field of Medicine which included Doctors from the premier institution in India namely AIIMS. That apart, specialised Doctors from London as well as United States of America have also evaluated, assessed and monitored the treatment given by the petitioner hospital. However, it appears that the second respondent, without appreciating the manner and extent to which treatment was given by the petitioner is attempting to attribute negligence on the part of the petitioner hospital which could be glaringly evident from the manner in which the second respondent hitherto conducted the inquiry proceedings. First of all, the second respondent could not understand the nuances and complex medical terms denoted in the medical records to arrive at a conclusion inasmuch as the second respondent is jurisdictionally incompetent to assess, evaluate and elucidate, from the medical records made available, as to the manner, nature and complexity of the treatment given to the Chief Minister of the State. The medical records produced on behalf of the petitioner institution involves medical terms, medical procedure and other complex nature of treatment extended by the petitioner which could not be assessed by the second respondent as he is not medically competent to peruse those records. Even the terms of reference did not empower the second respondent to go into the veracity, adequacy, inadequacy, effectiveness or appropriateness of the treatment. According to the learned Senior counsel for the petitioner, the second respondent has to strictly adhere to the terms of reference and to confine his inquiry as mandated under the terms of reference to assess as to whether there was evidence for the treatment which was given to the Chief Minister

of the State in all the 75 days of her hospitalisation, whether there is evidence to show that the Doctors attached to the petitioner institution have attended to her on all the 75 days of her hospitalisation or whether there is any short fall in giving treatment to the Chief Minister of the State in any given day. However, the second respondent did not confine his inquiry within the scope and ambit of the terms of reference, rather, he has been traversing beyond the scope of the terms of reference, whereby, he is attempting to go into the veracity, adequacy, appropriateness or inadequacy of the treatment given to the Chief Minister of the State, to which he is not empowered to.

13. The learned Senior counsel for the petitioner would further contend that when the terms of reference relate to the nature and extent of medical treatment given to the Chief Minister of the State, the State Government ought to have constituted the Commission with Medical experts along with the second respondent to go into the details of the medical treatment given, so that such experts could render assistance to the second respondent to arrive at a just and fair conclusion. On the other hand, the State Government had chosen to appoint the second respondent, who is a retired Judge of this Court and who is not acquainted with the nuances involved in the medical procedure, as a Commission of Inquiry and he is jurisdictionally incompetent to deal with the medical procedures extended to the Chief Minister of the State. Whenever a Commission of Inquiry is appointed to offer his opinion with respect to complex technical aspects, the Government ought to have appointed experts in the relevant field who have hands-on experience to go into the details of such technical aspects. In the present case, the second respondent is jurisdictionally incompetent to assess, evaluate and render a

finding with respect to the medical aspects. The second respondent may be a learned person, but not learned in the field of medicine. In this context, the learned Senior counsel placed reliance on the decision reported in the case of (**Nair Service Society vs. State of Kerala, (2007) 4 SCC 1**) to contend that if the second respondent intends to delve into adequacy or inadequacy of medical treatment, the composition of the Commission of Inquiry itself is erroneous as the second respondent is a non-expert, non-technical and jurisdictionally incompetent to deal with the subject matter or to convert the inquiry into a trial of a medical negligence case.

14. The learned Senior counsel for the petitioner also submitted that the second respondent cannot compare himself with a Consumer Court, dealing with a case of medical negligence inasmuch as the second respondent is not a Judicial Forum but it is only a fact-finding body. In this context, reliance was placed on the Full Bench decision of this Court in the case of (**U. Dakshinamoorthy vs. Commission of Inquiry**) reported in **1979 (Volume 92) Law Weekly Page No. 688** wherein it has been held that the Commission of Inquiry is purely a fact-finding Commission as it does not have the moorings of a Court, as it is popularly understood, nor are there two persons placed on either side to place their views on a given subject, nor is there a *lis* in issue before it.

15. By placing reliance on the above decision, the learned Senior counsel for the petitioner would contend that merely because the second respondent is vested with certain powers akin to a Civil Court, it cannot be said that the second respondent is having the trappings of the Civil Court. Even otherwise, the second

respondent, being a fact finding body, cannot convert the inquiry into that of a *lis* between two wrangling parties. To buttress this submission, the learned Senior counsel for the petitioner relied on the decision of the Honourable Supreme Court in **Keshar Singh vs. State (Delhi Admin)** reported in **(1988) 3 Supreme Court Cases 609** wherein it has been held as follows:-

".... There are no parties before the Commission. There is no *lis*. The Commission is not a Court except for a limited purpose. The procedure of the Commission is inquisitorial rather than accusatorial. The Commission more often may have to give assurance to persons giving evidence before it that their statements will not be used in any subsequent proceedings except for perjury. Without such an assurance, the persons may not come forward to give statements. If persons have got lurking fear that their statements given before the Commission are likely to be used against them or utilised for productive use on them in any other proceedings, they may be reluctant to expose themselves before the Commission. Then the Commission would not be able to perform its task. The Commission would not be able to reach the nuggets of truth from the obscure horizon. The purpose for which the Commission is constituted may be defeated."

16. The learned Senior counsel for the petitioner also pointed out that the terms of reference are vague and unclear. The reference should pave way to cause inquiry to investigate a definite matter which had led to public speculation and public importance. In order to buttress this submission, the learned Senior counsel for the petitioner relied on the decision rendered by the Division Bench of the Madhya Pradesh High Court in the case of **(Arjun Singh vs. State of Madhya Pradesh and others)** reported in **1992 Madhya Pradesh Law Journal 693** wherein in para No.26 and 27, it was held as follows:-

"26. In our opinion, the various decisions of the Supreme Court right from the case of *R.K. Dalmiya (supra)*, *State of Jammu and Kashmir and others vs. Bakshi Gulam Mohd and another*, AIR 1967 SC 122; *P.V. Jagannath Rao and another vs. State of Orissa and others*, AIR 1969 SC 215 and down up to *Krishna Ballabh Sahay and others vs. Commission*

of Inquiry and others, AIR 1969 SC 259, compel us to reject the contention raised on behalf of the petitioner. It is true that provisions of both Section 3 and Section 11 of the Act allow setting up of an inquiry only if there exists matter of definite public importance. The word 'definite' means determinate, distinct, precise and not vague. Thus, in order to be definite all that necessary is that the matter must not be vague. If general allegations are not vague, they are definite matters. Where a particular instance is given, the matter becomes definite. By use of the expression 'matter of definite public importance' what the legislature intends is that no enquiry should be set up to investigate a nebulous mass of vague and unspecified rumours. The reference should confine the enquiry to the investigation of the definite matter which is causing a crisis of public confidence.....

27. Applying the above test as a guide for understanding the expression 'definite matter of public importance' it is clear that the conduct of the two Chief Ministers of the Congress party at the relevant time in granting licence to the lottery at Churhat and granting tax exemption to the said lottery as also the alleged acquisition of disproportionate assets and wealth by the petitioner, at the relevant time, are definite matters of public importance and it cannot be alleged against the State that in issuing the impugned notification attempt has been made to make a fishing and roving inquiry into the vague and unspecified allegations. The second contention, therefore, also fails."

17. Advancing his argument further, the learned Senior counsel for the petitioner would contend that if the terms of reference in a given case includes whether a particular person died due to consumption of any poisonous substance, then the Commission of Inquiry can go into the negligence aspect as well and to cause the inquiry in that direction to ascertain whether poison was in fact administered and if so, at whose instance or whether there is negligence in giving treatment. In the present case, the terms of reference is merely to consider the circumstances and situation leading to the hospitalisation of the demised Chief Minister and the subsequent treatment extended till her unfortunate demise, meaning thereby, the second respondent has to assess, evaluate and adjudge as to why and for what cause the Chief Minister was admitted in the petitioner hospital

on 22.09.2016, whether treatment was in fact continuously given to the demised Chief Minister during the course of her 75 days hospitalisation and whether it was established by the petitioner hospital by production of medical records. The fact remains that the Chief Minister of the State was given treatment continuously during the course of her hospitalisation in the petitioner hospital for 75 days and she was not left unattended even for a single day. While so, the second respondent cannot cause a fishing or roving enquiry in to the manner in which treatment was given or whether such treatment was adequate, appropriate and proper. However, if the second respondent intends to cause an inquiry into the adequacy or inadequacy of the treatment extended, it cannot as such go into those medical aspects without setting up a medical board consisting of experts in the field of medicine during the course of the inquiry. The composition of the Commission of Inquiry itself is a flaw and the Government ought to have constituted a Medical Board to assist the second respondent during the course of it's inquiry. In any event, the terms of reference does not empower the second respondent to probe into and conclude that an alternative treatment could have been considered or the treatment provided by the expert Doctors attached to the petitioner hospital is a farce. If the second respondent traverse into those details, it would be clearly an attempt to enlarge the scope of the reference and is excessive.

18. The learned Senior counsel for the petitioner also pointed out that notice under Section 8 (B) of The Act was directly sent to the Chairman of the hospital and the issuance of such notice was also widely reported in the print and electronic media even before the notice was received by the addressee. Further, the second respondent filed a counter statement before itself, which is a procedure

unknown and unheard of in the context of conduct of an inquiry. Moreover, the second respondent had appointed some Doctors to scrutinise the voluminous medical records produced by the petitioner hospital without notice to the petitioner and the petitioner is groping in the dark as to who those Doctors are and whether they are medically competent to peruse the documents. The appointment of Doctors behind the back of the petitioner or without any notice to the petitioner speak volumes about the manner in which the second respondent had so far conducted the inquiry, much to the chagrin of the petitioner hospital.

19. The learned Senior counsel for the petitioner would further contend that inspite of the above submissions, if this Court comes to a conclusion that the second respondent can also go into the veracity, appropriateness, adequacy or inadequacy of the treatment given to the Chief Minister of the State, this Court can issue a direction to the State Government to constitute a Medical Board consisting of experts in the field of Medicine to assist the second respondent during the course of inquiry and to submit a report to this Court. If such a course of action is not adopted and the second respondent is permitted to traverse beyond the scope of inquiry, it would prejudice the petitioner hospital and it's reputation will be at stake. In effect, the appointment of the second respondent as Commission of Inquiry to enter into an arena in which he has no specialisation or experience would only render the very inquiry vitiated. Even otherwise, the terms of reference made by the Government itself is vague. If the first respondent really intended to cause a probe into the adequacy or inadequacy of the treatment extended by the petitioner, then it ought to have clearly spelt it out in the terms of reference, but in the present case, the terms of reference clearly indicates that the intention of the Government

is only to get a report as to whether continued treatment was given to the Chief Minister of the State during her hospitalisation and nothing more. The first respondent can only refer a definite matter to be inquired into by the second respondent, however, in the present case, the terms of reference is ambiguous and unclear. The second respondent can only peruse the volumes of record produced by the petitioner running into several thousands of pages, collate them and confirm as to what was the nature of treatment provided. The Commission of Inquiry can gather facts, render an opinion and even makes a recommendation in tune with the terms of reference so made. For this purpose, the Commission of Inquiry is empowered under Section 5-B of the Act to appoint persons having special knowledge of the matter connected with the inquiry as assessors, to assist and advise the commission in the inquiry. However, without doing so, the second respondent, on it's own cannot cause a roving or fishing inquiry as it would prejudice the petitioner hospital. Thus, it is the contention of the learned Senior counsel for the petitioner that the terms of reference must be definite and logical and it should not be unambiguous. In this context, the learned Senior counsel for the petitioner placed reliance on the decision of the Honourable Supreme Court in the case of **(Ram Krishna Dalmia vs. Justice S.R. Tendolkar)** reported in **1959 SCR 279 = AIR 1958 SC 538** in which the Constitutional Bench of the Honourable Supreme Court had an occasion to consider the scope and power of a Commission of Inquiry which was called upon to inquire into 11 point reference with terms such as "any irregularities", "breaches of trust or action", "contravention of any law". The Commission of Inquiry was not given any time limit to complete it's inquiry. In that case, the Judge of the Bombay High Court was appointed as a one man Commission of Inquiry along with a Chartered Accountant and an Income Tax

Commissioner to deal with certain irregularities or illegalities alleged against certain firms/companies promoted by certain individuals and such composition of the Commission of Inquiry was also upheld by the Honourable Supreme court. However, in the present case, even though the terms of reference include complex medical treatment provided to the Chief Minister of the State, the composition of the Commission of Inquiry does not include any expert in the field of medicine and therefore, the constitution of the Commission of Inquiry itself is bad. Even the application submitted by the petitioner hospital in Application No. 213 of 2018 for constitution of a Medical Board consisting of experts in the field of medicine was rejected by the second respondent on 28.12.2018. In fact, the petitioner was constrained to file the said application on noticing that the second respondent may venture into the appropriateness of treatment given to the Chief Minister of the State and in such event, it will be only proper for the second respondent to take the assistance of the competent medical professionals to examine the medical records. This is more so that during the course of hospitalisation of the Chief Minister of the State, she was given treatment for varied complex matrix of diseases and each one overlapped the other and it required a full understanding of the synchrony between all her medical issues. Therefore, the learned Senior counsel for the petitioner would vehemently contend that the second respondent is jurisdictionally incompetent to go into the appropriateness, adequacy or inadequacy of the medical treatment given to the Chief Minister of the State. Yet, if this Court concludes that the second respondent can go into those aspects, a Medical Board, consisting of medical professionals and/or experts shall be constituted in accordance with Section 5B of the Act who can render assistance to the second respondent in the course of the inquiry, so that the interest of the petitioner hospital will not be put to

jeopardy. The learned Senior counsel also invited the attention of this Court that there is a thin distinction between finding of a fact and rendering a decision on the basis of the fact so found. If the facts are merely appreciated and a report is given thereof, as is expected of the second respondent, then the petitioner will have no qualm or grievance. Rather, in this case, the second respondent is attempting to render a finding, much less a judicial finding on the basis of the materials made available before it, to which course of action, the second respondent is legally incompetent. Therefore, the learned Senior counsel for the petitioner prayed for allowing WP No. 3953 of 2019 as prayed for.

20. Mr. P.S. Raman, learned Senior counsel appearing for the petitioner mainly confined his argument with respect to bias on the part of the second respondent in conducting the inquiry. By referring to the cause title in the application No. 214 of 2018 filed by the second respondent/Commission by itself and before itself, through its standing counsel, the second respondent enlarged and varied the scope of the inquiry and has eventually become one of the contesting parties to the inquiry. During the course of inquiry, the second respondent has cast aspersion against the petitioner hospital by posing irrelevant and unwarranted questions to the Doctors as to why a particular medicine was prescribed or why a particular course of examination has not been done. Even though the report that may be submitted by the second respondent commission may not bind the petitioner hospital, still, the observations made by the second respondent, during the course of inquiry and causing the same to be published in the newspaper had in effect sullied and tarnished the image of the petitioner hospital in the midst of one and all.

21. The learned Senior counsel for the petitioner would further contend that the second respondent commenced the inquiry proceedings during September 2017 and in the course of inquiry issued notices under Section 8-B of The Act on 21.12.2017 to Dr. Pratap C. Reddy, Chairman of the petitioner hospital and such notice was bereft of any material particulars. In effect, the petitioner hospital was served summons through the Chairman of the Petitioner hospital calling upon the Chairman to appear as a witness before it. The notice dated 21.12.2017 was purportedly issued by the second respondent, referring to the press meet held on 17.12.2017 in which the Chairman of the Petitioner hospital had made certain statement pertaining to the admission of the Chief Minister of the State in their hospital on 22.09.2016. Therefore, the second respondent has stated that it has decided to call upon the Chairman as a witness with reference to the above statement made. Above all, it was stated in the notice dated 22.12.2017 that as *"some of the witnesses examined in the commission gave evidence affecting you prejudicially,"* the appearance of the Chairman is essential. However, no material was furnished as to what was the statement given by the witness examined before the second respondent which had a tendency to affect the Chairman of the petitioner hospital prejudicially. The petitioner also came to know that the second respondent commenced the inquiry proceedings during November 2017 in which certain witnesses were examined and they include Doctors, Government Officials, personal staff etc., Therefore, a letter dated 28.12.2017 was sent to the second respondent on behalf of the Chairman of the petitioner hospital requesting to furnish the materials which prejudicially affect his right. However, the same was not furnished, but, the inquiry proceedings were continued by the second respondent.

22. The learned Senior counsel for the petitioner proceeded to demonstrate that the standing counsel for the second respondent filed an Application No. 214 of 2018 on 27.12.2018. The standing counsel for the Commission filing an application or a Counter on behalf of the Commission before the Commission itself is explicitly in violation of the established principles of natural justice that can be surmised as *nemo iudex in causa sua*. Further, in the counter statement filed on behalf of the Commission in Application No. 213 of 2018 seeking constitution of medical board, certain unwarranted averments were made casting aspersions on the petitioner hospital. This application has not been closed by the second respondent but ordered to be tagged along with the main case. In the counter statement, in para No.5, it was stated as follows:-

"5. Therefore, the presence of an Endocarditis Team is crucial. But, unfortunately cardio thoracic and neuro surgeon have not been engaged in the treatment of late Chief Minister..... The constitution of proper medical team at the time of admission for effective treatment of late Chief Minister adhering to the established medical guidelines by including cardio thoracic surgeons in the critical care medical team and early surgery in time for left side infective endocarditis on mitral valve with mitral valve with mitral perforation would have prolonged the life span of late Chief Minister.

6.....

7. In the instant case, the Hon'ble Chief Minister had vegetation measuring 14mm over mitral valve and she also had perforation in mitral valve. In the above Textbook of Medicine published by the Apollo Hospital, surgery alone has been recommended for the said ailments. But it is very unfortunate that the above parameters for surgery as espoused in the said book had not been followed, which speaks against the nature of treatment given to late Chief Minister.

8. It is further pertinent to note that three senior consultants namely Dr. M. Sturat Russel, Dr. Mr. Samin Sharma and Dr. Mr. Rajeev Soman, whose medical opinion was solicited in the matter of treatment of former chief minister have recommended angiogram which has not been followed in the instant case. Dr. Mr. Samin Sharma was ready to do the said procedure on the same day when he clinically examined amma on 25.11.2016. However, the same was declined by Apollo Team, which is contravention of

para 10.2.1 of 2015 of 2015 ESC guidelines on management of Infective Endocarditis.

23. By quoting the above passage in the counter statement filed by the standing counsel for the second respondent before the second respondent commission, the learned Senior counsel for the petitioner would vehemently contend that the second respondent had virtually concluded that the treatment given to the Chief Minister of the State by the petitioner hospital during her hospitalisation was improper and there were short comings in such treatment extended to her. Such an averment made in the counter statement is not warranted besides it is factually incorrect. The second respondent did not understand the reason for non-performance of the surgery to the Chief Minister of the State which includes several medical and complex factors. The second respondent, by picking up a portion of the evidence adduced by the witnesses had erroneously concluded, even before the conclusion of the inquiry before it, that the petitioner hospital did not extend proper treatment to the Chief Minister of the State and had it been properly extended, the life time of the Chief Minister would have prolonged.

24. The learned Senior counsel for the petitioner would further advance his argument by placing reliance on the order dated 13.07.2018 passed in Application No. 58 of 2018. The said application was filed by the counsel for the Commission itself, before the Commission itself, praying to direct the petitioner hospital to permit the commission to inspect their hospital at Greams Road and photograph, more particularly the places specified in the schedule thereof. In the order dated 13.07.2018 passed in the said Application No. 58 of 2018, the second

respondent jumped to an erroneous conclusion that the petitioner hospital had removed the CCTV cameras while the late Chief Minister was taking treatment. In effect, the removal of CCTV camera or switching off the camera due to protocol reasons, has become the subject matter of debate before the second respondent and it had drawn huge public speculation when it was published in the newspapers. Thus, the second respondent had prejudged the issue that the petitioner hospital has been guilty in extending treatment to the late Chief Minister on several aspects.

25. By pointing out the order dated 22.01.2019 passed by the second respondent in Application No. 213 of 2018, the learned Senior counsel for the petitioner would contend that the second respondent has relied on the counter filed on it's behalf to dismiss the application without taking note of the genuine plea of the petitioner hospital for constitution of medical board. Further, an adverse finding has been made by the second respondent to the effect that "*In its opinion the petitioner hospital has become an advocate for the Health Secretary's case and therefore filed the present application for constitution of medical board.....How the Health Secretary takes care for the applicant Doctors rather than the Government Senior most panel Doctors.*" These observations made by the second respondent, according to the learned Senior counsel for the petitioner, are unconnected with the issue before it besides it had cast aspersions on the petitioner hospital on several aspects.

26. Referring to the depositions of the Doctors before the second respondent, the learned Senior counsel for the petitioner proceeded to contend that 55 doctors, 11 nurses and 6 paramedical staff of the petitioner hospital have

deposed as witness before the second respondent/Commission. That apart, 5 doctors from the premier institution in India viz., AIIMS were examined on oath. During the examination of the Doctors, the second respondent had apparently questioned the integrity of one Doctor by asking the other Doctor, making accusatorial statements in the guise of recording their chief examination. The question posed to the Doctors as to whether they are deposing to cover up the lacuna in the treatment extended to the demised Chief Minister by colluding with the third respondent is irksome. Further, without any authority of law the Commission cross-examined the Doctors deposed before it which is contrary to Section 8-C of the Act. Section 8-C of the Act did not contemplate power to the Commission of Inquiry to cross-examine the witness especially when the Commission is only a fact finding body and should have no preconceived notions. In fact, the suggestions put by the Commission to the witnesses are nothing but treating the prosecution witness as hostile. The fact remains that all the Doctors and paramedical staff had been summoned as the Commission's witnesses, yet the Commission had put suggestions to them which amount to a pre-conceived notion with an ulterior motive to implicate the petitioner hospital in some form or the other. The Commission had posed suggestions imputing a major cover-up operation involving the Doctors of the Petitioner hospital, thereby, the Commission has not only exceeded its jurisdiction, but acted beyond the terms of reference. The Commission also *suo-moto* assumed the role of a jury as well as the defence counsel, converting its fact finding endeavour into a criminal trial. The Commission had in fact put suggestion to expert witness including a cardio-surgeon who deposed on behalf of the prestigious institution i.e., AIIMS Delhi by asking whether he is a party to the conspiracy hatched by the petitioner hospital. Above all, the

commission refused legitimate adjournments when it was sought for on behalf of some of the Doctors, who were hard-pressed for time to attend to his or her patients. When some of the Doctors did not turn up for deposing before the Commission, the Commission even chosen to address a letter dated 06.09.2018 to the Chairman of the petitioner hospital stating that "law would take its course against him and other Directors, if he fails to depute his doctors for deposition before the commission". Further, the Doctors who deposed before the Commission were questioned with regard to their integrity, medical knowledge and about their competency to continue in their profession, which, according to the learned Senior counsel, is beyond the scope and ambit of the terms of reference as also the inquiry. This has caused a reasonable apprehension that the petitioner hospital is sought to be implicated by the second respondent under the garb of conducting an inquiry besides it clearly reveals that the second respondent is biased towards the petitioner hospital.

27. The learned Senior counsel for the petitioner also contended that for the first time, the second respondent, in the counter statement filed in these writ petitions, has disclosed that certain medical experts were deputed and their services are being utilised. However, the petitioner hospital has no knowledge as to who the medical experts are, what was their role, what was the nature of service utilised from them etc., The Counter statement further revealed that 1 Bio Chemist and 3 Doctors have been appointed to verify the medical records and nothing more. The petitioner hospital was kept in dark without putting them on notice regarding the deputation of the Doctors to assist the second respondent. According to the learned Senior Counsel, such an appointment is grossly in violation of principles of

natural justice, since the petitioner hospital, as a noticee under Section 8B of the Act, is not aware of such appointment of assessors under Section 5B of The Act or the purpose for which such appointments were made. Even though the second respondent/Commission is empowered to seek the assistance of experts in exercise of power under Section 5B of The Act, such appointment has been made without notice to the petitioner and therefore it is in violation of principles of natural justice.

28. The learned Senior counsel for the petitioner has drawn the attention of this Court to the the recording of deposition of Dr. Madan Kumar, a Senior Cardio-thoracic Surgeon and the manner in which his statement was misquoted or misread by the second respondent. According to the learned Senior counsel for the petitioner, on 29.11.2018, when the aforesaid witness was examined, his statement with respect to time for connecting the Chief Minister of the State to ECMO machine was erroneously recorded as "15 minutes" instead of "15 seconds". Even though the Doctor pleaded the second respondent to cause necessary correction with respect to such statement made, the second respondent refused to do so. Rather, in the application No. 214 of 2018 filed by counsel for the second respondent, the deposition of Dr. Madhan Kumar was conspicuously referred to as a defence by the counsel for the second respondent. Curiously, the second respondent made reference to such deposition of Dr.Madan Kumar to conclude that the Chief Minister of the State was brain dead and some how the petitioner hospital suppressed this. Such observation made by the second respondent in fact prompted Dr. Madan Kumar to file an Application No. 1 of 2019 stating in detail the recording of his statement and to correct it. However, so far, no order has been

passed thereon by the second respondent. Curiously, such misstatement or mis-recording of statement of Dr. Madan Kumar was widely published in the newspapers and social media to disparage the reputation of the witness. Therefore, according to the learned Senior counsel for the petitioner, the manner in which the inquiry proceedings are being conducted by the second respondent is smeared with bias and it vitiates the proceedings conducted so far. In this regard, the learned Senior counsel for the petitioner relied on the decision of the Honourable Supreme Court in **K. Vijaya Bhaskar Reddy vs. Government of Andhra Pradesh**, reported in **1995 SCC Online AP 356** wherein it was held that when the material evidence available on record indicates that they are such as it is likely to give rise to reasonable apprehension in the mind of a party to the inquiry, it is enough to complain bias. According to the learned Senior counsel for the petitioner, if materials are produced to show that the litigant has a strong belief or likelihood that he or she is prejudiced or the proceedings in which he or she is part of is biased, then the Court can interfere and render all the proceedings so far conducted a nullity.

29. The learned Senior counsel for the petitioner proceeded to contend that from the commencement of the inquiry, the second respondent had shown an affiliation to the interest of the media at the cost of the reputation of the petitioner's hospital. This could be evident from the fact that by virtue of an order dated 13.07.2018 passed in Application No. 58 of 2018, the second respondent has allowed a photo journalist to enter into the restricted areas in the petitioner hospital to take photographs and to share them with the press. In this context, the petitioner also filed application No. 205 of 2008 before the second respondent detailing the

manner in which information pertaining to the inquiry has been leaked to the media through the sources in the commission and prayed to take steps to ensure that no information is shared to the media which would prejudice the reputation of the petitioner's hospital. However, this application has been dismissed by the second respondent. The order dismissing the application was also widely published in the media to the effect that the Commission has found the petitioner hospital guilty of collusion and conspiracy. Further, even during the pendency of these writ petitions, the second respondent issued summons to 7 doctors for their appearance on 27.02.2019. Therefore, the petitioner hospital filed an application No. 24 of 2019 seeking to defer the appearance of the doctors not due to the pendency of the writ petitions but on account of the fact that about 32 doctors attached to the petitioner hospital have filed an affidavit before this Court disclosing the manner in which they were treated by the second respondent. However, an order was passed in the said application on 27.02.2019 at 7.30 pm which was not known to the petitioner. Rather, the order dated 27.02.2019 was published in the newspapers on the next day. On enquiry, the petitioner came to know that the copy of the order dated 27.02.2019 was sent to the media houses by the second respondent commission from the official e-mail address. By reason of such publications in the newspaper, severe damage to the reputation and goodwill of the petitioner hospital has been caused. In this context, the learned Senior counsel for the petitioner placed reliance on the decision of the Honourable Supreme Court in **State of Bihar vs. Lal Krishna Advani** reported in **(2003) 8 SCC 361** to contend that the petitioner hospital is entitled to have and preserve its reputation from being damaged by any authority under the guise of discharging its statutory duty.

30. The learned Senior counsel for the petitioner also would contend that the statutory power vested with the Commission of Inquiry is not akin to the Civil Court or a Consumer Forum when a case of medical negligence is dealt with. The Court or a Consumer Forum will deal with a *lis* between two parties and the burden of proof of the relief sought for in the case depends on the person who is making allegation against the other by letting in oral and documentary evidence. Further, the Civil Court or a Consumer Forum can weigh the oral and documentary evidence, including medical evidence, adduced by both sides to arrive at a conclusion. On the other hand, the Commission of Inquiry is a fact finding body and not a Court though it may be presided by a Judicial Officer. The second respondent, by assuming himself as a Judge of a Civil Court or a Consumer Forum dealing with medical negligence, has clearly pre-determined the issue and is seeking to implicate the petitioner hospital in some form or the other. When once the plea of bias is raised and pleaded, then all the proceedings hitherto conducted by the second respondent will go and therefore, the learned Senior counsel prayed for allowing both the writ petitions as prayed for.

31. Mr. Vijay Narayanan, learned Advocate General appearing for the first respondent would contend that the second respondent was appointed as a One Man Commission by virtue of G.O. Ms. No.817, Public (SC) Department dated 25.09.2017 for the purpose of making an independent inquiry in to the circumstances and situation leading to the hospitalisation of the Chief Minister of the State Selvi. J. Jayalalitha on 22.09.2016 and her unfortunate demise on 05.12.2016. For the purpose of conducting an inquiry, the Government had clearly prescribed the terms of reference which is broad and clear enough for the

commission of inquiry to inquire into the issue. The petitioner did not challenge the appointment of the second respondent as a One Man Commission of inquiry and therefore, they are estopped from filing the present writ petitions. Furthermore, the petitioner hospital fully participated in the inquiry so far conducted by the second respondent. Almost 55 Doctors of the petitioner institution and other technical and para-medical staff have deposed before the second respondent commission over a period of time. Therefore, at this stage, it is too late for the petitioner institution to contend that the Commission is not empowered to go into the medical aspects or the adequacy or inadequacy of treatment given to the demised chief minister. In fact, soon after the death of the Chief Minister of the State, after 75 days of hospitalisation, there were wide spread rumour among the general public as to whether proper treatment was given to the chief Minister of the State by the petitioner hospital or not. In order to allay the apprehension of the general public, the Government thought it fit to constitute a fact finding inquiring authority. During the course of the inquiry proceedings, notices under Section 8B of the Act have been issued by the commission to all those who are likely to be prejudicially affected with a view to give them an opportunity of hearing.

32. The learned Advocate General appearing for the State would further contend that the apprehension of the petitioner is unfounded. The petitioner's contention that the second respondent had prejudged the issue and is likely to file an adverse report to the Government against the petitioner hospital cannot be sustained. Even if an adverse report is filed, it is for the Government to decide as to whether such a report can be accepted or not. Even assuming that an adverse report is filed and it was accepted by the Government, the Government will only

direct the prosecution agency to treat the report of the Commission as a complaint and to take action against those who were found to have contravened any of the Act and Rules. In such event, the person against whom the adverse report has been submitted will be given all due opportunity to put forth his defence against the so-called adverse report. In any event, a report is being sought for from the second respondent by the Government only to be informed about the ground realities and to get first hand information about the treatment provided to the Chief Minister of the State. Above all, whether an adverse report will be submitted or not cannot be pre-conceived at this stage. As and when a report is given, then the petitioner will have a cause of action to seek appropriate remedy thereagainst. The writ petitions have been filed at the far end of the inquiry proceedings, particularly when the commission is likely to wind up the inquiry and submit its report to the Government. Therefore, according to the learned Advocate General, the writ petitions are premature and they are liable only to be dismissed.

33. Mr. Ar.L. Sundaresan, learned Senior counsel appearing for the second respondent would vehemently contend that the writ petitions are pre-mature and they are not maintainable. As per the terms of reference, the second respondent has conducted an inquiry and the inquiry is likely to be completed within a short period. At this stage, the petitioner has come up with these writ petitions only to stall the inquiry proceedings. In other words, 90% of the inquiry has been completed and the second respondent is likely to submit its report to the Government. In fact, the second respondent commenced the Inquiry during November 2017 and until January 2018, the Doctors attached to the petitioner hospital subjected themselves to the inquiry without any objection. The petitioner

hospital, having subjected themselves to the inquiry, is estopped from filing the present writ petitions. Therefore, at the instance of the petitioner hospital, if the inquiry proceedings are interfered with, it would defeat the very purpose and object with which the Government had constituted the One Man Commission of Inquiry and that the Government will be deprived of having the benefit of the full information pertaining to a matter of public importance. Furthermore, the petitioner has neither challenged the appointment of the second respondent as a One Man Commission of Inquiry and therefore also, the petitioner cannot be heard to contend that the inquiry proceedings are conducted much to their prejudice. Even otherwise, the second respondent is only a fact finding body and the report which the second respondent would submit to the Government cannot be construed as a judicial document which will bind any one and it cannot be enforced *proprio vigore*. In such view of the matter, the petitioner is not entitled to question the manner in which the second respondent conducts the inquiry after having participated and subjected themselves to the inquiry. The second respondent, as a fact finding body, can only form its opinion and submit its recommendations to the Government and thereafter, it is for the Government to act upon the report by following the due process of law. In this context, the learned Senior counsel for the second respondent would place reliance on the Full Bench decision of this Court in the case of **(U. Dakshinamoorthy vs. The Commission of Inquiry)** reported in **1979 (Volume 92) Law Weekly page No.688** to contend that the proceedings before the second respondent is not a judicial proceedings and therefore, the relief sought for in the writ petitions are not maintainable and they are liable only to be dismissed.

34. By inviting the attention of this Court to the terms of reference, the learned Senior counsel for the second respondent would contend that the word "demise" used in the terms of reference would indicate that the second respondent can go into or cause an inquiry into the circumstances surrounding the hospitalisation of the chief Minister of the State, the nature of treatment given to her during the course of her 75 days of hospitalisation, whether such treatment is adequate, inadequate, appropriate and proper, form an opinion as to the treatment given on the basis of the evidence adduced before it and appraise the medical records filed to arrive at a conclusion. Therefore, at any stretch of imagination, it cannot be said that the second respondent is not empowered to go into the veracity, appropriateness or adequacy or inadequacy of treatment given to the Chief Minister or can it be said that the second respondent exceeded or enlarged the scope of terms of reference. If the second respondent is restrained from going into the adequacy or inadequacy of the treatment given, it would defeat the very purpose and object for which the second respondent was appointed as a One Man Commission of Inquiry. It is the vehement contention of the learned Senior counsel for the second respondent that the second respondent, being a fact finding inquiring authority cannot merely collect the medical records and forward it to the Government and thereby reducing the functions of the Commission of Inquiry like a Post man who merely sort out the letters. Such a job is ministerial in nature for which a Commission of Inquiry is unnecessary. Even otherwise, if that was the intention of the Government, it could not have appointed the second respondent, rather, the Government itself would have called the petitioner hospital to produce the medical records for their perusal and arrived at a conclusion as to whether treatment was in fact given to the Chief Minister of the State in all the 75 days.

Thus, it is evident that the Government, in order to get an opinion about the ground realities pertaining to the treatment given to the Chief Minister of the State has appointed the second respondent as One Man Commission of Inquiry and consequently, the second respondent has to necessarily look into the veracity of the treatment given on the basis of the medical records produced by the petitioner hospital. The Government, as a client, had sought an opinion of the Commission with respect to the circumstances surrounding the hospitalisation and the subsequent treatment given to the Chief Minister of the State till her unfortunate demise. In order to render an opinion thereof, the second respondent has to collate all the documentary evidence and to recommend to the government as regards the short fall, if any, in the treatment given by the petitioner hospital, so as to enable the government to get a first-hand information about the treatment given to the Chief Minister of the State. The second respondent is fully aware of the obligations and will confine the inquiry only with respect of the Terms of Reference and the question of traversing beyond the scope of inquiry or converting the scope of inquiry into a *lis* will not arise. Even the Government, in the counter affidavit, has clearly stated that the terms of inquiry is wide enough to consider all the issues and it cannot be said that the second respondent is incompetent to render a finding as regards the efficacy, appropriateness and adequacy or inadequacy of treatment given by the petitioner hospital. Even the terms of reference was made to allay the apprehension of the public at large and to put at rest the speculation surrounding the demise of the Chief Minister of the State, which includes the suspicion of the public at large as to whether adequate treatment was in fact provided to the Chief Minister of the State or not.

35. The learned Senior counsel for the second respondent would proceed to contend that from the commencement of inquiry on 22.11.2017, around 154 witnesses have been examined, which includes 55 doctors attached to the petitioner hospital, 5 doctors from All India Institute of Medical Science, (AIIMS) New Delhi, three private doctors from other hospitals, 12 Government Doctors working in the Government Hospitals in the State, 22 paramedical and other staff of the petitioner hospital, five politicians and 51 other witnesses. These witnesses, particularly the witnesses of the petitioner hospital have been deputed after receipt of notice under Section 8B of The Act sent to the Chairman of the petitioner hospital. After completion of the examination of the witnesses, as aforesaid, the petitioner hospital has come up with these writ petitions for the first time before this Court raising the issue as if the second respondent is exceeding the scope of reference or traversing beyond the scope of reference and that the proceedings conducted by the petitioner is biased. As a retired Judge of this Court, the second respondent, in his wisdom, can collect all the materials, inquire into the circumstances that led to the hospitalisation of the Chief Minister of the State and on the basis of the materials so collected, conclude the inquiry and make appropriate recommendation to the Government. It cannot be disputed by the petitioner that during the course of inquiry, the second respondent can even take the aid of the experts in exercise of the powers conferred under Section 5B of the Act. As per Section 5B of the Act, the second respondent need not be an expert in the relevant field and if required, the second respondent can very well take the aid and assistance of the experts in the field. In this context, the learned Senior counsel for the second respondent had drawn an analogy by comparing the functions of the second respondent with the proceedings before the Civil Court or a

Consumer Court dealing with a case of medical negligence. According to the learned Senior counsel for the second respondent, if only a medical professional can adjudicate a medical issue, only a professional in the relevant field can be appointed. However, the Judges appointed as Presiding Officer of the Civil Courts or Consumer Forum can deal with varied subjects such as Medicine, Engineering and Environment and arrive at a finding as regards negligence on the basis of the material produced and the Presiding Officer need not be an expert in the given field. In fact, on 22.01.2018, the second respondent made a request to the Government to grant permission to appoint Doctors to assist and advice the Commission as per Section 5B of the Act followed by a reminder letter sent on 20.03.2018. The Government also, by virtue of G.O. Ms. No.342, Public (Law and Order-F) Department dated 09.05.2018 granted permission to the Commission to avail the service of medical professionals. Accordingly, on 09.10.2018, the Dean of Madras Medical College had deputed Dr. R. Nandakumar, MS., Mch., Associate Professor of Cardiac Thoracic Surgery and Tmt. M. Maragatham, Bio-Chemist, Institute of Bio Chemistry to report to the commission and accordingly, they were assisting the commission from 10.10.2018. Subsequently, on 23.10.2018, Dr. Nandakumar was relieved and Dr. M. Nandakumaran, Institute of Cardiology; Professor Dr. K. Malathy, Institute of Radiology and Professor Dr. A. Sivaraman, Institute of Cardiothoracic Surgery were deputed by the Dean, Rajiv Gandhi Government General Hospital, Chennai and they are assisting the commission. The aforesaid professionals have also perused the medical records in this case and their report is awaited. In the order dated 22.01.2019 passed by the second respondent in Application No. 213 of 2018, the second respondent has also duly referred to the above said appointments and the utilisation of their service.

Therefore, it is futile on the part of the petitioner to contend that they are not aware of the appointment of the Doctors in exercise of power conferred under Section 5B of the Act. In this context, the learned Senior counsel for the second respondent relied on the decision in the case of (**V. Kishan Rao vs. Nikil Super Speciality Hospital**) reported in **(2010) (5) Supreme Court Cases 513** to contend that the evaluation of medical evidence is a mixed question of law and fact, which cannot be done by a medical expert. According to the learned Senior counsel for the second respondent, in that case, it was decided that the Consumer Forum can very well go into the medical negligence.

36. As regards the allegations relating to bias, the learned Senior counsel for the second respondent would contend that the allegations of bias cannot be pressed into service in this case inasmuch as the second respondent is not adjudicating a *lis* or hearing the arguments or rival contentions between two parties. Further, the instances pointed out by the petitioner to drive home the plea of *bias* cannot be sustained. The second respondent is conducting the inquiry with an open mind. The report to be submitted by the second respondent cannot partake the character of a judicial verdict nor it is enforceable *proprio vigore*. In this context, the learned Senior counsel for the second respondent placed reliance on the decision in the case of (**Vijayalakshmi Shanmugam vs. Chief Secretary**) reported in **(2012) (3) CTC 14** wherein it was held that the plea of bias is not available against the Commission of an Inquiry inasmuch as the Commission of Inquiry only has the trappings of a civil court to summon the witness and to record the deposition of the witnesses. In this case, according to the learned Senior counsel for the second respondent, it is alleged that the second respondent has leaked the information to

the press which resulted in likelihood of causing damage to the reputation of the petitioner hospital. It is further stated that the counsel for the Commission in the counter statement filed in Application No. 213 of 2018 made certain accusations against the petitioner and thereby revealed the mind of the second respondent in pre-judging the issue. It is also alleged that the second respondent did not grant sufficient time to enable the Doctors attached to the petitioner hospital to depose before it. The further accusation is that Doctors were ill-treated during the course of their examination. According to the learned Senior counsel for the second respondent, these allegations relating to bias are mis-conceived. There is no personal allegations made against the second respondent and In the absence of any such plea of personal motive made against the second respondent, the allegations of bias need not be considered. According to the learned Senior counsel for the second respondent, the first respondent has given a specified time limit within which the second respondent has to complete the inquiry. Therefore, when adjournments were sought for on behalf of the petitioner, they were limited and restricted and not refused as alleged. In order to adjust the work schedule, the Commission has fixed the dates for deposition of the witness and therefore, refusing adjournment can never be termed as a motive or ill-will to attribute bias against the second respondent. As regards the publication of the news item in electronic and print media, the learned senior counsel for the second respondent would contend that there are no specific allegations against any person attached to the commission who allegedly leaked the information to the press and media and that the second respondent has nothing to do with the publications effected in the media nor can it be said to be a biased attitude. Further, the averments made in the counter statement at the instance of the counsel for the second respondent is

sought to be taken as an advantage by the petitioner to attribute bias when it was not known as to whether such averments would form part and parcel of the final report to be submitted by the second respondent to the Government. Further, the allegation that the witness of the petitioner hospital have been ill-treated cannot be countenanced inasmuch as the witnesses have been examined only in the presence of the counsel for the petitioner and at the time of the deposition, none of them have raised their little finger towards the second respondent. In any event, during the course of inquiry, certain questions are put to the witnesses only to unearth the truth and to enable the second respondent to understand the facts involved in this case in a more meaningful manner and not as alleged by the petitioner. In this context, reference has been made to the order dated 22.01.2019 passed in Application No. 213 of 2018 wherein it was stated that the Commission is fully aware about its limitation that it will be a fact finding commission and the commission will proceed with the inquiry within its limit since it is aware of its limitation. According to the learned Senior counsel for the second respondent, the second respondent had dealt with the inquiry proceedings without any bias and that the apprehensions of the petitioner has to be held as unfounded. Further, merely because the second respondent had put certain question to the witness, it cannot be a reason to conclude that the second respondent had pre-determined the issue and that it would be prejudicial to the interest and reputation of the petitioner hospital. In effect, the learned Senior counsel for the second respondent would contend that the second respondent had completed 90% of the work and some of the witnesses are required to be cross-examined. Further, if the petitioner hospital depute any other witness, they will also be examined and the commission will submit a report to the Government. Therefore, at this stage, the relief sought for in

these writ petitions need not be granted and he prayed for dismissal of the writ petitions.

37. The learned counsel appearing for the third respondent would contend that on receipt of summons from the second respondent, the third respondent had entered appearance through a counsel and fully cooperated with the inquiry conducted by the second respondent. During the course of inquiry, the third respondent had filed a sworn affidavit detailing the previous health condition of the Chief Minister of the State prior to her hospitalisation and the medical treatment taken by her. It is further stated that the third respondent has nothing to remark against the appointment of the second respondent as a one man Commission of Inquiry and the counsel for the third respondent has only stated that the third respondent is ready and willing to extend her cooperation for the inquiry that is being conducted by the second respondent. However, it is stated that the third respondent was unaware and she was not put on notice regarding the appointment of five government Doctors by the Commission for aiding it. Had it been put on notice by the Commission to the petitioner as well as the third respondent, the service of those Doctors would have been utilised by the parties to the inquiry. In any event, it is submitted that the third respondent is only intending to get the inquiry completed at the earliest inasmuch as it is she, who is victimised by the false propaganda and concocted stories relating to the death of the former Chief Minister of the state. Therefore, the learned counsel for the third respondent would only pray for dismissal of the writ petitions so as to enable the Commission to conclude the inquiry at the earliest.

38. We have heard the learned counsel on either side at length and perused the materials placed on record.

39. On 22.09.2016, the former Chief Minister of Tamil Nadu, Selvi. J. Jayalaitha was admitted in the petitioner hospital apparently with a complaint of fever and dehydration and she was advised by the medical experts to stay in the hospital for the purpose of providing her treatment for such ailment. From the date of her hospitalisation, there were wide spread speculation among the general public as to the health status of the Chief Minister of the State. There were even curious on-lookers who had thronged the petitioner hospital purportedly to have a glimpse of the Chief Minister of the State during her stay in the petitioner hospital. It is an admitted fact that during the course of hospitalisation of the Chief Minister of the State, she was treated by renowned Doctors not only from India, but also from United Kingdom and United States of America. The Government of Tamil Nadu had also taken concerted efforts and roped in several specialist Doctors either to treat the ailing Chief Minister of the State or to oversee the treatment given to her by the petitioner institution. That apart, the Government issued G.O. (D) No.1368, Health and Family Welfare Department dated 30.09.2016 directing that the Dean, Government General Hospital, Chennai shall provide necessary logistical assistance and to co-ordinate with the Doctors attached to the petitioner hospital who are associated with the medical treatment given to the Chief Minister of the State. In spite of such strenuous treatment extended, the Chief Minister of the State breathed her last on 05.12.2016. After the death of the Chief Minister of the State, speculation loomed large among the public as to whether the treatment given to the Chief Minister of the State was adequate or there was any short fall thereof. In fact,

the death of the Chief Minister of the State had become the subject matter of debate among the general public and it had mired into a controversy with several rumours surrounding it. Therefore, in order to put at rest such speculation among the general public, the Government decided to appoint a one man Commission of inquiry, to cause an inquiry with respect to the circumstances and situation leading to the hospitalisation of the Chief Minister of the State on 22.09.2016 and the subsequent treatment provided to her till her demise on 05.12.2016. For more clarity, the Terms of Reference made by the Government is as under:-

"to inquire into the circumstances and situation leading to the hospitalisation on 22nd September 2016 and subsequent treatment provided till her unfortunate demise on 05th December 2016."

40. To answer the terms of the reference made by the Government, the second respondent herein, a retired Judge of this Court, was appointed as one man Commission of inquiry and to submit an inquiry report within three months. During the course of inquiry, several Doctors of the petitioner hospital were examined and voluminous documentary evidence were produced. According to the second respondent, 90% of the inquiry has been completed and only a few witness have to be examined before it. It is at this stage, the petitioner hospital has come forward with these writ petitions for the relief stated supra.

41. Mr. Aryama Sundaram, learned Senior counsel appearing for the petitioner hospital, by referring to the terms of reference, would vehemently contend that there is a clear nexus between the first limb of the reference and the second limb and if it is read separately and distinctively, it would lead to enlarging the scope of reference. In other words, it is his contention that if the second limb of the

reference is construed as the one which would empower the second respondent to adjudicate and adjudge the adequacy or inadequacy of treatment given by the petitioner, then a medical board has to be constituted inasmuch as the second respondent is not jurisdictionally competent to decide such an issue. If the terms of reference are strictly adhered to, the second respondent can only peruse the medical records and arrive at a subjective satisfaction as to whether medical treatment was in fact given to the Chief Minister of the State on all the 75 days of her hospitalisation and whether there is material available to show that treatment was in fact not given to the Chief Minister of the State on any given day. However, the second respondent cannot go into the appropriateness, adequacy or inadequacy of the medical treatment provided by the petitioner hospital as the second respondent is not empowered to do so. It is the contention of Mr. Sundaram, learned Senior counsel for the petitioner that the second respondent, who is not an expert in the field of medicine, cannot be competent to venture into an arena in which he has no specialisation. It is his further assertion that the medical treatment given to the demised Chief Minister involves complex and intricate procedures which a medical expert alone can be able to assess and evaluate and that the second respondent is incompetent to go into the correctness, appropriateness, adequacy or inadequacy of the treatment rendered by the petitioner hospital. Even though the second respondent is a learned person, he is not a competent person to venture into medical aspects. Furthermore, the petitioner hospital had subjected themselves to the inquiry by examining the Doctors attached to their hospital and also produced voluminous documents in the form of medical records, compact discs etc., which cannot be subjected to scrutiny by the second respondent, who is a non-medical and non-technical person in the

field of medicine. Thus, the learned Senior counsel for the petitioner hospital would contend that the very constitution of the second respondent as a One Man Commission is erroneous and the composition of the Commission should consist of experts in the field of medicine. In this context, the learned Senior counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of **(Nair Service Society vs. State of Kerala)** reported in **(2007) 4 SCC 1** to contend that if the scope of inquiry is to deal with medical aspects, it should consist of professionals in the relevant field and in the absence of the same, the composition of the Commission of Inquiry itself is vitiated. Therefore, the learned Senior counsel for the petitioner prayed for allowing the writ petitions as prayed for.

42. The prayer of the petitioner is opposed by the first respondent by contending that the terms of reference is wide enough and carefully couched to enable the second respondent to conduct an inquiry into the medical aspects as well.

43. The learned Senior counsel appearing for the second respondent would contend that the petitioner did not challenge the appointment of the second respondent as a Commission of Inquiry. In fact, the appointment of the second respondent was subjected to challenge before this Court in WP No. 25940 of 2017 and it was dismissed by the Division Bench of this Court. In the present writ petitions, what is sought for by the petitioner is only to forbear the second respondent from proceeding with the inquiry in so far as it relates to adequacy or inadequacy of the treatment given by the petitioner. In effect, if the petitioner's prayer is accepted, the second respondent will be restrained from perusing the

medical records and to form an opinion thereof, as a fact finding body and the functioning of the second respondent will be reduced into that of a ministerial work, which could only go through the medical records and forward it to the first respondent/Government. If that was the intention and object of the Government, the word "demise" would not have been included in the terms of reference, which would only indicate that the second respondent can very well decide the appropriateness, adequacy or inadequacy of treatment given to the Chief Minister of the State. The word 'demise' indicated in the terms of reference can be literally interpreted and inferred that the second respondent can very well render his opinion with respect to the appropriateness, adequacy or inadequacy of treatment given to the Chief Minister of the State by the petitioner hospital as well. Even otherwise, the petitioner, having subjected to the inquiry proceedings by examining their Doctors, technicians and paramedical staff, is estopped from filing the present writ petitions at the fag end of the inquiry proceedings. In any event, the second respondent may or may not offer it's opinion in the final report to the Government with respect to the adequacy or inadequacy of treatment given to the Chief Minister of the State, while so, it is premature on the part of the petitioner to come forward with these writ petitions.

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44. Having regard to the above submissions, at the first blush, it is necessary to examine as to whether the second respondent is competent and is empowered to deal with the correctness, adequacy, appropriateness or inadequacy of the treatment given by the petitioner hospital to the Chief Minister of the State.

Admittedly, from the date of hospitalisation of the Chief Minister of the State as also during the course of her hospitalisation, until her unfortunate demise, there were

wide speculation and rumour among the Public that had fanned throughout the State. Such speculation was in relation to the nature of treatment given to the Chief Minister of the State by the petitioner hospital, whether the treatment was adequate or is there any slackness or shortfall in extending such treatment. Such speculation had gained rumour unmindful of the fact that the petitioner hospital, from the date of her hospitalisation, had roped in several specialists Doctors in all walks of life to not only extend treatment to the demised Chief Minister but to oversee and monitor the treatment given to her by other Doctors. Even the Government of Tamil Nadu also had deputed reputed Doctors from their pool. Therefore, it is in these situation, the Government, in order to put an end to such unnecessary speculation among the public, had appointed the second respondent as Commission of Inquiry. The appointment of the second respondent as an independent inquiring authority has arisen due to the suspicion and speculation raised surrounding the death of the Chief Minister of the State. Even in the press release dated 06.03.2017 issued by the Health Secretary to the Government of Tamil Nadu it is specifically stated that *"On the doubts expressed by some quarters on the quality of treatment provided to the late. Hon'ble Chief Minister, the AIIMS report have consistent concurred with the line of treatment being provided by Apollo Hospitals and have specifically commended the "meticulous medical management imparted by the treating team"* Needless to mention that it is with the speculation raised by the public in mind, the second respondent coined and couched the terms of reference to unearth certain events that had unfolded from the date of hospitalisation till the unfortunate demise of the Chief Minister of the State. If a harmonious interpretation is made to the terms of reference, the Government was careful enough to include the word "subsequent treatment

provided till her unfortunate demise on 05th December 2016" meaning thereby the nature and extent of treatment given by the petitioner, which includes appropriateness, adequacy or inadequacy of the treatment. Even in the counter affidavit filed by the Government in these writ petitions, reference was made to the fact that the terms of reference are wide enough, broad and clear to enable the Commission of Inquiry to inquire into the issue. Therefore, it can reasonably be inferred that the terms of reference made by the government includes appropriateness, efficacy, adequacy or inadequacy of the treatment provided by the petitioner hospital and if that is not gone into, certainly, as has been contended by the learned Senior counsel for the second respondent, it will certainly belittle and confine the functions of the second respondent into one as that of a Ministerial function to merely compare the authenticity or correctness of the medical records produced by the petitioner hospital. Further, as rightly pointed out by the learned Senior counsel for the second respondent, if that was the intention of the Government to merely peruse or compare the medical records, it could have directly asked the petitioner hospital to furnish the records and a probe into it by a Commission of inquiry is not warranted. Therefore, the second respondent can go into the correctness, efficacy, adequacy or inadequacy of the medical treatment provided by the petitioner hospital as per the terms of reference by screening the records produced before it and arrive at a conclusion as to the nature of treatment given to the Chief Minister of the State during her hospitalisation. In such view of the matter, we are of the view that if the second respondent is restrained from going into the correctness, efficacy, adequacy or inadequacy of the medical treatment provided by the petitioner hospital, it would only defeat the very object with which the government had appointed the second respondent as a one man Commission

of Inquiry. Merely because the second respondent ventures into the adequacy or inadequacy of the treatment given by the petitioner hospital, as mandated under the terms of reference, it cannot be said that the second respondent is expanding or enlarging the scope of the inquiry beyond the terms of reference. Therefore, we are of the view that the second respondent is empowered and is entitled to go into the appropriateness, efficacy, adequacy or inadequacy of the treatment given by the petitioner hospital to the Chief Minister of the State, as mandated by the government under the terms of reference. While so, the relief sought for by the petitioner hospital to forbear the second respondent from venturing into the medical aspects cannot be countenanced and we hold that the second respondent can venture into the appropriateness, adequacy or inadequacy of the treatment given by the petitioner hospital based on the available medical records.

45. Yet another submission made on behalf of the petitioner institution is that the composition of the One Man Commission is bad. A retired Judge of this Court cannot be competent to deal with the complex and intricate medical treatment provided by the petitioner and therefore, the composition of the Commission should include professionals and experts in the relevant field. At the outset, we are not in agreement with such submission made on behalf of the petitioner. It is for the State Government to decide the composition of the Commission of Inquiry, whether it could be a One Man Commission of Inquiry or the Commission should consist of expert or professionals in the relevant field. The Government, as a client, intended to seek an opinion by appointing a One Man Commission of Inquiry. It is for the State Government to decide as to what exactly their requirement is and depending upon their requirement, they can appoint either a One Man Commission of Inquiry

or a commission consisting of experts in the field. When such being the case, we cannot interfere with the appointment of the Commission of Inquiry and direct the Government to include professionals or experts on Board to assist the One Man Commission of Inquiry. Even in the absence of inclusion of experts or professionals in the field, as per Section 5B of The Act, the Commission can independently take the aid of and appoint any person who, in its opinion, shall be of assistance for conducting the inquiry. As per Section 5B of the Act, the Commission can have the assistance of professionals and experts, in a particular field, if it is desirable so as to more effectively and purposely complete the task assigned to it. In fact, Section 5B of The Act gives widest power to the Commission to take the assistance of any person, having special knowledge in any given field. Therefore also, we are of the view that merely because the State Government appointed the retired Judge of this Court as a One Man Commission of Inquiry, it cannot be said that the Commission cannot effectively and efficiently perform its task of completing the inquiry as per the terms of reference.

46. Furthermore, as rightly pointed out by the learned Senior counsel for the second respondent, the petitioner institution did not challenge the appointment of the second respondent as a Commission of Inquiry, rather, it had subject itself with the inquiry conducted by the second respondent in which the Doctors attached to the petitioner hospital have been examined and voluminous medical records have been produced by the petitioner hospital. To be specific, the Commission commenced the inquiry sometime during November 2017. From the date of commencement of the inquiry, nearly 154 witnesses have been examined by the Commission, which include 56 Doctors attached to the petitioner hospital, 5 Doctors

from All India Institute of Medical Science, New Delhi, three Doctors attached to private hospitals in the City, 12 Doctors from the State run Government Hospitals, 22 paramedical and other staff of the petitioner hospital etc., During the examination of these witnesses, the petitioner hospital did not raise it's little finger pointing out the non-inclusion or non-appointment of medical professional as part of the Commission. Though the petitioner hospital has filed an application before the Commission for Constitution of Medical Board in Application No. 213 of 2018 on 28.12.2018, the same was rejected by the second respondent on 22.01.2019. Even otherwise, the appointment of the second respondent as Commission of Inquiry was subjected to challenge before this Court at the instance of one Mr. P.A. Joseph in WP No. 25940 of 2017 by way of a Public Interest Litigation. By order dated 04.10.2017, the Division Bench of this Court dismissed the writ petition. Therefore, in the absence of challenge to the appointment of the second respondent as Commission of Inquiry by the petitioner hospital, at the earliest point of time, at this stage, it is futile on the part of the petitioner hospital to contend that the second respondent cannot venture into the efficacy, appropriateness and adequacy or inadequacy of the treatment given by the petitioner hospital.

47. Above all, in the counter affidavit filed by the second respondent in these writ petitions, reference was made to the appointment of Doctors to assist the Commission. In fact, specific reference was made to the order passed by the Government in G.O. Ms. No.342, Public (Law and Order-F) Department dated 09.05.2018 according permission to the Commission to avail the service of medical professionals. Pursuant to the order passed by the Government, on 09.10.2018, the Dean of Madras Medical College had deputed Dr. R. Nandakumar, MS., Mch.,

Associate Professor of Cardiac Thoracic Surgery and Tmt. M. Maragatham, Bio-Chemist, Institute of Bio Chemistry to report to the commission and accordingly, they assisted the commission till 10.10.2018. Subsequently, on 23.10.2018, Dr. Nandakumar was relieved and Dr. M. Nandakumaran, Institute of Cardiology; Professor Dr. K. Malathy, Institute of Radiology and Professor Dr. A. Sivaraman, Institute of Cardiothoracic Surgery were deputed by the Dean, Rajiv Gandhi Government General Hospital, Chennai and they were assisting the commission in its pursuit. It is also stated that the above said Doctors are likely to submit their report to the Commission. In such view of the matter, we are only inclined to decline the prayer of the petitioner to direct the first respondent to constitute a medical Board to assist the second respondent during the inquiry proceedings or to direct such committee to submit a report to this Court, as has been prayed for by the petitioner in WP No. 3953 of 2019, especially when 90% of the inquiry proceeding was over.

48. Next it has to be considered whether the inquiry proceedings are vitiated by bias. Mr. Raman, learned Senior counsel appearing for the petitioner would vehemently contend that the entire inquiry proceedings conducted by the second respondent are vitiated by bias. To substantiate that the inquiry proceedings are biased, the learned Senior counsel for the petitioner relied on several instances that had taken place during the inquiry proceedings. At first, reliance was placed on the summons dated 21.12.2017 sent by the second respondent to the Chairman of the petitioner institution for his appearance as a witness. The summons were issued apparently on the basis of a press statement made by the Chairman of the Petitioner hospital on 17.12.2017 in which he had

spoken about the critical health condition of the Chief Minister of the State at the time of her admission on 22.09.2016. According to the learned Senior counsel for the petitioner, in the summons, specific reference was made that "*some of the witnesses examined in the commission gave evidence affecting you prejudicially your interest and in your absence they gave evidence the line with the reference made by the Commission.*" Immediately on 22.12.2017, the petitioner entered appearance through their counsel. Subsequently, on 28.12.2017, the petitioner filed a petition seeking to furnish the so-called evidence recorded against the Chairman of the petitioner hospital before the Commission. According to the learned Senior counsel for the petitioner, inspite of petition filed by the petitioner, the second respondent did not furnish the material evidence on it's file but withheld them much to the prejudice of the petitioner hospital. Above all, the petitioner came to know from the counter affidavit filed in these writ petitions that on 15.02.2019 the Commission had recorded the evidence of unknown parties, including 302 complainants from police stations and nearly 30 sworn affidavits of persons raising allegations regarding the suspicious circumstances relating to the unfortunate demise of the Chief Minister of the State and such evidences have been recorded behind the back of the petitioner.

49. The learned Senior counsel for the petitioner would vehemently contend that on 28.12.2018, the petitioner has filed Application No.213 of 2018 praying to constitute a medical board so as to enable the second respondent to effectively submit it's final report to the Government. In the affidavit filed in support of the Application No. 213 of 2018, the petitioner hospital has provided several justification for constituting a medical board by citing the voluminous medical

records produced before it, the intricacies and complex medical terms contained in those records besides that the witnesses appearing on behalf of the petitioner hospital finds it difficult to explain the nuances, scientific facts, protocol and procedures to the second respondent inasmuch as he is not an expert in the field. According to the learned Senior counsel for the petitioner, the petitioner also given several other reasons for constituting a medical board such as incorrect recording of the deposition of the medical witnesses etc.,. In this context, the learned Senior counsel for the petitioner placed reliance on the affidavit filed by Dr. Madhan Kumar, Senior Cardio-thoracic Surgeon and Consultant in the petitioner hospital who had been responsible for connecting ECMO machine to the Chief Minister of the State during her hospitalisation. The affidavit was filed in support of Application No. 1 of 2019 filed before the Commission wherein he has stated certain mistakes that had crept in recording his deposition with respect to the cardiac procedure performed by him as "15 minutes" instead of "15 seconds". According to the Senior counsel for the petitioner, even though the Doctor pleaded with the second respondent to rectify the mistakes recorded in the depositions, the second respondent rejected the application on 22.01.2019 by stating that both the answers provided by the witness has been recorded simultaneously and the depositions were not recorded incorrectly.

50. The learned Senior counsel for the petitioner mainly contended that the petitioner hospital has filed Application No. 213 of 2018 seeking to constitute a medical board by assigning various reasons. In the application also, reference was made to incorrect recording of deposition of the witnesses with reference to medical terms and as to how it had caused prejudice to the witnesses, individually and to

the petitioner hospital as a whole. According to the learned Senior counsel for the petitioner, the second respondent could have either accepted the plea of the petitioner or rejected it by assigning any reasons. However, curiously, the second respondent filed a counter statement in Application No. 213 of 2018 before itself. Notwithstanding the filing of the counter before itself, mudslinging allegations have been made against the petitioner in the counter statement thereby tarnishing the image and reputation of the petitioner hospital. Further, in the counter affidavit, the second respondent had reached a definite conclusion to implicate the petitioner in the case. The learned Senior counsel for the petitioner has invited our attention to relevant portion of the counter statement, wherein it has been stated thus, purportedly by referring to the Book titled "2015 ESC guidelines on management of infective Endocarditis:-

"5. Therefore, the presence of Endocarditis Team is crucial. But, unfortunately, cardio thoracic and neuro surgeon have not been engaged in the treatment of late. Chief Minister. Though Dr. Mr. Sridhar and Dr. Mr. Girinath, Senior Surgeon have been included in the Apollo's consultant team, they never clinically examined late Chief Minister at the appropriate time. Their service have been utilised only on 04.12.2016 after cardiac arrest. Mr. Girinath claims to have seen late Chief Minister through glass doors. The European Guidelines suggest early surgery for vegetation over mitral value exceeding 10mm and for perforation. Such guidelines had not been followed in the treatment of late Chief Minister. The Constitution of proper medical team at the time of admission for effective treatment of late Chief Minister adhering to the established medical guidelines by including cardio thoracic surgeons in the critical care medical team and early surgery in time for left side infective endocarditis on mitral valve with mitral perforation would have prolonged the life span of late chief minister." (emphasis supplied)"

8. In the instant case, Hon'ble Chief Minister had vegetation measuring 14mm over mitral valve and she also had perforation in mitral valve. In the above Textbook of medicine published by the Apollo Hospital, surgery alone has been recommended for the said ailments. But it is very unfortunate that the above parameters for surgery as espoused in the said Book had not been followed, which speaks against the nature of treatment given to late. Chief Minister.

8. It is further pertinent to note that three senior consultants namely Dr. Mr. Sturat Russel, Dr. Mr. Samin Sharma and Dr. Mr. Rajeev Soman, whose medical opinion was solicited in the matter of treatment of former chief minister have recommended angiogram which has not been followed in the instant case. Dr. Mr. Samin Sharma was ready to do the said procedure on the same day when he clinically examined amma on 25.11.2016. However, the same was declined by Apollo Team, which is in contravention of para 10.2.1 of 2015 ESC guidelines on management of infective Endocarditis...

Thus, the Apollo hospital has failed to follow the established clinical guidelines on the management of Endocartis including the guidelines prescribed in their own text book in respect of surgical intervention for vegetation in mitral valve and perforation. Such lapses among other things, which appear on the face of the record had raised serious doubts and suspicion regarding the treatment of Hon'ble late Chief Minister necessitating constitution of this Hon'ble Inquiry Commission.....

51. The learned Senior counsel for the petitioner also pointed out the observation made by the second respondent in the order dated 22.01.2019 passed in Application No. 213 of 2018 wherein it was observed in para-38 that "*....The applicant hospital now became advocate for somebody's case.*"

52. By pointing out the above portion from the orders passed by the Commission of Inquiry before itself, the learned Senior counsel for the petitioner would vociferously contend that the Commission had come to a definite conclusion to implicate the petitioner hospital in it's probe, even before the inquiry is completed. The above portion of the averments made in the counter statement is explicit that the commission had prejudged the nature and manner of report that it would submit to the Government, exposing it's mind. In such event, as a party to the inquiry proceedings, the petitioner hospital cannot be expected to participate

53. The learned Senior counsel for the petitioner has also drawn our attention to several news paper publications made during the pendency of inquiry proceedings conducted by the second respondent. He pointed out to the newspaper publication made in the English Daily with the caption "*Jaya Probe panel warns Apollo of action*" in which the Secretary of the Commission was quoted as saying that if the Doctors attached to the petitioner hospital did not turn up for the inquiry, law will take it's own course. Further, in the news paper, the summon issued to the petitioner hospital has been verbatim extracted. Similarly, in the newspaper "The Economic Times" dated 10.09.2018 a news item with the caption "*Jayalalitha death probe commission censures Apollo for non-cooperation*" was published. Furthermore, in one issue of an English Daily dated 18.12.2018 a news item was published under the caption "Jayalalitha's Food Bill was Rs.1.17 Crore - Apollo Management". Reference was also made to a news paper publication made in one issue of Sunday Times under the caption "Health Secy & Hosp colluded in Jaya's treatment : Counsel". Further reference was also made to the news item published in The Hindu titled "Apollo failed to do angiogram". According to the learned Senior counsel for the petitioner, such publications made in the print media had in effect brought down the reputation of the petitioner hospital to a considerable extent besides it had shown the petitioner hospital in poor light. It is further stated that the information relating to the inquiry proceedings were leaked by the commission to the print and electronic media even before the information pertaining to the order passed by the commission reaches the petitioner institution.

54. Above all, the counsel for the Commission filed an application on behalf of the Commission, before the Commission itself, in Application No. 58 of

2018 for inspection of the petitioner hospital. This was opposed by the petitioner hospital by stating that such an inspection has no nexus to the inquiry proceedings besides it is unwarranted. Notwithstanding such objection made by the petitioner hospital, the second respondent allowed the application filed by the counsel for the Commission and permitted a photo journalist to enter into the restricted area of the petitioner hospital. In the order dated 13.07.2018 passed in the said application, the second respondent has observed as follows:-

"16. At this juncture, it is pertinent to note that the Apollo Hospital Authorities had removed the CCTV cameras while the late Hon'ble Chief Minister was taking treatment in the Apollo Hospital. The matter pertains to the treatment given to the late. Hon'ble Chief Minister at the Apollo Hospital and that she was the Chief Minister of this State for several occasions in alternative periods and in 2016 also. The public at large eager to know about the treatment given to her by the Apollo Hospitals and they are very anxious to know that the photos released previously had been taken only in the hospital or not. Further, I have to acknowledge the presence of the media persons how much interest daily they are taking to collect the news from various sources and they are updating the news to the public, of course, with some speculations and marginal exaggerations within their limits and it has been responded by the public at large also cannot be ignored."

55. Further reference was made to the petition filed by the counsel for the Commission before the Commission itself in Application No. 214 of 2018, which was filed by the Commission for impleading the Health Secretary and Chief Secretary of the State as parties to the inquiry proceedings. In this application, in para No.2, it has been stated as follows:-

"2.While so, it is apparent that the evidence of the health secretary is not only contradictory, but also suggestive of conspiracy and collusion between the health secretary and Apollo Hospital with regard to the inappropriate treatment of late chief minister. At times, he speaks like spokesman of the Apollo Hospital, which speaks volume to the collusion and inaction in the matter of treatment of late chief minister. The medical evidence adduced so far against the Respondent No.2 namely Apollo Hospital clearly established the fact that the Apollo Hospital failed to provide Angio treatment inspite of the

fact that three Senior doctors hailing from various hospitals have suggested such a course. Thus, it is clear that failure to take Angio test or angiogram in time has led to deterioration of her health, which is suggestive of collusion between Respondent No.1 and 2 in the matter of treatment of former chief minister. There is also sufficient circumstantial evidence in this regard.

56. By pointing out the above statement made by the second respondent in the order dated 13.07.2018 as also the averments in application No. 214 of 2018 mentioned supra, the learned Senior counsel for the petitioner would contend that the observation that CCTV cameras were removed by the petitioner institution has been made without any basis. The second respondent has given undue preference and advantage to the media and press personnel to cover whatever proceedings that had taken place before the second respondent and to publish the same in the newspaper much to the chagrin of the petitioner hospital and at the cost of reputation of the petitioner hospital. When the second respondent has made a tirade of attack towards the petitioner hospital in such a fashion, then the petitioner will have no confidence to participate any further in the inquiry proceedings. The learned Senior counsel for the petitioner therefore would contend that the entire inquiry proceedings hitherto conducted by the second respondent are vitiated and therefore, he prayed for allowing WP No. 3947 of 2019 as prayed for.

57. Countering the submissions of the learned Senior counsel for the petitioner, the learned Senior counsel for the second respondent would contend that the question of bias cannot be pressed into service as against the inquiry proceedings conducted by the second respondent. The second respondent is not conducting any *lis* between wrangling and rival parties and even if any observation is made by the Commission in the final report, that will not bind the parties to the

proceedings. The report can be construed only as an opinion offered by the Commission and it will not partake the character of a judicial verdict. To substantiate this submission, the learned Senior counsel for the second respondent relied on the decision the Division Bench of this Court in the case of **(Vijayalakshmi Shanmugam; Thangam Thennarsu vs. Chief Secretary, Fort St. George, Chennai and others)** reported in **(2012) (1) CTC 14 (Madras)** wherein in para No.32, it was held as follows:-

"32.As we have pointed out already, when there are prima facie materials available before the Government for ordering the one-man Commission of Inquiry, the relevant test would be only as to the availability of material and not the fact that the attempts made by the present Government to construct a secretariat complex had failed earlier. That apart, 'malice in law' means, evil intent on the part of a person who commits wrongful acts injurious to others. It could also be termed to be one of ill-will, animosity, malevolence, rancour or grudge. Malice in its legal sense means malice such as may be assumed from doing of a wrongful act intentionally but without just cause or excuse or for want of reasonable or probable cause. To put it otherwise, malice can be termed to be a conscious, intentional commission of a wrongful act without any justification or conscious violation of law that injures another without a just cause or excuse or probable or reasonable cause. Nevertheless, all wrongful acts, though intentional, would not constitute malice, unless, it is established by the person pleading the same that the act was actuated by malice. Keeping in mind the above basic principles as to malice or malice in law, the facts of the present case must be considered. As we have pointed out already, at the time when the one-man Commission of Inquiry was constituted, there were materials available before the Government and hence the Government had a cause or reasonable cause for exercising its discretion in appointing the one-man commission of inquiry. In fact, for exercise of such discretion, it would be sufficient for the Government to have a probable cause supported by materials. Accordingly, the submission as to the question of malice in law has no substance on the facts of the present case. The power of review as to the challenge to the Commission of Inquiry is limited to the question as to whether there are materials for the Government to order such a commission and for that matter, whether the decision of the Government is arbitrary and *mala fide*. In so far as the appointment of the member to head the commission of inquiry is concerned, the question of bias has to be looked into on the facts of each case....."

58. The learned Senior counsel for the second respondent also would

contend that the averments made by the second respondent in the counter statement filed in the application for constitution of medical board are for the purpose of meeting the averments made therein. Further, whether those averments would form part of the final report that may be submitted by the second respondent to the Government is uncertain. Further, certain questions, which were posed to the Doctors during their deposition were not intended to harass them but only to elicit the ground realities and truth. In any event, the allegations of bias can be made only against an Officer who is dealing with judicial proceedings and not against the Commission of Inquiry which is a fact finding body. The second respondent is fully aware of the terms of reference and would strictly adhere to it in all respects. Therefore, the learned Senior counsel for second respondent would only contend that the inquiry proceedings have been conducted in an acceptable manner prescribed under law and prays for dismissal of the writ petitions.

59. Upon considering the rival contentions made with respect to the plea of bias, we could infer from the records that the petitioner had mainly projected certain instances that had taken place during the inquiry proceedings such as (i) the nature of questions posed by the Commission during the deposition of the Doctors (ii) the refusal on the part of the second respondent commission to adjourn the inquiry proceedings at the instance of the petitioner hospital (iii) furnishing information to the press and media regarding the inquiry proceedings directly from the e-mail address of the commission thereby tarnishing the image and reputation of the hospital (iv) various orders passed by the commission implicating the petitioner hospital, either directly or indirectly and (vi) the proceedings conducted by the second respondent in filing a counter by itself before itself and thereby

converting the inquiry proceedings into a *lis*. These are some of the allegations made by the petitioner hospital to demonstrate that the inquiry so far conducted by the second respondent is smeared with bias and that it has gravely prejudiced the petitioner hospital to bring down its reputation.

60. As regards the allegations raised by the petitioner hospital that adjournments were refused when it was sought for on behalf of the Doctors, due to their pre-occupation, but on the other hand, leniency is shown in granting adjournment when it was sought for by the counsel for the third respondent, we are of the view that such a contention cannot be *ipso facto* considered to conclude that the inquiry proceedings are actuated by malice. We accept the submission of the learned Senior counsel for the second respondent that since the second respondent is obliged to submit its final report in a time bound manner to the government, in order to swiftly conclude the inquiry proceedings and to streamline the inquiry proceedings, adjournments were refused on some occasion, however, the request made by the petitioner hospital were largely accepted and adjournments were granted. It is needless to mention that the second respondent, as a Commission of Inquiry is having the trappings of Civil Court and it can grant or refuse adjournment at his discretion over which we cannot interfere. It is for the second respondent, depending upon the need and other attendant circumstances, to either grant or refuse adjournment so that the Commission can plan and arrange the inquiry proceedings in a manner which best suits the Commission and it cannot be called in question by the petitioner hospital by contending that the second respondent is acting against their interest and therefore the inquiry proceedings are vitiated by reason of bias. Even assuming that merely because adjournments were

granted by the Commission at the instance of the third respondent, the inquiry proceedings cannot be held to be vitiated.

61. The other contention of the petitioner hospital is that the second respondent, during the course of inquiry, had put questions to the witness as if the Doctors have colluded themselves and engaged in a conspiracy to cover up the lacuna on the part of the petitioner institution in providing treatment to the Chief Minister of the State. In reply, the learned Senior counsel for the second respondent would contend that such questions were posed in the presence of the counsel for the petitioner, in a transparent manner to ascertain the ground realities. We are in agreement with such submissions made by the learned Senior counsel for the second respondent. As a Commission of Inquiry, the second respondent is empowered to conduct the proceedings in a manner the commission desires and when some questions are to be put to the witness, that too in the presence of the counsel for the witness, it cannot be said that the second respondent has intentionally, in order to either degrade the witness or to test the efficiency of the witness, has posed the questions. In fact, we find from para No.41 of the order dated 22.01.2019 in Application No. 213 of 2018 that the commission had treated the Doctors well. For more clarity, para No.41 reads thus:-

"41. The applicant hospital summoned doctors were treated by the commission as guest by providing chair and they have been given most respect with dignity....."

62. This piece of the observation made in the order dated 22.01.2019 only suggests that the witnesses were treated well by the Commission and it is not as if they were harassed vindictively. At the best, it cannot be said that the Commission had wantonly to harass the witnesses had put some question much to the

inconvenience of the witness. The posing of questions to the witnesses were in good faith to ascertain certain information from them and it cannot be construed as an attempt on the part of the second respondent to prejudice the witnesses. Therefore, we are not inclined to accept the submissions made on behalf of the petitioner that the witnesses were wantonly, wilfully and deliberately harassed by the second respondent during the course of inquiry proceedings.

63. Even though several other averments have been made by the petitioner institution to demonstrate that the inquiry proceedings are actuated by malice or biased, we are not inclined to consider the same in these writ petitions. At the same time, we find that an innocuous and strange procedure had been adopted by the second respondent commission in filing an application through it's counsel before itself or in filing a counter statement for the application filed by the petitioner hospital before itself. The averments made by or on behalf of the commission in the application or counter statement mentioned supra are in fact disturbing. The contents of the application or counter statement to the application are *per se* unwarranted and not intended in an inquiry proceedings conducted by the second respondent in exercise of the powers conferred under the provisions of The Act. The second respondent, in our opinion, could have avoided adopting such a procedure in filing an application before itself. Instead, it could have *suo motu* passed certain order to either implead a particular person or to do any other acts or things in relation to the inquiry proceedings instead of filing an application before itself. We wish to observe that the petitioner hospital had subjected itself to the inquiry proceedings without any hesitation and cooperated for the inquiry.

However, in view of certain observations made by the second respondent through

it's counsel in the application and counter statement to the application filed by the petitioner, which we have referred to above, the petitioner hospital was compelled to approach this Court with these writ petitions.

64. In order to be enlightened ourselves as to why and how such averments were allowed to be made by the second respondent in the form of application filed by it's own counsel before it or rather a counter statement to the application filed by the petitioner hospital, we have posed a question to the learned Senior counsel for the second respondent as to who had authorised the counsel for the second respondent to make unnecessary and unwarranted averments in the application and/or counter statement filed before the second respondent. The learned Senior counsel for the second respondent submitted that those averments were made by the counsel for the second respondent independently, on his own. If that be so, as rightly pointed out by the learned Senior counsel for the petitioner, the counsel for the second respondent has to be pulled up by the second respondent especially when those averments made in the application and/or counter statement have driven the petitioner hospital to file the present writ petitions and to make allegations as regards bias. We also wish to observe that the Commission of Inquiry is a fact finding body and during the course of such inquiry, the Commission need not attribute "collusion", "conspiracy" or "fraud" etc., Therefore, we find some force in the submission of the learned Senior counsel for the petitioner that the second respondent exceeded it's scope and ambit in conducting inquiry proceedings by attributing negligence or collusion against the petitioner hospital even before the submission of final report to the Government by way of application or counter statement to the application filed by the petitioner,

which in our opinion, the Commission could have avoided. In this context, useful reference can be made to the observations of the Full Bench of this Court in the case of **(U. Dakshinamoorthy vs. Commission of Inquiry** mentioned supra and the relevant portion of the Judgment reads as follows:-

" 19. The Commission of Inquiry, after referring to the various sections in the Advocates Act dealing with misconduct, professional or otherwise, of an Advocate, observed that the term 'professional or other misconduct' has not been defined anywhere in the Advocates Act. According to the commission, the scope of the Advocates Act is very wide and if the authority constituted to inquire into the misconduct of an advocate comes to the conclusion that the allegations are proved, it can impose on the Advocate any one of the punishments prescribed in S.35 of that Act; but, as far as the Commission is concerned, it cannot be looked upon as a Judicial Functionary and the report ultimately made by it cannot be enforced *proprio vigore*. The Commission governed by the Commissions of Inquiry Act, 1952, is appointed by the State Government for the information of its own mind. In order that it should not act, in exercise of its executive power, otherwise, than in accordance with the dictates of justice and equity, in ordering a departmental enquiry against its officers. Hence, according to the Commission, it is a fact finding body meant only to instruct the mind of the Government without producing any document of a judicial nature. The Commission has further observed that the report of the Commission appointed under the Commissions of Inquiry Act is not binding on the Government. Since the Commission is a fact-finding body, it gives only an information to the Government and such information given cannot have any binding nature upon the parties concerned, or on the Government. Commissions appointed under the Act do not adjudicate any disputes or determine rights or liabilities or decide any question of guilt or innocence. On the other hand, the Commission observed that the scope of Chapter V of the Advocates Act is entirely different from the scope of Chapter V of the Commissions of Inquiry Act, and the objects are also entirely different. On these findings, the Commission saw no force in the preliminary objection raised before it by the petitioner herein."

65. Thus it is evident from the above Full Bench decision of this Court that the second respondent, as a fact finding body, cannot determine the rights or liabilities or decide any questions of guilt or innocence on any one, who is part of the inquiry before it since the second respondent is not dealing with a *lis* between

two wrangling parties. The Commission can only offer its opinion to the Government for its mind, with respect to the nature of treatment given by the petitioner on the basis of oral and documentary evidence - whether such treatment was adequate or not. Since the second respondent had cast certain aspersions against the petitioner hospital, mentioned above, in our opinion, that by itself will not vitiate the inquiry proceedings hitherto conducted by the second respondent. We hope and trust that the second respondent/Commission will confine his inquiry strictly within the scope and ambit of terms of reference made by the government. Further, it cannot also be said that the remarks made by the second respondent, mentioned above, will form part of the final report to be submitted to the Government. We are also fully aware of the fact that even if a final report is submitted by the second respondent to the Government, either way, yet, it is for the government to act upon the same and if the report that is to be submitted by the commission is acted upon, in such event, the petitioner hospital will be provided all due opportunity in adherence to principles of natural justice.

66. With the above observation, we dispose of these writ petitions. No costs. Consequently, connected miscellaneous petitions are closed.

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(R.P.S.J.) (K.R.J.)

04-04-2019

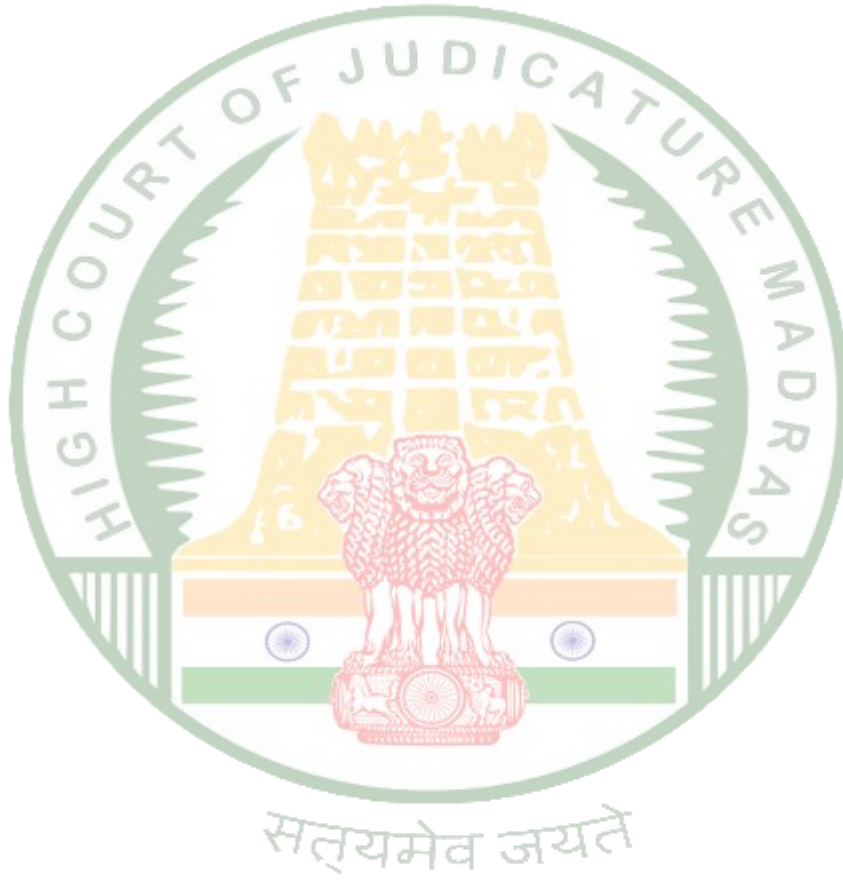
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Index : Yes / No
To

1. State of Tamil Nadu

<http://www.judis.nic.in> rep. by the Principal Secretary to the Government
(Public Department)
Fort St. George, Chennai - 600 009

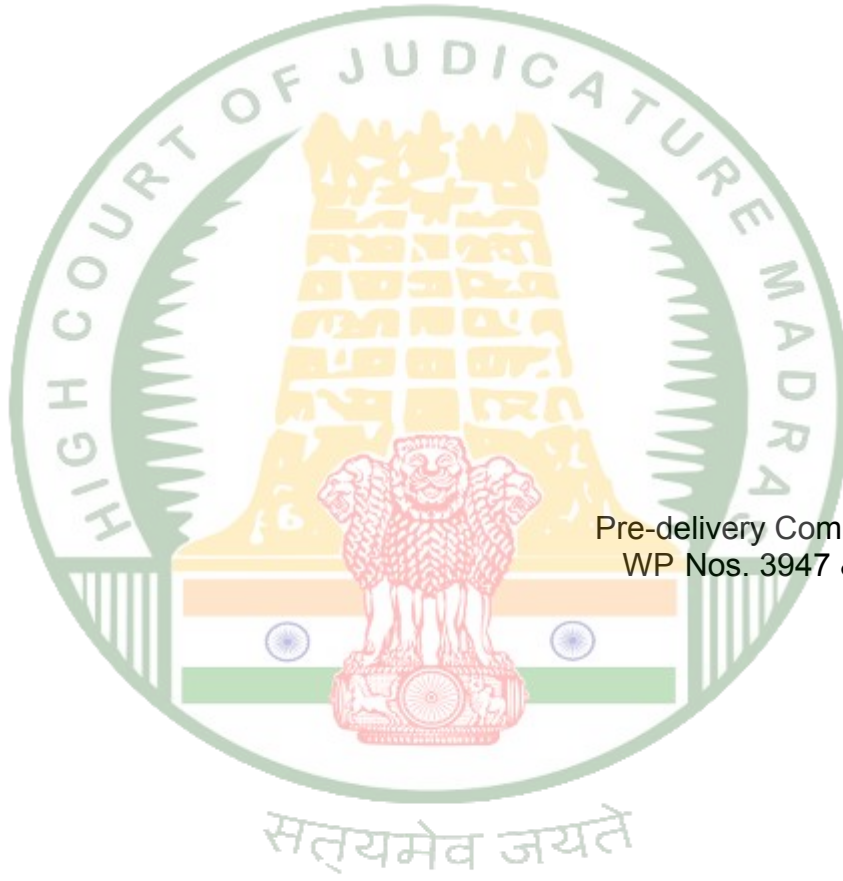
2. Justice Thiru. A. Arumughaswamy Commission of Inquiry
Represented by its Secretary
1st Floor, Kalas Mahal Heritage Building
Chepauk, Chennai - 600 005



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R. SUBBIAH, J
and
KRISHNAN RAMASAMY, J

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