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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2019

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.19209 of 2019

S.M.Vetrivel

...Petitioner

Vs

1. Government of Tamilnadu,
rep.by Principal Health Secretary,
Health and Family Welfare Department
Secretariat, Fort St.George,
Chennai 600 009.
 2. The Director of Medical and
Rural Health Services and Family Welfare Department,
DMS Compound, Teynampet,
Chennai 600 006.
 3. The Director of Public Health and
Preventive Medicine,
DMS Compound, Teynampet,
Teynampet, Chennai 600 006.
 4. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai,
Chennai 600 005.
 5. The District Collector,
Kancheepuram District.
 6. The Commissioner,
Chennai Corporation,
Ripon Buildings,
Chennai 600 003.
- ... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to construct a General Hospital in the site earmarked for Primary Health Centre, by the Tamil Nadu Slum Clearance Board, in their new scheme at Perumbakkam based on the representation dated 21.11.2017.



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For Petitioner : Mr.R.Sankarasubbu
for M/s.S.Deepika

For Respondents: Mr.E.Manoharan,
Additional Government Pleader
for R1 to R3 & R5
Mr.M.Rajasekar,
Standing Counsel for TNSCB for R4
Mr.K.Soundara Rajan
Standing Counsel
for Chennai Corporation for R6

O R D E R

[Order was delivered by S.MANIKUMAR,J]

Mr.S.M.Vetrivel, a practising advocate, has sought for issuance of a Writ of Mandamus directing the respondents to construct a General Hospital in the site earmarked for a Primary Health Centre, by the Tamil Nadu Slum Clearance Board, in the new scheme at Perumbakkam based on his representation dated 21.11.2017. Supporting the prayer sought for, the petitioner has contended inter alia,

(i) The Slum Clearance Tenements and Slum areas were emerged in order to cater the need and service of the newly emerged IT Sector and the other Companies in the locality.

(ii) In all, there must be around 5 lakh and odd total population of Slum people live in Sholinganallur area/constituency. However there was not even a government Sub Centre, District Hospital, or Peripheral Hospital situated within Sholinganallur or around the radius of 15 kms of Sholinganallur. Being an emerging locality with transformation of rural to urban/semi urban, it is essential to provide health services as per the requirements of the population.

(iii) Due to the tremendous population growth in the above said area and most particularly, the emergence of more slum tenements, the locality becomes vulnerable to communicable diseases and accident prone area and the population unsurprisingly requires a general hospital with all modern facilities. The Sholinganallur stretch contains Perumbakkam, Chemmencherry, Sholinganallur, Kannagi Nagar and Ezhil Nagar, Kanthanchavadi, Periaeri and other areas are situated in between two high roads, such as GST and OMR and other main roads, where all the heavy vehicles



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plying round the clock as the area is attached to IT Sector as well people are using the both the roads to reach the city and to exit the city, hence the same become a significant road for transport. As a result of it, several accidents took place near Perumbakkam and Kannagi Nagar where it is quite difficult for an ambulance to reach and also it is quite impossible to reach the General Hospital which is the only one possible for live saving. During the recent years, the death ratio of the victims is quite high both accidental and emergent condition taken from these areas, before they would reach Government General Hospital, they were declared brought dead as they reach the hospital not in time and there were no first aid given immediately as there was no Government Hospital situated in between, however plenty of private hospitals were surfaced everywhere in the nearby areas. At the same time, it is quite necessary to have a General Hospital in order to handle the emergency cases as well health issues.

(iv) Various Representations were submitted with the respondents and other competent authorities requesting for the allotment of land and construction of a building for General Hospital in and around, Sholinganallur."

2. Details of the private major hospitals, providing Intensive Care for accident and emergent cases, situated in and around Perumbakkam are as follows:-

Hospital	Radius
1. Chettinad Hospital, Kelambakkam	15 Kms
2. Glenegals Global Hospital, Perumbakkam	8 Kms
3. Kamatchi Hospital, Pallikaranai	20 Kms
4. Apollo Hospital, Perungudi	15 Kms

3. According to the petitioner, there is an immediate requirement for construction of a General Hospital at Perumbakkam, for the following reasons:-

(i) Several accidents taking place both at Perumbakkam and Kannagi Nagar @ Sholinganallur Village and in OMR which results in several death rate and physically disabled persons,

(ii) Rise of death ratio

(iii) Distance of the other General Hospital.

(iv) Enhancement of emergency and risk cases

(v) The area has become an accidents prone area

(vi) Time consumption for reach of ambulance services

(vii) Communicable disease prone area as well people and children are more vulnerable seasonal fevers



and other health risk.

(viii) Excessive density of population which was created by the Government itself, which is more vulnerable.

(ix) No ICU/emergency care units/first aid in case of any accidents such as fall from heights/electrical accidents/fire accidents and injuries caused by anti social elements. No provision for reaching ambulance immediate to the spots.

(x) Duty doctors are not available in primary health centre.

(xi) Rise and emergence of more private health sectors which cost effective.

4. Mr.R.Sankara Subbu, learned counsel for the petitioner submitted that "Public Health" is one of the Directive principles of the State Policy and protection of life is inclusive of public health, guaranteed under Article 21 of the Constitution of India and therefore, Mandamus sought for should be issued.

5. He invited our attention to the reply given by the Additional Greater Chennai Medical Officer/Joint Director, Medical Services Department, Greater Chennai Corporation, Chennai 600 003 dated 02.01.2018, addressed to the Writ petitioner, wherein the said authority has stated that conversion of the Primary Health Centre into a Government Hospital is not feasible and that, 24 hours Urban Community Health Centre with all the facilities estimated at a cost of Rs.741 lakhs at Injambakkam and building, a 24 hours Urban Primary Health Centre has been undertaken, in Perungudi Zone, is under progress.

6. Learned counsel for the petitioner submitted that the abovesaid reply has been given on 02.01.2018 to the Petitioner's representation dated 21.11.2017, without taking into consideration the need for a Hospital. He further submitted that there is no progress, in the construction of 24 hours hospital, as stated in their letter dated 02.01.2018 and therefore the respondents be directed to answer the prayer, sought for, by the Petitioner.

Heard the learned counsel for the petitioner and perused the material on record.

7. Petitioner has contended that a Primary Health Centre, proposed at Chemmemcheri village, can be converted into one of Government General Hospital, in order to protect the health of poor people living in Chemmencheri and surrounding areas. When a request dated 21.11.2017 was made by the petitioner, the



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Additional Greater Chennai Medical Officer/Joint Director, Medical Services Department, Greater Chennai Corporation, in his reply, dated 02.01.2018, has stated as under:-

"In the above referred letter, you have requested for the conversion in order the Chemmencheri Primary Health Center as the Government General Hospital to protect the Health of Poor people living in Chemmencheri and surrounding Area.

It is hereby informed that Greater Chennai Corporation Health Services Department, Chemmencheri Tsunami Nagar Area Primary Health Center has been functioning for 24 Hours with Thirty Beds facilities. Treatment has been provided by Special Doctors in this Center during the evening from 4.30 Hours till 8.30 Hours in Night (Monday to Friday). A Doctor is in duty during Night Hours.

Moreover the following Medical Services are provided in the Center.

Treatment for Minor Health issues.

Identifying Diabetics, Blood Pressure and providing treatment for all type of fevers (Malaria, Dengue)

Out Patient service for woman and Children

Pregnancy period test, Online Registration for Pregnancy

Providing PICME number Administering Vaccination for Pregnant Mothers, Blood Pressure and weight checkup.

Laboratory Test, Basic Test, such as finding Blood Group, Haemoglobin, Urine Test and 100 percent counseling and test for HIV, and Identify diabetics and hyper tension during pregnancy are all conducted in Highly Equipped Apparatus Lab at free of cost.

Ultra Sonogram Test (Scan)

Test and Treatment for Tuber culosis

ECG Test provided.

Moreover, Greater Chennai Corporation Health service Department Sholinganallur Zone has been undertaken construction work for building 24 Hours Urban Community Health Center with all facilities Hundred Beds for fast of 741 Lakhs and Injambakkam.

Similarly constructions works for building a 24 Hours Urban Primary Health Center has been undertaken in Perungudi Zone School Road, Sholinganallur constituency with all facilities including Hundred Beds at cost of 667 Lakhs.

Moreover construction of a 24 Hours Hospital is all facilities including Thirty Beds at cost of 482 lakhs in Kannagi Nagar Zone Fifty Sholinganallur constituency it is at final stage.



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It is hereby informed that when the construction of the above said Hospitals completed and come into existence, the people living in the areas mention in your representation would get the special best Medical services."

10. Perusal of the letter dated 02.01.2018 shows that in Chemmemcheri Tsunami Nagar area, a Primary Health Center has been functioning for 24 hours with Thirty Beds facilities. Treatment has been provided by Special Doctors in this Center, during the evening from 4:30 hours to 8:30 hours in Night (Monday to Friday). There is a Doctor during Night hours. Medical facilities provided at the said Centre are stated as supra.

11. Greater Chennai Corporation Health Service Department, Sholinganallur Zone, has undertaken construction work for building a 24 hours Urban Community Health Center, with all facilities, with 100 beds, at an estimated cost of Rs.741 lakhs. Similarly, construction work, for building a 24 hours Urban Primary Health Center has been undertaken, in Perungudi Zone School Road, Sholinganallur constituency with all the facilities, including 100 beds, at a cost of Rs.667 lakhs. That apart, construction of a 24 hours Hospital, with all facilities, including 30 beds at a cost of 482 lakhs, in Kannagi Nagar Zone, Fifty Sholinganallur constituency, is stated to be at the final stage.

12. In view of the above, the Additional Greater Chennai Medical Officer/Joint Director, Medical Services Department, Greater Chennai Corporation, by a letter, dated 02.01.2018, has informed the writ petitioner that when the construction of the above said hospitals, are completed, and come into existence, people living in the areas mentioned, in the representation of the petitioner, dated 21.11.2017, would get the special best Medical services. Construction or conversion of a Primary Health Centre into a Government General Hospital is purely a decision of the Government, taking note of the needs of the said area, and attendant circumstances therein.

13. In the case on hand, by letter dated 02.01.2018, the Additional Greater Chennai Medical Officer/Joint Director, has given the reasons, as to why conversion of Chemmencheri Primary Health Centre, into a Government General Hospital, is not feasible, after taking into consideration the petitioner's request.

14. Giving due consideration to the averments in support of the prayer sought for, we are of the view that answering the prayer sought for in this writ petition, insofar as conversion



of a Primary Health Centre into a Government General Hospital, is concerned, the Additional Greater Chennai Medical Officer/Joint Director, Medical Services Department, Greater Chennai Corporation, Chennai, has categorically stated that conversion is not feasible but, a 24 hours Urban Community Health Centre would be provided with all medical facilities.

15. Judicial review on the decision making process on the aspect, as to whether, there should be a Government Hospital or a Primary Health Centre, cannot be said to be capricious or arbitrary. On the aspect of judicial review on administrative decisions, we deem it fit to consider few decisions,

(i) In Council of Civil Service Unions Vs. Minister for the Civil Service, reported in (1984) 3 All ER 935 Lord Diplock enunciated three grounds upon which an administrative action is subject to control by judicial review, viz. (i) illegality (ii) irrationality and (iii) procedural impropriety, as follows:

"By "illegality" he means that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it, and whether he has or has not, is a justiciable question; by "irrationality" he means "Wednesbury unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided, could have arrived at it; and by "procedural impropriety" he means not only failure to observe the basic rules of natural justice or failure to act with procedural fairness, but also failure to observe procedural rules that are expressly laid down in the legislative instrument by which the tribunal's jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

(ii) The principle of "Wednesbury unreasonableness" or irrationality, classified by Lord Diplock as one of the grounds for intervention in judicial review, was lucidly summarised by Lord Greene M.R. in Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corpn., reported in (1948) 1 KB 223 = (1947) 2 All ER 680 as follows:

"...the court is entitled to investigate the action of the local authority with a view of seeing whether it has taken into account matters which it ought not to take into account, or conversely, has refused to take into account or neglected to take into account matters which it ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that the local authority, nevertheless, have come to a



conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere."

(iii) In State of U.P. & Anr. Vs. Johri Mal, reported in (2004) 4 SCC 714, the Hon'ble Supreme Court has observed thus:

"The scope and extent of power of the judicial review of the High Court contained in Article 226 of the Constitution of India would vary from case to case, the nature of the order, the relevant statute as also the other relevant factors including the nature of power exercised by the public authorities, namely, whether the power is statutory, quasi-judicial or administrative. The power of judicial review is not intended to assume a supervisory role or don the robes of the omnipresent. The power is not intended either to review governance under the rule of law or do the courts step into the areas exclusively reserved by the suprema lex to the other organs of the State. Decisions and actions which do not have adjudicative disposition may not strictly fall for consideration before a judicial review court."

(iv) In Rameshwar Prasad & Ors. (VI) v. Union of India & Anr., (2006) SCC 1, the Hon'ble Supreme Court observed thus,

"A person entrusted with discretion must, so to speak, direct himself properly in law. He must call his attention to matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules he may truly be said to be acting unreasonably. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority.

It is an unwritten rule of law, constitutional and administrative, that whenever a decision-making function is entrusted to be subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote."

(v) In Jayrajbhai Jayantibhai Patel v. Anilbhai Jayanitbhai Patel and Ors., reported in 2006 (8) SCC 200, the Hon'ble Supreme Court in Para 18 observed as under:-

"18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the



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conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a Court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the Court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision."

The following passage from Professor Bernard Schwartz's book Administrative Law (Third Edition) aptly echo's our thoughts on the scope of judicial review:

"Reviewing courts, the cases are now insisting, may not simply renounce their responsibility by mumbling an indiscriminate litany of deference to expertise. Due deference to the agency does not mean abdication of the duty of judicial review and rubber-stamping of agency action : [W]e must accord the agency considerable, but not too much deference; it is entitled to exercise its discretion, but only so far and no further."

Quoting Judge Leventhal from Greater Boston Television Corp. Vs. FCC, 444 F. 2d 841 (D.C.Cir. 1970), he further says:

"...the reviewing court must intervene if it 'becomes aware...that the agency has not really taken a 'hard look' at the salient problems, and has not genuinely engaged in reasoned decision-making..."

(vi) In Ganesh Bank of Kurundwad Ltd. and others Vs. Union of India and others, reported in (2006) 10 SCC 645, the Hon'ble Supreme Court in Paras 50 and 51 observed as under:-

"50. There should be judicial restraint while making judicial review in administrative matters. Where irrelevant aspects have been eschewed from consideration and no relevant aspect has been ignored and the administrative decisions have nexus with the



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facts on record, there is no scope for interference. The duty of the court is (a) to confine itself to the question of legality; (b) to decide whether the decision making authority exceeded its powers (c) committed an error of law (d) committed breach of the rules of natural justice and (e) reached a decision which no reasonable Tribunal would have reached or (f) abused its powers. Administrative action is subject to control by judicial review in the following manner:

(i) Illegality.- This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

(vii) Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires.

(viii) The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and



procedural impropriety."

(vii) In All India Railway Recruitment Board v. K. Shyam Kumar reported in 2010 (6) SCC 614, the Hon'ble Supreme Court, held as follows:

"22. Judicial review conventionally is concerned with the question of jurisdiction and natural justice and the Court is not much concerned with the merits of the decision but how the decision was reached. In Council of Civil Service Unions Vs. Minister of State for Civil Service (1984) 3 All ER 935 the (GCHQ Case) the House of Lords rationalized the grounds of judicial review and ruled that the basis of judicial review could be highlighted under three principal heads, namely, illegality, procedural impropriety and irrationality. Illegality as a ground of judicial review means that the decision maker must understand correctly the law that regulates his decision making powers and must give effect to it. Grounds such as acting ultra vires, errors of law and/or fact, onerous conditions, improper purpose, relevant and irrelevant factors, acting in bad faith, fettering discretion, unauthorized delegation, failure to act etc., fall under the heading "illegality". Procedural impropriety may be due to the failure to comply with the mandatory procedures such as breach of natural justice, such as audi alteram partem, absence of bias, the duty to act fairly, legitimate expectations, failure to give reasons etc.

23. Ground of irrationality takes in Wednesbury unreasonableness propounded in Associated Provincial Picture Houses Limited v. Wednesbury Corporation (1947) 2 All ER 680, Lord Greene MR alluded to the grounds of attack which could be made against the decision, citing unreasonableness as an 'umbrella concept' which covers the major heads of review and pointed out that the court can interfere with a decision if it is so absurd that no reasonable decision maker would in law come to it. In GCHQ Case (supra) Lord Diplock fashioned the principle of unreasonableness and preferred to use the term irrationality as follows:

"By 'irrationality' I mean what can now be succinctly referred to as "Wednesbury's unreasonableness", It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

24. In R. v. Secretary of State for the Home Department ex parte Brind (1991) 1 All ER 720, the



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House of Lords re-examined the reasonableness of the exercise of the Home Secretary's discretion to issue a notice banning the transmission of speech by representatives of the Irish Republican Army and its political party, Sinn Fein. Court ruled that the exercise of the Home Secretary's power did not amount to an unreasonable exercise of discretion despite the issue involving a denial of freedom of expression. House of Lords however, stressed that in all cases raising a human rights issue proportionality is the appropriate standard of review.

25. The House of Lords in *R (Daly) v. Secretary of State for the Home Department* (2001) 2 AC 532 demonstrated how the traditional test of *Wednesbury* unreasonableness has moved towards the doctrine of necessity and proportionality. Lord Steyn noted that the criteria of proportionality are more precise and more sophisticated than traditional grounds of review and went on to outline three concrete differences between the two:-

(1) Proportionality may require the reviewing Court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions.

(2) Proportionality test may go further than the traditional grounds of review in as much as it may require attention to be directed to the relative weight accorded to interests and considerations.

(3) Even the heightened scrutiny test is not necessarily appropriate to the protection of human rights.

Lord Steyn also felt most cases would be decided in the same way whatever approach is adopted, though conceded for human right cases proportionality is the appropriate test.

26. The question arose as to whether doctrine of proportionality applies only where fundamental human rights are in issue or whether it will come to provide all aspects of judicial review. Lord Steyn in *R. (Alconbury Development Limited) v. Secretary of State for the Environment, Transport and the Regions* (2001) 2 All ER 929 stated as follows:-

"I consider that even without reference to the Human Rights Act, 1998 the time has come to recognize that this principle (proportionality) is part of English administrative law not only when Judges are dealing with Community acts but also when they are dealing with acts subject to domestic law. Trying to keep the *Wednesbury* principle and proportionality in separate compartments seems to me to be unnecessary



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and confusing".

Lord Steyn was of the opinion that the difference between both the principles was in practice much less than it was sometimes suggested and whatever principle was applied the result in the case was the same.

27. Whether the proportionality will ultimately supersede the concept of reasonableness or rationality was also considered by Dyson Lord Justice in R. (Association of British Civilian Internees: Far East Region) v Secretary of State for Defence [2003] QB 1397 and stated as follows:-

"We have difficulty in seeing what justification there now is for retaining Wednesbury test but we consider that it is not for this Court to perform burial rights. The continuing existence of the Wednesbury test has been acknowledged by House of Lords on more than one occasion. A survey of the various judgments of House of Lords, Court of Appeals, etc. would reveal for the time being both the tests continued to co-exist."

28. Position in English Administrative Law is that both the tests that is. Wednesbury and proportionality continue to co-exist and the proportionality test is more and more applied, when there is violation of human rights, and fundamental freedom and the Wednesbury finds its presence more on the domestic law when there is violations of citizens ordinary rights. Proportionality principle has not so far replaced the Wednesbury principle and the time has not reached to say good bye to Wednesbury much less its burial.

29. In Huang case (2007) 4 All ER 15 (HL), the House of Lords was concerned with the question whether denial of asylum infringes Article 8 (Right to Respect Family Life) of the Human Rights Act, 1998. House of Lords ruled that it was the duty of the authorities when faced with individuals who did not qualify under the rules to consider whether the refusal of asylum status was unlawful on the ground that it violated the individual's right to family life. A structured proportionality test has emerged from that decision in the context of the violation of human rights. In R (Daly) (supra) the House of Lords considered both common law and Article 8 of the convention and ruled that the policy of excluding prisoners from their cells while prison officers conducted searches, which included scrutinizing privileged legal correspondence was unlawful.

30. Both the above-mentioned cases, mainly concerned with the violation of human rights under the



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Human Rights Act, 1998 but demonstrated the movement away from the traditional test of Wednesbury unreasonableness towards the test of proportionality. But it is not safe to conclude that the principle of Wednesbury unreasonableness has been replaced by the doctrine of proportionality.

31. Justice S.B. Sinha, as His Lordship then was, speaking for the Bench in *State of U.P., v. Sheo Shanker Lal Srivastava and Ors.* (2006) 3 SCC 276 after referring to the judgment of the Court of appeal in *Huang v. Secretary of State for the Home Department* (2005) 3 All ER 435, *R. v. Secretary of State of the Home Department, ex parte Daly* (2001) 3 All ER 433 (HL) opined that Wednesbury principle may not now be held to be applicable in view of the development in constitutional law and held as follows:-

"24. While saying so, we are not oblivious of the fact that the doctrine of unreasonableness is giving way to the doctrine of proportionality.

25. It is interesting to note that the Wednesbury principles may not now be held to be applicable in view of the development in constitutional law in this behalf. See, for example, *Huang v. Secy. of State for the Home Deptt.* wherein referring to *R. v. Secretary of State of the Home Department, ex parte Daly*, it was held that in certain cases, the adjudicator may require to conduct a judicial exercise which is not merely more intrusive than Wednesbury, but involves a full-blown merit judgment, which is yet more than *ex p. Daly*, requires on a judicial review where the court has to decide a proportionality issue."

32. *Sheo Shanker Lal Srivastava* case was later followed in *Indian Airlines Ltd., v. Indian Airlines Ltd., v. Prabha D.Kanan* (2006) 11 SCC 67. Following the above mentioned two judgments in *Jitendra Kumar and Others v. State of Haryana and Another* (2008) 2 SCC 161, the Bench has referred to a passage in *HWR Wade and CF Forsyth on Administrative Law*, 9th Edition. (2004), pages 371- 372 with the caption "Goodbye to Wednesbury" and quoted from the book which reads as follows:-

"The Wednesbury doctrine is now in terminal decline but the coup de grace has not yet fallen, despite calls for it from very high authorities" and opined that in some jurisdictions the doctrine of unreasonableness is giving way to doctrine of proportionality."

33. *Indian Airlines Ltd.'s* case and *Sheo Shanker Lal Srivastava's* case (*supra*) were again followed in



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State of Madhya Pradesh and Others v. Hazarilal, (2008) 3 SCC 273 and the Bench opined as follows:-

"Furthermore the legal parameters of judicial review have undergone a change. Wednesbury principle of unreasonableness has been replaced by the doctrine of proportionality."

34. With due respect, we are unable to subscribe to that view, which is an overstatement of the English Administrative Law.

35. Wednesbury principle of unreasonableness as such has not been replaced by the doctrine of proportionality though that test is being applied more and more when violation of human rights is alleged. H.W.R. Wade & C.F. Forsyth in the 10th Edition of Administrative Law (2009), has omitted the passage quoted by this court in Jitender Kumar case and stated as follows:

"Notwithstanding the apparent persuasiveness of these views the coup de grace has not yet fallen on Wednesbury unreasonableness. Where a matter falls outside the ambit of 1998 Act, the doctrine is regularly relied upon by the courts. Reports of its imminent demise are perhaps exaggerated." (emphasis applied).

36. Wednesbury and Proportionality - Wednesbury applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to 'assess the balance or equation' struck by the decision maker. Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalize or lay down a straight jacket formula and to say that Wednesbury has met with its death knell is too tall a statement. Let us, however, recognize the fact that the current trend seems to favour proportionality test but Wednesbury has not met with its judicial burial and a state burial, with full honours is surely not to happen in the near future.



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17. In the light of the above discussion, the prayer sought for in this writ petition cannot be granted. Accordingly the writ petition stands dismissed. No costs.

dpq

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal Health Secretary,
Government of Tamil Nadu,
Health and Family Welfare Department
Secretariat, Fort St.George,
Chennai 600 009.
2. The Director of Medical and
Rural Health Services and Family Welfare Department,
DMS Compound, Teynampet, Chennai 600 006.
3. The Director of Public Health and
Preventive Medicine,
DMS Compound, Teynampet,
Teynampet, Chennai 600 006.
4. The Chairman,
Tamil Nadu Slum Clearance Board,
Kamarajar Salai, Chennai 600 005.
5. The District Collector,
Kancheepuram District.
6. The Commissioner,
Chennai Corporation,
Ripon Buildings, Chennai 600 003.
7. The Secretary,
Urban Community, Health Centre,
Sholinganallur.

+1cc to Mr. Advocate, SR.No.58301/19

+1cc to the Govt.Pleader, Vide Sr.No.58307/19

Writ Petition No.19209 of 2019

Kak(20/08/2019)

Kak(10/09/2019)