

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM:

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

W.P.No.9329 of 2019 and
W.M.P.Nos.9889 & 9891 of 2019

P.R.Natesa Jayaraman
S/o.Natesa Thevar
President,
Nagapattinam Bar Association
Nagapattinam Taluk
Nagapattinam District ... Petitioner

Vs.

- 1.The Registrar General
High Court of Madras
Chennai - 600 104.
- 2.The Additional Chief Secretary to Government
Department of Home Cts.III Department
Fort St. George
Chennai - 600 009. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records in G.O. Ms. No.142 Home (Cts.III) Department dated 5.3.2019 on the file of second respondent and quash the same as illegal and direct the second respondent to constitute the district court at Nagapattinam.

For Petitioner : Mr.R.Sankarasubbu

For Respondents: Mr.K.Elangovan for R1
Mr.E.Manoharan,
Additional Govt. Pleader for R2

ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

Instant public interest litigation is filed for a Writ of Certiorarified Mandamus, to call for the records of the Additional Chief Secretary to Government, Department of Home

Cts.III Department, Chennai, in G.O.Ms. No.142 Home (Cts.III) Department dated 5.3.2019 and to quash the same, as illegal and consequently, for a direction to the 2nd respondent, to constitute the district court at Nagapattinam.

2. Petitioner is the President of Nagapattinam Bar Association and according to him, the Bar Association is aggrieved by the order of Additional Chief Secretary to Government passed in G.O. Ms. No.142 Home (CTS III) Department dated 5.3.2019 and that the same is issued, without jurisdiction under Section 3-A of Tamil Nadu Civil Courts Act, 1873. No amendment is permissible and that the amendment is partial, illegal and without jurisdiction.

3. It is the contention of the petitioner that there was a proposal to constitute an Additional District Court at Nagapattinam, to dispose of cases speedily. The said proposal was accepted and G.O.(Ms).No.793, Home (Cts-III) Department, dated 30.10.2017 was issued. However, certain vested interests induced the District Judge, Nagapattinam to submit a report, without consulting 195 Advocates of the Bar Association of Nagapattinam.

4. Without any basis, a stale report was submitted to the High Court that an Additional District Court may be constituted at Mayiladuthurai to cater to the needs of the public, in and around Mayiladuthurai area. The second respondent did not consider that there are two Sub-Courts, two District Munsif Courts, two Judicial Magistrate Courts, Special Magistrate FTC 138 N.1 Act Cases, and two Sub Courts, already functioning at Mayiladuthurai and these Courts would cater to the needs of public at large, whereas, there is only one Sub Court and one Munsif Court in Nagapattinam District Court campus and if an Additional District Court is constituted at Nagapattinam District Court campus, it would fulfill the needs of the general public and that the court would speedily dispose the cases.

5. Petitioner has further submitted that the District Judge has erroneously submitted the details based on statistics, for one year, whereas, the statistical data for a period of six years would only show the current status of the slow process in the disposal of cases. According to the petitioner, the report is stale, illogical and prepared for the purpose of satisfying those having vested interests and wanted to upset the earlier G.O.Ms.No.793, Home (Cts.III) Department, dated 30.10.2017, constituting Additional District Court at Nagapattinam. Thus, Nagapattinam Bar Association is agitated, as the amendment of the year 2019, is without jurisdiction and is taking away the legitimate rights of people of Nagapattinam.

6. It is the further contention of the petitioner that

Section 3A of Tamil Nadu Civil Courts Act, 1873 states that, after the recommendation of the High Court, the State Government may appoint one or more additional district judges to that court for such period, as may be deemed necessary, the additional district judge so appointed shall discharge the functions as assigned to him by district judge so appointed shall discharge the functions as assigned to them by district judge. Therefore, the above provision contemplates establishment of additional district judges only to the court, situated at Nagapattinam and not in any other place. Further, by constituting an additional district court, at Mayiladthurai, the learned Judge does not have the full powers for trial of cases, and whatever cases that are assigned by the District Judge, alone can be taken for disposal.

7. According to the petitioner, in G.O.Ms.297, Home (Cts-III) Department, dated 05.04.2017, the Government have rightly decided to establish an additional district Court at Nagapattinam, and the same cannot be nullified by issuing an amendment to the earlier G.O. By way of an amendment to the earlier G.O.Ms.No.297, Home (CTS-III) Department, dated 05.04.2017, additional district judge at Mayiladuthurai cannot be constituted and according to the petitioner, a fresh G.O. in supercession of the earlier G.O.Ms.No.297, Home (Cts.III) Department, dated 05.04.2017, has to be issued and therefore, the present G.O.Ms.142, dated 05.03.2019 is null and void and cannot be put into execution. A representation dated 27.02.2019, has been sent, to reconsider the proposal to constitute an additional district Court at Mayiladuthurai, upsetting earlier G.O. in year of 2017. Hence, the present writ petition has been filed, on the following grounds,

(i) Having issued G.O.(Ms)No.793, Home (Cts-III) Department, dated 30.10.2017, to constitute an Additional District Court at Nagapattinam, Government have now passed the impugned G.O.(Ms).No.218, Home (Cts-III) Department, dated 07.05.2019, changing the place of the Court to Mayiladuthurai, and there is no rationality. Nagapattinam Bar was not consulted. Thus, there is a violation of the principle of Natural Justice, Bar of Nagapattinam is a 100 years old Bar comprising of senior advocates.

(ii) The District Head Quarters is a centre stage and people from all walks of life are coming to Nagapattinam to attend the District Collector's Office, District Superintendent of Police Office for solving their problems and that they have no grievance about the conveyance and distance. Senior and experienced lawyers are at District Head Quarters to cater to the needs of litigants.

8. Heard the learned counsel for the petitioner. We called

for the files from the Registry and perused the materials available on record.

9. Files disclose that the District Judge, Nagapattinam has sent a letter dated 29.09.2010 to the Registrar General, High Court, Madras, along with a statement showing the particulars of cases, as on 31.10.2009, for both Civil and Criminal Unit of Nagapattinam and stated that in the courts situated in Nagapattinam Judicial District, 520 Sessions cases were pending trial as on 31.08.2010. Apart from this 289 Criminal Appeals, 69 Criminal Revision Cases 69 Original Suits, 60 Appeal Suits, 51 Civil Miscellaneous Appeals, 90 Original Petitions and 169 M.C.O.Ps were pending before District Court, Nagapattinam. In the Judicial Magistrate Courts, of Nagapattinam District. 394 P.R.C. Cases were pending to be committed to the court of Sessions as on 31.08.2010. He has submitted the statistical particulars of pendency of all categories of cases court wise as on 31.08.2010.

10. District Judge, Nagapattinam has further submitted that considering the available cases triable by Sessions Court and as there is only one Sessions Court in Nagapattinam District, it will be difficult to dispose of the Sessions Cases pending for many years. In view of the such pendency victims are ultimate sufferers, as the offenders in grave crime often go scotfree, in view of the several intervening circumstances due to lapse of many years.

11. The District Judge, Nagapattinam, has further submitted that he has to visit the Sub Jail periodically, to take up the Annual Inspection for all the Subordinate Courts of this District and surprise inspection to be made in all the courts both civil and criminal courts periodically, besides administrative work in the entire District. He has submitted that the existing District Court alone is not sufficient to dispose of the Sessions Cases, as the pendency was alarming. Hence he has requested that either an Additional District Court or One Fast Track Court for Nagapattinam be ordered to be constituted with staff.

12. Files disclose that the abovesaid request of the District Judge, Nagapattinam, was placed before the Administrative Committee. There were request from other District Judges also, for constituting additional courts and sanctioning of additional staff. Based on the request of various Bar Associations, proposals were called for, from the concerned Principal District Judges for sanction of additional staff, redeployment of staff and constitution of courts.

13. Files disclose that proposals were placed before the concerned Hon'ble Portfolio Judges and the Hon'ble Chief

Justice. As per the directions, proposals were placed before the Administrative Committee for consideration. Placing on record, the views of the Administrative Committee, the Registrar General, High Court, Madras, along with the statistical particulars of the pendency of cases, as on 01.07.2011, in the District Court, Nagapattinam, vide letter, dated 12.01.2012, has sent a proposal to the Principal Secretary to the Government, for constitution of Additional District Courts, including Nagapattinam. Pendency of cases, as on 01.07.2011, are as follows:

S.No.	Category of cases	Pending before District Court, Nagapattinam as on 1.7.2011
1	Sessions Cases	464
2	Criminal Appeals	234
3	Criminal Revisions	16
4	Original Suits	46
5	Appeal Suits	28
6	CMAs	20
7	MCOPs	72
8	Original Petitions	17
9	Execution Petitions	21
	TOTAL	918

14. Perusal of the files discloses that the District Judge, Nagapattinam, has sent a letter, dated 20.11.2014, to the Registrar General, High Court, Madras, wherein, he has stated that 1237 cases were pending as on 30.09.2014 in the Principal District Court at Nagapattinam and in addition to the District Court, an Additional District Court of Mahila is functioning in the Nagapattinam w.e.f 01.10.2013 with 112 sessions cases. He has further stated that the proposed constitution of Additional District Court is at Mayiladuthurai which is 70 kms far away from Nagapattinam Headquarters.

15. In the said letter, District Judge, Nagapattinam has submitted the statistical particulars of pendency of all categories of cases in the District Court, Nagapattinam; Mahila Court, Mayiladuthurai jurisdiction cases and remaining cases in the District Court, as follows:

Sl. No.	Court	Nature of cases	Pending as on 30.09.2014
1	District Court, Nagapattinam	OS	92

Sl. No.	Court	Nature of cases	Pending as on 30.09.2014
		AS	47
		C.M.A	45
		OP	99
		EP	136
		SC	87
		C.A	154
		CRL OP	21
		TOTAL	681
2	Fast Track Mahila Court, Nagapattinam	SC	112
		CA	27
		TOTAL	139
3	Mayiladuthurai Jurisdiction cases	OS	34
		AS	37
		C.M.A	26
		OP	37
		EP	26
		SC	32
		C.A	65
		CRL OP	9
		TOTAL	266

The number of remaining cases in the District Court at Nagapattinam if cases are transferred to the proposed Additional District Court at Mayiladuthurai, are given as hereunder:

OS	58
AS	10
C.M.A	19
OP	62
EP	110
SC	55
C.A	89
CRL OP	12
TOTAL	415

16. District Judge, Nagapattinam, in the abovesaid letter, has stated that if the cases transferred to the proposed Additional District Court at Mayiladuthurai only 415 cases only will remain in the District Court at Nagapattinam and it is not sufficient for the existing Principal District Court at Nagapattinam.

17. Files disclose that Government of Tamil Nadu, have issued G.O.Ms.No.297, Home (CTS-III) Department, dated 05.04.2017, sanctioning orders for constitution of 48 new Courts at various places of the State, including an additional district court at Nagapattinam. Relevant portion of the said Government Order is extracted hereunder:

GOVERNMENT OF TAMILNADU

ABSTRACT

Courts - Civil - Constitution of 48 new courts at various places of the State - Sanctioned - Orders issued.

Home (Cts-III) Department
G.O.Ms.No.297 Dated : 05.04.2017
Read:

From the Registrar General, High Court of Madras
D.O.letter No.90/A/2011/G/Judn, dated : 15.12.2016.

ORDER:

The Registrar General, High Court of Madras, in his letter read above has requested the Government to issue necessary sanction orders for Constitution of 48 new courts by way of creation/conversion/shifting at various places in the State which include Sub courts / Additional Sub courts / District Munsif Courts/Additional District Munsif Courts/District Munsic-cum-Judicial Magistrate Courts/Additional District Courts and Additional Courts. He has sent necessary proposals for constitution of these courts with staff and other requirements at a total expenditure of Rs.38,25,69,646/- (Recurring expenditure Rs.29,17,47,093/- and Non recurring expenditure Rs.9,08,22,553/-) as detailed below:-

.....
VI.Additional District Courts

SI .N o.	District	Place	No of Courts
1.	Tiruvannamalai	Tiruvannamalai	1
2.	Nagapattinam	Nagapattinam	1

SI .N O.	District	Place	No of Courts
3.	Virudhunagar	Srivilliputhur	1
4.	Sivagangai	Sivagangai	1

2. The Government, after careful examination, have decided to accept the proposal of the Registrar General, High Court of Madras and to accord sanction for the Constitution and Conversion of 48 new courts including Sub courts/District Munsif Courts/Additional District Munsif Courts/District Munsif-cum-Judicial Magistrate Court and Additional District Courts in various places of the State, with the staff and other infrastructure facilities as detailed in Annexures I to VII of this order at a total cost of Rs.36,26,45,274/- (Rupees thirty six crore twenty six lakh forty five thousand two hundred and seventy four only) (recurring Rs.33,08,10,274/- and non-recurring Rs.3,18,35,000/-).

3. The Government have decided to change the nomenclature of the post "Night Watchman" as "Watchman" and therefore the nomenclature of the post of "Night Watchman" henceforth be called as "Watchman". Also the 8 posts of Translators now proposed for the new courts shall be filled up from the 130 posts of Translators sanctioned for the Judiciary vide G.O.Ms.No.12, Home (Cts.II) Department, dated : 04.01.2017.

4. Other requirements for the newly constituted courts

The Director of Stationery and Printing, Chennai is directed to supply two Tamil Typewriters and two English Typewriters, stationery articles, forms and registers to the new courts free of cost against specific indent of the Judicial Officer concerned.

5. Notification:-

Notifications under the provisions of the Tamil Nadu Civil Courts Act, 1873 have to be published by the Government / High Court, Chennai in the Tamil Nadu Government Gazette for the constitution of 48 new courts in various places of the State.

6. The expenditure sanctioned in para 2 above shall be debited under the following heads of account:-

"2014.00 Administration of Justice - 105 Civil and Sessions Courts - State's Expenditure - AB - Mofussil, Civil Sessions Courts - Regular Establishments -

- (i) "01. Salaries (DPC 2014 00 105 AB - 0104)"
- (ii) "05. Office Expenses - 01 Telephone Charges (DPC 2014 - 00 - 105 - AB - 0515)"
- (iii) "05. Office Expenses - 05 Furniture (DPC 2014 - 00 - 105 - AB - 0551)" -
- (iv) "76 Computer and Accessories - 01. Purchase (DPC 2014 - 00 - 105 AB - 7616)." -
- (v) "68 Cost of Books/Note Books/Slates, etc." (DPC 2014 - 00 - 105 - AB - 6804)"
- (vi) "05. Office Expenses - 02. Other Contingencies (DPC 2014 - 00 - 105 - AB - 0524)"
- (vii) "19-Machinery and Equipments - 01 Purchase (DPC 2014 - 00 - 105 - AB - 1916)

7. The expenditure on Copyist Establishment shall be debited under the following head of account:-

"2014.00. Administration of Justice - 105 - Civil and Sessions Courts - State's Expenditure - AC - Mofussil, Civil and Sessions Courts - Copyist Establishments - 01 Salaries (DPC. 2014.00 - 105. AC 0102)"

8. The expenditure on Process Service Establishment shall be debited under the following head of account:-

"2014.00 Administration of Justice - 105 Civil and Sessions Courts - State's Expenditure - AD Mofussil, Civil and Sessions Courts - Process Service Establishments - 01 Salaries. (DPC 2014 00 - 105 AD - 0100)"

9. The incumbents of the posts newly created in various courts as detailed in Annexures I to VII of this order are eligible to draw pay and allowances as per the orders in force.

10. The expenditure sanctioned in para-2 above shall constitute an item of "New instrument of Service" and the approval of Legislature shall be obtained in due course of time. Pending approval of the Legislature, the expenditure may be initially met by drawal of an advance from the contingency fund. The Registrar General, High Court is requested to calculate the actual amount required for the period up to next supplementary estimates and apply for sanction of the same as advance from the contingency fund to Finance (BG-I) Department directly in Form 'A' appended to the Tamil Nadu Contingency Fund Rules, 1963 along with a copy of this order. Orders for sanction of an advance from the Contingency Fund will be issued from Finance (BG-I) Department. The Registrar General, High Court is also requested to

send necessary explanatory notes to the Government in Finance (BG-I/Home-II) Department for inclusion of this expenditure in the Supplementary Estimates for the year 2017-18 at the appropriate time without fail.

11. The Registrar General, High Court of Madras is requested to send necessary draft notification to the Government for publishing in the Tamil Nadu Government Gazette, under the provisions of the Tamil Nadu Civil Courts Act, 1873 [Central Act III of 1873] for the commencement of the new courts sanctioned.

12. The Pay and Accounts Officer / Treasury Officers concerned are requested to admit and honour the bills as and when presented if there are otherwise found to be in order.

13. This order issues with the concurrence of Finance Department vide its U.O.No.18636/Fin (CMPC)/2017 dated: 05.04.2017 and with Additional Sanction Ledger No.08 (Eight).

(BY ORDER OF THE GOVERNOR)

NIRANJAN MARDI

PRINCIPAL SECRETARY TO GOVERNMENT

To

The Registrar General, High Court, Chennai - 104.

The Principal District Judges, Tiruppur, The Nilgiris, Kanniyakumari, Madurai, Sivagangai, Ramanathapuram, Tiruchirappalli, Salem, Namakkai, Virudhunagar, Ariyalur, Tiruvallur, Dharmapuri, Dindigul, Kancheepuram, Pudukottai, Coimbatore, Krishnagiri, Tiruvannamalai, Nagapattinam, Chennai.

The Pay and Accounts Officers, Chennai-104/35/8/Madurai.

The Principal Accountant General (Civil Audit), Tamil Nadu, Chennai-18.

The Accountant General (A.&E), Tamil Nadu, Chennai - 18

The Commissioner of Treasuries and Accounts, Chennai-15.

The Director of Stationery and Printing, Chennai - 2.

All District Collectors

The Treasury Officers, Tiruppur, The Nilgiris, Kanniyakumari, Madurai, Sivagangai, Ramanathapuram, Tiruchirappalli, Salem, Namakkal, Virudhunagar, Ariyalur, Tiruvallur, Dharmapuri, Dindigul, Kancheepuram, Pudukottai, Coimbatore, Krishnagiri, Tiruvannamalai, Nagapattinam, Chennai.

Copy to:

The Finance (Home.II/BG.I/BG-II/CMPC) Department, Chennai-9.

The Public (Telephones. I) Department, Chennai - 9

SF/SC

//FORWARDED BY ORDER//

(R.SRIDHAR)

UNDER SECRETARY TO GOVERNMENT

Annexure-VI

Constitution of Additional District Courts

SI. No.	District	Place	No of Courts
1.	Tiruvannamalai	Tiruvannamalai	1
2.	Nagapattinam	Nagapattinam	1
3.	Virudhunagar	Srivilliputhur	1
4.	Sivagangai	Sivagangai	1

Staff for each Additional District Court:-

SI. No.	Name of the post	No. of Posts	Scale of Pay
1.	District Judge	1	27700-770-33090-920-40450-1080-44770
2.	Head Clerk	1	9300-34800+GP 4300
3.	Bench Clerk Gr.II	1	5200-20200+GP 2800
4.	Assistant	1	5200-20200+GP 2800
5.	Junior Assistant	3	5200-20200+GP 2400
6.	Steno typist Gr.III	1	5200-20200+GP 2400
7.	Typist	1	5200-20200+GP 2400
8.	Record Clerk	1	5200-20200+GP 2200
9.	Office Assistant	3	4800-10000+GP 1300
10.	Watchman cum Masalchi	1	4800-10000+GP 1300
	Total	14	

Expenditure for each Additional District Court:-

Recurring Expenditure

Salaries Rs.70,56,012

Law books Rs. 7,000

Broad Band Connection Rs. 7,000

Total Rs.70,70,012

Non-Recurring Expenditure

Furniture	Rs.4,00,000
Computer with printer	Rs.2,00,000
Permanent Advance	Rs. 1,000
Law books	Rs. 75,000
Laptop	Rs. 60,000

Total	Rs.7,36,000

Grand Total	Rs.78,06,012

Expenditure for 4 Additional District Courts

Recurring Expenditure	Rs.2,82,80,048
Non Recurring Expenditure	Rs. 29,44,000

Total	Rs.3,12,24,048

18. Files further disclose that the Government have issued G.O.Ms.No.793, Home (Cts.III) Department, dated 30.10.2017, constituting an Additional District Court at Nagapattinam and it reads thus,

GOVERNMENT OF TAMILNADU

ABSTRACT

Courts - Civil - Nagapattinam District - Constitution of Additional District Court at Nagapattinam - Publication of Notification in Tamil Nadu Government Gazette - Orders - Issued.

Home (Cts-III) Department

G.O. (Ms) No.793

Dated : 30.10.2017
ncwtpsk;gp tUlk;
Ig;grpj;jp';fs;
13?Mk; ehs;
jpUts;Sth;Mz;L.2048
Read:

1. G.O.Ms.No.297, Home (Courts-III) Department, dated : 05.04.2017.

2. From the Registrar General, High Court of Madras, Letter Roc.No.2341/2010/G3, dated: 18.09.2017.

ORDER:-

In the Government Order first read above, the Government have issued orders, among other things, for the constitution of Additional District Court at Nagapattinam in Nagapattinam District. Consequently, the Registrar General, High Court of Madras, has sent

draft notification to the Government with a request to cause the same be published in the Tamil Nadu Government Gazette.

2. The Government, after careful consideration, accept the proposal of the Registrar General, High Court of Madras. Accordingly, the following Notifications shall be published in the Tamil Nadu Government Gazette.

NOTIFICATION-I

In exercise of the powers conferred by section 3-A of the Tamil Nadu Civil Courts Act, 1873 (Central Act III of 1873), the Governor of Tamil Nadu, hereby appoints one Additional District Judge to the District Court at Nagapattinam and also alters the number of District Court at Nagapattinam and also alters the number of District Judges and Additional District Judges to be appointed to the said District Court as three with effect on and from the date on which the said Additional District Judge, assumes charge of the said Court.

(BY ORDER OF THE GOVERNOR)

NIRANJAN MARDI

ADDITIONAL CHIEF SECRETARY TO GOVERNMENT

19. Files further disclose that the Bar Association of Mayiladuthurai, has made a request to constitute an additional district court at Mayiladuthurai and the same has been forwarded to the High Court. After circulation to the Hon'ble Portfolio Judge, remarks and statistical particulars from the District Judge, have been called for. A Hon'ble sub-Committee has been constituted to look into the matter. Request of the Bar Association, Mayiladuthurai forwarded by the Principal District Judge, Nagapattinam has been placed before the Hon'ble Sub Committee, relating to Constitution of Courts. After considering the material on record, the Hon'ble Sub Committee has opined that, "The report of the Principal District Judge, Nagapattinam District dated 02.03.2015 shows that there are no sufficient cases for formation of an Additional District and Sessions Court at Mayiladuthurai. Hence, the proposal is not feasible for consideration at the present. The said issue shall be reconsidered after expiry of one year" - The aforesaid minutes has been approved by the Hon'ble Administrative Committee by circulation.

20. Perusal of the files disclose that Mayuram Bar Association has sent a letter to the Hon'ble Chief Justice, High Court, Madras, to establish an additional District Court at Mayiladuthurai, wherein, the said Bar Association has stated as follows:

"In Nagapattinam District, Mayiladuthurai is the major town consisting of more than two lakhs population. In and around Mayiladuthurai, there are around two hundred villages and Mayiladuthurai is the only town connecting those villages. Mayiladuthurai has got a Revenue Sub Division which consist of four taluks namely Mayiladuthurai, Tharangambadi, Sirkali and Kuttalam. All the four taluks comes under the jurisdiction of Mayiladuthurai Sub Courts namely Principal Sub Court and Additional Sub Court, Mayiladuthurai. Seventy percent of cases pending before the District Court, Nagapattinam hails from Mayiladuthurai Sub Division which includes Civil Suit Appeals against the Decree and Judgment of the Sub Courts, Civil Miscellaneous Appeals against the Decree and Judgment made in HMOP Cases pending on the file of Principal Sub Court, Mayiladuthurai, Criminal Appeals against the convictions made in Criminal Cases by the Judicial Magistrate Courts, Mayiladuthurai including Cheque Bounce cases and also Original Suits more than ten lakhs rupees of pecuniary jurisdiction from Mayiladuthurai Sub Division. Only thirty percent of cases pending in District Court, Nagapattinam hails from Nagapattinam Sub Division. At this juncture, it is imminent to have an Additional District and Sessions Court with full powers at Mayiladuthurai.

Litigants from Mayiladuthurai Sub Division who are having pending litigations at Nagapattinam District and Sessions Court has to travel to Nagapattinam either through a District namely Thiruvallur District or through a State namely Karaikkal of Pondicherry Union Territory to reach Nagapattinam. Moreover, the journey time for a litigant at Kollidam, the border of Nagapattinam District has to travel half a day to reach Nagapattinam to attend his case at Nagapattinam District Sessions Court.

Mayuram Bar Association is a more than hundred year old Traditional Bar consisting of two hundred and twenty members and twenty female members. For the past one decade, our continuous request before the Hon'ble High Court of Judicature at Madras is to have a Additional District and Sessions Court at Mayiladuthurai. In this connection, we would like to refer our resolutions passed in this regard.

Resolution No.1 dated 13.08.2013

It is unanimously resolved to request the Hon'ble High Court Judicature at Madras for establishment of Mahila Court, Additional District Judge Court, Family Court, Labour Court at Mayiladuthurai.

Resolution No.1 dated 08.08.2014

It is unanimously resolved to request to the Hon'ble High Court of Judicature at Madras for the establishment of Additional District Judge Court and Family Court, Labour Court at Mayiladuthurai

Resolution No.2 dated 01.07.2015

Unanimously resolved to request the Hon'ble High Court of Judicature at Madras for the establishment of Additional District Judge Court and Family Court, Labour Court, P.C.R. Courts at Mayiladuthurai.

Resolution No.5 dated 17.11.2015

Resolved to request the Hon'ble High Court to constitute Additional District Court at Mayiladuthurai

Resolution No.1 dated 07.04.2016

Resolved to request the Hon'ble High Court of Judicature at Madras for the establishment of Additional District and Sessions Judge Court with full powers at Mayiladuthurai. Public and Litigants at large had to cross either a District or a State to reach the District Court at Nagapattinam. Nearly 65% of the present works pending at District Court, Nagapattinam are hailing from Mayiladuthurai and Sirkali areas. Public had to travel a distance of 60 - 90 Kms to get justice. Hence, it was resolved to request the Hon'ble High Court, Madras for establishment of Additional District Court at Mayiladuthurai with full powers.

Resolution No. 1 dated 14.02.2017

Resolved to request the Hon'ble High Court of Judicature at Madras to establish an Additional Judge District Court at Mayiladuthurai with full powers including filing of bails, appeals and original suits on the lines of Kanchipuram Additional District Judge Court. Presently, 70% of works pending in Nagapattinam District and Sessions Court hails from Mayiladuthurai and Sirkali Regions. People i.e., Litigant Public has to travel across another State i.e., Karaikkal (or) another District i.e., Thiruvavur to reach Nagapattinam. Hence, establishment of an Additional District Judge Court at Mayiladuthurai is very much needed.

Resolution. No.3 dated 27.04.2017

Resolved to request the Hon'ble High Court of Judicature at Madras to set up the Family Court of Nagapattinam District at Mayiladuthurai as Additional District Court, Mayiladuthurai inclusive of other Civil and Criminal matters.

The above resolutions passed by our Bar will clearly reveal the need for a Additional District and

Sessions Court with full powers at Mayiladuthurai.

The members of Mayuram Bar Association pray before Our Lordship to kindly consider our request and pass suitable orders for establishment of Additional District and Sessions Court at Mayiladuthurai with full powers and render Justice."

21. Taking note of the request of the Bar Association, a detailed report with statistical particulars, were called for, from the District Judge, Nagapattinam. Accordingly, vide letter, dated 22.09.2017, the District Judge, Nagapattinam, has submitted a note, stating that as per the statistics collected, more than 50 % of cases in all the categories arise out of Mayiladuthurai jurisdiction. Further the distance between Mayilduthurai and Nagapattinam is about 55 to 60 kms. There is no direct bus or train link between Mayiladuthurai and Nagapattinam. Very few buses are plying directly between Mayiladuthurai and Nagapattinam. More over, the buses bound to Nagapattinam have to cross over Karikkal town which is considered to be the main bus route. To travel from Mayiladuthurai to Nagapattinam it will take atleast minimum two and half hours, because of the poor conveyance available and congestion.

22. He has further reported that various categories of cases which arise out of Mayiladuthurai jurisdiction and pending in the District Court, Nagapattinam are mostly represented by Advocates from Mayiladuthurai. Because of the above said poor transport facilities, the Advocates are mostly unwilling to attend their cases at various courts in Nagapattinam. The litigant Public from Mayiladuthurai also find it very difficult to attend their cases on time. This indirectly causes delay in the disposal of the cases. Because more than 50% of the cases in all the categories which are from Mayiladuthurai jurisdiction, pending in the District Court, Nagapattinam, it would be appropriate to constitute an additional district Court at Mayiladuthurai on both geographical and convenience point of views. For the abovesaid reasons, he has suggested that an additional district may also be constituted at Mayiladuthurai where the accomodation of the Court room can be arranged without any rental expenses, in the existing Combined Court Buildings, Mayiladthurai itself. Along with the letter, dated 22.09.2017, he has sent the statistical particulars of various categories of cases arising out of Mayiladuthurai jurisdiction, as follows:

Sl. No	Total No of cases pending in the District Court, Nagapattinam	No. of cases pending in the District Court, Nagapattinam arising from Mayiladuthurai Jurisdiction	Total number of cases at Nagapattinam District Court and Fast Track Mahila Court arising from Mayiladuthurai Jurisdiction		
	Nature of cases	Pending as on 31.8.2017	Nature of Cases	Pending as on 31.8.2017	-
1	O.S	116	O.S	63	-
2	A.S	121	A.S	97	-
3	C.M.A	85	C.M.A	44	-
4	O.P	121	O.P	63	-
5	E.P	212	E.P	52	-
6	S.C	93	S.C	52	-
7	C.A	71	C.A	61	51
8	CRL RP	31	CRL.R.P	12	-
9	M.C	1	-	-	-
	Total	851	Total	444	51

1) Total No. of cases pending in the District Court,
Nagapattinam - 851

2) No. of cases pending in the District Court, Nagapattinam
arising from Mayiladuthurai Jurisdiction - 444

3) Number of cases of pending in the Sessions Judge,
Fast Track Mahila Court, Nagapattinam
arising from Mayiladuthurai Jurisdiction - 51

Total number of cases at Nagapattinam District
Court and Fast Track Mahila Court arising from
Mayiladuthurai Jurisdiction - 495

23. Matter has been placed before the Hon'ble Portfolio Judge, and thereafter, before the Hon'ble Sub Committee. Decision on the above, has been deferred. Files further disclose that the Hon'ble Portfolio Judge, has given a letter, dated 27.04.2018, recommending constitution of an additional Court at

Mayiladuthurai, instead of Nagapattinam.

24. The Hon'ble Sub-Committee, among other matters, discussed and recommended for relocating the proposal for establishing an Additional District and Sessions Court at Mayiladuthurai, instead of Nagapattinam. Decision has been taken to constitute an additional court at Mayiladuthurai. Accordingly, Registry has been directed to address the State Government for issuing appropriate orders. The Registrar General, High Court, Madras, in his letter, dated 20.12.2018, has requested the Additional Chief Secretary to Government, Home (Cts-III) Department, Chennai, for an amendment to the earlier G.O.Ms.No.297, Home (Cts.III) Department, dated 05.04.2017 and the said letter is extracted hereunder:

"I am to state that the Government in the Government Order first cited, among other things, have issued orders for constitution of an Additional District Court at Nagapattinam, and the Government in the Government Order second cited, have issued notification u/s.3-A of the Tamil Nadu Civil Courts Act, 1873 (Central Act III of 1873). The same was also published in Issue No.47, in the Tamil Nadu Government Gazette in Part II Section 2, dated 22.11.2017.

In this connection, as directed, the High Court recommends the proposal for re-location of the Additional District and Sessions Court at Mayiladuthurai, instead of Nagapattinam, for the reasons stated below :-

The Nagapattinam District consists of eight taluks. While four taluks namely Nagapattinam, Vedaranyam, Kizhavelur and Thirukkuvalai come within the jurisdiction of the Sub-Court at Nagapattinam, Mayiladuthurai, Kuttallam, Tharangambadi and Sirkazhi taluks are within the jurisdiction of the Sub-Court at Mayiladuthurai. The headquarters of the District Nagapattinam is situate almost on the southern extremity of the District. The distance between Kollidam, which is a town in the northern border of the District and Nagapattinam is about 77 km. The distance between Manalmedu, which is situate on the North-Western extremity and Nagapattinam is about 79 km. The distance between Mayiladuthurai, which is the second biggest town in the District and Nagapattinam is about 57 km. There is no direct bus facility from many parts of the district to Nagapattinam. The connectivity as well as the condition of the roads in the area is very poor, leading to the travelling time being more than normal. As is the case in all the delta districts, the roads are with several bends,

which also contributes to the increase in the travelling time.

With the amendment of the Tamil Nadu Civil Courts Act, the District Court now has original jurisdiction also. Unlike the past the appearance of litigants before the District Courts is required since trials of civil suits are now being taken up by the District Courts. The object of formation of Additional District Courts apart from reducing the burden on the Principal District Court is also to facilitate the litigants and lawyers. The statistics provided by the Principal District Judge, Nagapattinam in September 2017 shows that the number of cases from Mayiladuthurai Sub Court's jurisdiction is more than 50% of the total number of cases in almost all categories, except Execution Petitions and Criminal Revision Petitions. Out of total number of 851 cases pending before the District Court, Nagapattinam 444 cases are from the Mayiladuthurai region. The Mayiladuthurai Bar Association has also been demanding constitution of Additional District Court at Mayiladuthurai for a long time now. If a new Additional District Court is constituted at Nagapattinam, the total number of cases will be split between the Principal District Court and the Additional District Court, resulting in the pendency being reduced to about 425 cases each. If a new Additional District Court is to be constituted at Mayiladuthurai thereafter and 444 cases from the Mayiladuthurai region are withdrawn to the new District Court at Mayiladuthurai, the pendency in the Principal and the Additional District Courts at Nagapattinam will only be around 200 each. The question of feasibility of establishing a new District Court in Mayiladuthurai which will have the effect of reducing pendency in the two District Courts at Nagapattinam to 200 each will then become an issue and by other considerations our answer will be no for one more Additional District Court at Mayiladuthurai. Also, the District Judge Nagapattinam in one of his report has suggested that the new Additional District Court could be located at Mayiladuthurai, instead of Nagapattinam. He has also given particulars of the time taken for travel between Mayiladuthurai and Nagapattinam. Constitution of the Family Court at Nagapattinam is also on the cards apart from constitution of a Special Mahila Court. In the event of constitution of a Family Court at Nagapattinam all HMOPs, now pending on the file of the Sub-Court at Mayiladuthurai will stand transferred to the Family Court. This will result in erosion of work in the

courts at Mayiladuthurai. The members of the Bar Association of Mayiladuthurai are also agitating due to the non-consideration of their request for establishing the Additional District Court at Mayiladuthurai. Hence, the request of the members of the Bar Association Mayiladuthurai is genuine and the proposal to relocate the Additional District Court at Mayiladuthurai instead of Nagapattinam will be beneficial to the litigant public in particular.

In view of the above, I am to request that the following amendments to the Government Order first cited, and a fresh notification are absolutely necessary for constitution of Additional District and Sessions Court at Mayiladuthurai, instead of Nagapattinam, and the same has to be issued by the Government.

DRAFT AMENDMENT

In G.O.Ms.No.297, Home (Cts-III) Department, dated 05.04.2017, in first paragraph, under the sub heading VI. Additional District Courts, in the table at page 2, against Sl.No.2, for the existing entries, the following entries shall be substituted namely :-

Sl.No	District	Place	No.of Courts
2.	Nagapattinam	Mayiladuthurai	1

Also, in the said G.O., in Annexure-VI, under the heading Constitution of Additional District Courts, in the table at page 22, against Sl.No.2, for the existing entries, the following entries shall be substituted namely:-

Sl.No.	District	Place	No.of Courts
2.	Nagapattinam	Mayiladuthurai	1

I am further to state that notification issued by the Government in G.O.(Ms) No.793, Home (Cts-III) Department, dated 30.10.2017 for constitution of Additional District Court at Nagapattinam, needs to be cancelled and the following fresh notification u/s. 3-A of the Tamil Nadu Civil Courts Act, 1873, for constitution of Additional District and Sessions Court at Mayiladuthurai, is necessary and the same may be issued by the Government.

NOTIFICATION

In exercise of the powers conferred by Section 3-A of the Tamil Nadu Civil Courts Act, 1873 (Central Act III of 1873), the Governor of Tamil Nadu, after consultation with the High Court of Madras, hereby

appoints one Additional District Judge, to the District Court, Nagapattinam, for the purpose of posting him as the Judge of the Additional District and Sessions Court at Mayiladuthurai and also fixes the number of District Judges and Additional District Judges to be appointed to the said District Court as Three with effect from the date on which the said Additional District Judge, Mayiladuthurai, assumes charge of Additional District and Sessions Court at Mayiladuthurai.

I am, therefore, to request that necessary amendment to G.O.Ms.No.297, Home (Cts-III) Department, dated 05.04.2017, and necessary fresh notification, as stated supra, for constitution of Additional District and Sessions Court at Mayiladuthurai may be issued on priority basis and the same may be communicated to the High Court, so as to enable the High Court to take further action in the above matter."

25. After giving due consideration to the matters, set out in the letter, dated 20.10.2018, State Government have issued G.O.(Ms.)No.142, Home (Cts.III) Department, dated 05.03.2019, as hereunder:

GOVERNMENT OF TAMILNADU

ABSTRACT

Courts - Nagapattinam District - Orders issued for the Constitution of Additional District Court at Nagapattinam - Amendment to G.O.Ms.No.297, Home (Cts.III) Department, dated : 05.04.2017 for the Constitution of Additional District Court at Mayiladuthurai - Orders Issued.

Home (Cts-III) Department
G.O. (Ms) No.142 Dated : 05.03.2019
tpsk;gp. khrp 21.
jpUts;Sth;Mz;L.2050

Read:

1. G.O.Ms.No.297, Home (Cts-III) Department, dated: 05.04.2017.
2. G.O.Ms.No.793, Home (Cts-III) Department, dated: 30.10.2017.
3. From the Registrar General, High Court of Madras, letter Roc.No.2341/2010/G3, dated: 20.12.2018.

ORDER:-

In the Government Order first read above, among other things, orders have been issued for the constitution of Additional District Court at Nagapattinam. In the Government Order second read above, necessary notification under Section 3-A of the Tamil Nadu Civil Courts Act, 1873 (Central Act III of 1873) has been issued and the same has been published in Issue No.47, in the Tamil Nadu Government Gazette in Part II Section 2, dated: 22.11.2017.

2. The Registrar General, High Court of Madras has now stated that the High Court recommends the proposal for re-location of the Additional District and Sessions Court at Mayiladuthurai, instead of Nagapattinam, for the reasons stated below:-

The Nagapattinam District consists of eight taluks. While four taluks namely Nagapattinam, Vedaranyam, Kizhavelur and Thirukkuvalai come within the jurisdiction of the Sub-Court at Nagapattinam, Mayiladuthurai, Kuttallam, Tharangambadi and Sirkazhi taluks are within the jurisdiction of the Sub-Court at Mayiladuthurai. The headquarters of the District Nagapattinam is situated almost on the southern extremity of the District. The distance between Kollidam, which is a town in the northern border of the District and Nagapattinam is about 77 km. The distance between Manalmedu, which is situated on the North-Western extremity and Nagapattinam is about 79 Km. The distance between Mayiladuthurai, which is the second biggest town in the District and Nagapattinam is about 57 km. There is no direct bus facility from many parts of the district to Nagapattinam. The connectivity as well as the condition of the roads in the area is very poor, leading to the travelling time being more than normal. As is the case in all the delta districts, the roads are with several bends, which also contributes to the increase in the travelling time.

With the amendment of the Tamil Nadu Civil Courts Act, the District Court now has original jurisdiction also. Unlike the past the appearance of litigants before the District Courts is required since trials of civil suits are now being taken up by the District Courts. The object of formation of Additional District courts apart from reducing the burden on the Principal District Court is also to facilitate the litigants and lawyers. The statistics provided by the Principal District Judge, Nagapattinam in September 2017 shows that the number of cases from Mayiladuthurai Sub

Court's jurisdiction is more than 50% of the total number of cases in almost all categories, except Execution Petitions and Criminal Revision Petitions. Out of total number of 851 cases pending before the District Court, Nagapattinam 444 cases are from the Mayiladuthurai region. The Mayiladuthurai Bar Association has also been demanding constitution of Additional District Court is constituted at Nagapattinam, the total number of cases will be split between the Principal District Court and the Additional District Court, resulting in the pendency being reduced to about 425 cases each. If a new Additional District Court is to be constituted at Mayiladuthurai thereafter and 444 cases from the Mayiladuthurai region are withdrawn to the new District Court at Mayiladuthurai, the Pendency in the Principal and the Additional District Courts at Nagapattinam will only be around 200 each. The question of feasibility of establishing a new District Court in Mayiladuthurai which will have the effect of reducing pendency in the two District Courts at Nagapattinam to 200 each will then become an issue and by other considerations our answer will be no for one more Additional District Court at Mayiladuthurai. Also, the District Judge Nagapattinam in one of his report has suggested that the new Additional District Court could be located at Mayiladuthurai, instead of Nagapattinam. He has also given particulars of the time taken for travel between Mayiladuthurai and Nagapattinam. Constitution of the Family Court at Nagapattinam is also on the cards apart from constitution of a Special Mahila Court. In the even of constitution of a Family Courts at Nagapattinam all HMOPs, now pending on the file of the Sub-Court at Mayiladuthurai will stand transferred to the Famil Court. This will result in erosion of work in the courts at Mayiladuthirai. The members of the Bar Association of Mayiladuthurai are also agitating due to the non-consideration of their request for establishing the Additional District Cort at Mayiladuthurai. Hence, the request of the members of the Bar Association Mayiladuthurai is genuine and the proposal to relocate the Additional District Court at Mayiladuthurai instead of Nagapattinam will be benefited to the litigant public in particular.

In view of the reasons stated above, the Registrar General, High Court of Madras has requested to issue the following amendments to the G.O.Ms.No.297, Home (Cts-III) Department, dated : 05.04.2017.

DRAFT AMENDMENT

In G.O.Ms.No.297, Home (Cts-III) Department, dated : 05.04.2017, in first paragraph, under the sub heading VI. Additional District Courts, in the table at page 2, against Sl.No.2, for the existing entries, the following entries shall be substituted namely:-

Sl.No	District	Place	No. of Courts
2.	Nagapattinam	Mayiladuthurai	1

Also, in the above said Government Order, in Annexure-VI, under the heading Constitution of Additional District Courts, in the table at page 22, against Sl.No.2, for the existing entries, the following entries shall be substituted namely:-

Sl.No	District	Place	No. of Courts
2.	Nagapattinam	Mayiladuthurai	1

3. The Registrar General has therefore requested orders seeking amendment to G.O.Ms.No.297, Home (Cts-III) Department, dated: 05.04.2017, for constitution of Additional District and Sessions Court at Mayiladuthurai instead of Additional District Court at Nagapattinam ordered to be constituted, in the said Government Order.

4. The Government, after careful examination of the proposal of the Registrar General, High Court of Madras at para 3 above have decided to accept it and to issue amendment to the Government Order first read above suitably for the constitution of Additional District Court at Mayiladuthurai in Nagapattinam District. Accordingly the following amendment is issued to G.O.Ms.No.297, Home (Cts.III) Department, dated: 05.04.2017.

AMENDMENT

In the said Government Order, in Annexure-VI, under the heading Constitution of Additional District Courts, in the table at page 22, against Sl.No.2, for the existing entries, the following entries shall be substituted namely:-

2.	Nagapattinam	Mayiladuthurai	1
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5. This order issues with the concurrence of the Finance Department vide its U.O.No.7499/Home-II/2019,

dated: 27.02.2019."

26. Thereafter, Government have issued G.O.Ms.No.218, Home (Cts.III) Department, dated 07.05.2019 and the same reads thus,

GOVERNMENT OF TAMILNADU

ABSTRACT

Courts - Civil - Nagapattinam District - Constitution of Additional District Court at Mayiladuthurai - Publication of Notification in Tamil Nadu Government Gazette - Orders - Issued.

Home (Cts-III) Department
G.O. (Ms) No.218
Dated : 07.05.2019
tpfhhp.rpj;jpiu 24.
jpUts;Sth;Mz;L.2050

Read:

1. G.O.Ms.No.297, Home (Cts-III) Department, dated: 05.04.2017.
2. G.O.Ms.No.793, Home (Cts-III) Department, dated: 30.10.2017.
3. From the Registrar General, High Court of Madras, letter Roc.No.2341/2010/G3, dated: 20.12.2018.
4. G.O.Ms.No.142, Home (Courts-III) Department, dated: 05.03.2019.

ORDER:-

In the Government Order first read above, among other things, orders have been issued for the constitution of Additional District Court at Nagapattinam in Nagapattinam District. In the Government Order second read above, necessary notification under Section 3-A of the Tamil Nadu Civil Courts Act, 1873 (Central Act III of 1873), has been issued and the same has been published vide Home Department's Notification No.II(2)/HO/958/2017 in the Tamil Nadu Government Gazette in Part-II-Section 2, dated: 22.11.2017.

2. The Registrar General, High Court of Madras in the letter third read above has sent proposal for relocation of the Additional District and Sessions Court at Mayiladuthurai instead of Nagapattinam by issuing amendment to the Government Order first read above. He has also stated that notification issued by the Government in G.O.(Ms).No.793, Home (Cts-III) Department, dated: 30.10.2017 for constitution of Additional District Court at Nagapattinam, needs to be

cancelled and requested to issue fresh notification under section 3-A of the Tamil Nadu Civil Courts Act, 1873 (Central Act III of 1873), in view of the constitution of Additional District and Sessions Court at Mayiladuthurai.

3. In the Government Order fourth read above, amendment has been issued to the Government Order first read above for the constitution of Additional District Court at Mayiladuthurai in Nagapattinam District by substituting the following entries against Sl.No.2 for the existing entries in Annexure-VI under the heading "Constitution of Additional District Courts" in the table at page 22:-

2.	Nagapattinam	Mayiladuthurai	1
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4. The Registrar General, High Court of Madras in the letter third read above has sent draft notification under section 3-A of the Tamil Nadu Civil Courts Act, 1873 (Central Act III of 1873) for the constitution of Additional District Court at Mayiladuthurai in Nagapattinam District and requested the Government to cause the same be published in the Tamil Nadu Government Gazette.

5. The Government, after careful consideration, have decided to accept the proposal of the Registrar General, High Court of Madras. Accordingly in supersession of orders issued in the Government Order second read above, the following Notification shall be published in the Tamil Nadu Government Gazette.

NOTIFICATION

In exercise of the powers conferred by section 3-A of the Tamil Nadu Civil Courts Act, 1873 (Central Act III of 1873) and in supersession of the Home Department's Notification No.II(2)/HO/958/2017 published at page 890 of Part-II-Section 2 of the Tamil Nadu Government Gazette dated the 22nd November, 2017, the Governor of Tamil Nadu hereby appoints one Additional District Judge to the Additional District Court at Mayiladuthurai in Nagapattinam District and also alters the number of District Judges and Additional District Judges to be appointed to the District Court at Nagapattinam as three with effect on and from the date on which the said Additional District Judge, assumes charge of the said Court.

(BY ORDER OF THE GOVERNOR)

NIRANJAN MARDI
ADDITIONAL CHIEF SECRETARY TO GOVERNMENT

27. Whether the Additional Chief Secretary to the Government, Department of Home Cts.III Department, Chennai, the 2nd respondent, has considered the ground reality, the need for constitution of an additional district Court, at Nagapattinam or Mayiladuthurai; whether notice has to be given to the bar associations; whether a bar association has a right to be heard, when a new Court is constituted; whether consultation from the Bar Associations, as to the Constitution of a Court is required; whether it is suffice that the High Court can decide the issue of Constitution of an additional district court, location of such Court, after obtaining a report from the Principal District Judge; whether the High Court has taken note of grievance of the litigants, convenience of the stake holders, in the matter of disposal of cases.

28. No provision has been pointed out to this Court that before constituting a court, at a place, the bar associations, as a matter of right can demand to be consulted or heard, and that only thereafter, a decision can be taken. Therefore, the contention of the petitioner that the Bar Association of Nagapattinam should have been consulted before the Constitution of Court at Mayiladuthurai and that the Bar Association ought to have been heard, and thus there is a violation of the Principles of Natural Justice, cannot be accepted for the reason that there is no Constitutional or Statutory right for any association, to demand a right of hearing or opportunity to be given, before establishing a court. No notice is required to be given to any association. Suffice to give due consideration of their request along with the report of the concerned District Judge, which, in the case on hand.

29. The Tamil Nadu Civil Courts Act (3 of 1873), has been enacted to consolidate and amend the law relating to the Civil Courts of the Madras Presidency Subordinate to the High Court. Part II deals with the establishment and constitution of civil courts.

30. Section 3 deals with the number of District Courts. As per Section 3 of the Act, the number of District (heretofore designated Zilla) Courts to be established or continued under this Act, shall be fixed, and may from time to time be altered, by the State Government.

31. Section 3-A was inserted by Section 2 of the Madras Civil Courts (Amendment) Act, 1931, (Madras Act 2 of 1931) and it reads thus:-

"When, in the opinion of the High Court, the state of business pending before the Judge of any District Court (hereinafter called the "District Judge") so requires, the [State Government] may appoint one or more Additional District Judges to that Court for such

period as they may deem necessary.

The Additional District Judges so appointed shall discharge all or any of the functions of the District Judge under this Act or any other law for the time being in force which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers as the District Judge."

32. Section 5 of the Act, deals with Court's Locality and the same is reproduced:-

"The place at which any Court under this Act shall be held may be fixed, and may, from time to time, be altered,-in the case of a District Court or a Subordinate Judge's Court, by the [State Government], in the case of a District Munsif's Court by the High Court.

[The places fixed for any Court under this section shall be deemed to be within the local jurisdiction of that Court.]"

33. Part III of the Act, deals with Jurisdiction. Section 10 deals with the local limits of jurisdiction of District Court or Subordinate Judges and its reads thus:-

"The [State Government] shall fix and may, from time to time, vary the local limits of the jurisdiction of any [District Court or Subordinate Judge's Court] under this Act.
[x x x]

The present local limits of the jurisdiction of every Civil Court (other than the High Court) shall be deemed to have been fixed under this Act."

34. Section 12 of the Act, deals with Jurisdiction of District Judge or Subordinate Judge in original suits and the same is reproduced:-

"The jurisdiction of a District Judge extends, subject to the rules contained in the Code of Civil Procedure, to all original suits and proceedings of a civil nature, of which the amount of value of the subject matter exceeds five lakh rupees. The jurisdiction of a Subordinate Judge extends, subject to the rules contained in the Code of Civil Procedure, to all like original suits and proceedings, of which the amount or value of the subject-matter exceeds one lakh rupees, but does not exceed five lakh rupees."

35. A conjoint reading of sections 3, 3A, 5 and 10 of the Tamil Nadu Civil Courts Act, 1873, makes it clear that the number of district courts to be established or continued under

the Act, shall be fixed, and may from time to time altered by the State Government, when in the opinion of the High Court, the State of business pending before the Judge of any District Court, so requires, the State Government may appoint one or more Additional District Judges to that court for such a period as they may deem necessary; the place at which any court this Act shall be held may be fixed, and may, from time to time, be altered in the case of a District Court or a Subordinate Judge's Court, by the State Government, in the case of District Munsif's Court by the High Court. The places fixed for any Court under this section shall be deemed to be within the local jurisdiction of that Court and the State Government shall fix and may, from time to time, vary the local limits of the jurisdiction of any District Court or Subordinate Judge's Court under this Act. The present local limits of the jurisdiction of every Civil Court other than the High Court shall be deemed to have been fixed under this Act. Contention of the petitioner that as per Section 3A of the Tamil Nadu Civil Courts Act, 1873, that an additional court can be constituted only at Nagapattinam is contrary to the provisions. What is referred to Section 3A of the Act is only appointment of district Judges in the courts constituted under Section 3 of the Act. Statutory provisions are clear and therefore the interpretation of the petitioner is erroneous.

36. Yet another contention made by the petitioner is that the Government having issued G.O.Ms.No.793 Home (Cts.III) Department dated 30.10.2017 to constitute an additional district court at Nagapattinam, have now issued G.O. Ms. No.218 Home (Cts.III) Department dated 7.5.2019 on stale grounds and that it is irrational. Earlier, the District Judge, Nagapattinam, in his letter dated 29.9.2010, while furnishing the details of the pendency of the cases as on 31.8.2010, i.e. 520 sessions cases, 289 criminal appeals, 69 criminal revision cases, 69 suits, 60 Appeal Suits, 51 CMAs, 90 OPs, 169 MCOP and 394 cases, pending committal, has stated that as there is only one Sessions Court in Nagapattinam, there is difficulty in disposing of the Sessions cases, pending for many years and ultimately the offenders go scot-free. In 2010, the then District Judge, Nagapattinam, has also expressed difficulty in conducting inspection in Sub-Jails and Subordinate Courts, besides administrative work. Having regard to the existence of only one District Court at Nagapattinam and for the above said reasons, the then District Judge, Nagapattinam, has requested constitution of an additional court at Nagapattinam. Accordingly, while considering the difficulties expressed by the then District Judge, Nagapattinam, additional court at Nagapattinam was constituted. Whereas, when the Bar Association of Mayiladuthurai made a request for constitution of an additional court at Mayiladuthurai, remarks have been called for from the District Judge, Nagapattinam and vide letter dated

20.11.2014, he has not only furnished the pendency of cases in Nagapattinam District Court, he has also detailed that constitution of an additional court at Mayiladuthurai, would be beneficial to the litigants and lawyers, the distance and other factors, morefully detailed in the forgoing paragraphs. As stated supra, the issue of constituting an additional district court at Nagapattinam or Mayiladuthurai, and similar requests and other issues, have been placed before a Hon'ble Sub Committee. Recommendations of the Hon'ble Sub Committee were accepted. No error can be found in the decision making process.

37. One of the contentions made in the writ petition is that no amendment can be issued to G.O.Ms.No.793 Home (Cts-III) Department, dated 30.10.2017, under Section 3-A of the Tamil Nadu Civil Courts Act, 1873 and the State Government in supersession of the said G.O., ought to have issued a fresh Government Order. Said submission is untenable for the reason that, the expression "time to time" used in Section 3 for the number of courts, place at which any court may be fixed in section 5, limits of jurisdiction in Section 10 of the Act, makes it clear that the State Government, in exercise of the powers in Section 21 of the General Clauses Act, 1897 can issue orders, amending the earlier G.O.Ms.No.793 Home (Cts-III) Department, dated 30.10.2017 and that there is no need to issue a fresh G.O. as contended by the petitioner. Section 21 of the General Clauses Act, 1897, reads thus:-

21. Power to issue, to include power to add to, amend, vary or rescind notification, orders, rules, or bye-laws.- Where, by any [Central Act] or Regulations a power to [issue notifications,] orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any [notifications,] orders, rules or bye-laws so [issued].

38. On the above aspect, we also deem it fit to consider few decisions,

(i) In Kamla Prasad Khetan v. Union of India reported in AIR 1957 SC 676, the Hon'ble Supreme Court, while considering the scope of Section 21 of the General Clause Act, 1897, observed thus:

"The power to issue an order under any Central Act includes a power to amend the order; but this power is subject to a very important qualification and the qualification is contained in the words 'exercisable in the like manner and subject to the like sanction and conditions (if any)'.....The true scope and effect of the expression 'subject to the like

conditions (if any)' occurring in Section 21 of the General Clauses Act has been explained."

(ii) In *Lachmi Narain v. Union of India* reported in 1976 (2) SCC 953, the Hon'ble Supreme Court held that Section 21 embodies only a rule of construction and the nature and extent of its application must be governed by the relevant statute which confers nor could the Respondents derive any authority or validity from section 21 of the General Clauses Act, for the notifications withdrawing the exemptions.

(iii) In *Durairaju Naidu v. State of Tamil Nadu* reported in AIR 1994 Madras 68, this Court held that inasmuch as Section 15(1) confers upon the State Government the power to make rules for regulating the grant of quarry leases, mining leases or other mining concessions in respect of minor minerals, it also confers upon the State Government, the power to add a new rule or to amend the rules already made for the purposes mentioned in Section 15(1) of the Act. In other words, by virtue of Section 21 of the General Clauses Act, 1897, the power which the State Government has under Section 15(1) to make rules, for the purposes mentioned in that section in respect of minor minerals, includes the powers to add or to amend the rules so issued already.

(iv) In *Chairman, Public Service Commission v. Sudarshan Singh jamwal* reported in 1998 (9) SCC 327, the Hon'ble Supreme Court, at Paragraph 3, held as follows:

"Section 21 of the General Clauses Act says that where by any Central Act or Regulation a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. The order, upon which the first respondent relied, was, according to the High Court itself, issued in the exercise of the State Government's inherent power, meaning, apparently, the power derived from Section 21 of the General Clauses Act."

(v) In *Tamil Nadu Government All Department, etc. v. Union of India* reported in 2005 (4) LW 347, this Court, at Paragraphs 17 and 18, held as follows:

"17. In this context, Section 21 of the General Clauses Act, 1897 would be relevant. Section 21 of the General Clauses Act runs as under:

"Power to issue, to include power to add to, amend, vary or rescind, notifications, orders, rules or bye-laws.--Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and

subject to the like sanction, and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

18. The above section would indicate that the power to create includes the power to destroy, and also the power to alter what is created. In other words, the power to rescind a notification is inherent in the power to issue the notification. As such, the specific provision regarding the power to vary, amend, or rescind notification etc. could also be made in the Act itself. It is also well settled that where the specific provision is made in the Act itself, the specific provision would prevail and in that case there is no need to invoke Section 21 of the General Clauses Act. Since there is no provision at all in the Administrative Tribunals Act regarding the mode of abolition of the Tribunal, in our opinion, the provisions of Section 21 of the General Clauses Act would apply. If any notification issued by the Government is to be rescinded by virtue of the powers given under Section 21 of the General Clauses Act, such power to rescind the notification must be exercised in like manner and subject to the like sanction and condition as in the case of issuing the notification."

(vi) In *M.P.Gangadharan v. State of Kerala* reported in AIR 2006 SC 2360, the Hon'ble Supreme Court held as follows:

"In terms of Section 21 of the General Clauses Act, 1897, (corresponding to the relevant provisions in Interpretation and General Clauses Act, 1925), the power to issue would include the power to amend, vary or rescind, notifications and orders. If a notification could be issued establishing a Family Court at Manjeri, we do not see any reason why another notification cannot be issued by the State to shift the said Court to another place but within the same area of the Family Court. In terms of Section 21 of the General Clauses Act, the State Government will indisputably have jurisdiction to abolish a Family Court and establish one at another place."

(vii) In *Shree Sidhballi Steels Ltd., v. State of Uttar Pradesh* reported in 2011 (3) SCC 193, the Hon'ble Supreme Court, at Paragraph 41, held as follows:

"41. By virtue of Section 14 and 21 of the General Clauses Act, when a power is conferred on an authority to do a particular act, such power can be exercised from time to time and carries with it power to withdraw, modify, amend or cancel the notifications earlier issued, to be exercised in the like manner and subject to like conditions, if any, attached with the

exercise of the power. It would be too narrow a view to accept that chargeability once fixed cannot be altered. Since the charging provision in the Electricity (Supply) Act, 1948 is subject to the State Government's power to issue notification under Section 49 of the Act granting rebate, the State Government, in view of Section 21 of the General Clauses Act, can always withdraw, rescind, add to or modify an exemption notification. No industry can claim as of right that the Government should exercise its power under Section 49 and offer rebate and it is for the Government to decide whether the conditions are such that rebate should be granted or not."

(viii) In *L & T Komatsu Ltd., v. All India Trade Union Congress Karnataka State Committee* reported in 2012 (III) LLJ 187 (Kant.), the Karnataka High Court held that the concerned Government has power to rescind an earlier notification issued under Section 10(1) of Contract Labour Act, 1970, by virtue of Section 21 of General Clauses Act, 1897 and its decision being one of policy cannot be subject of judicial review.

(ix) In *State of Rajasthan v. Basant Agrotech (India) Ltd.*, reported in 2013 (15) SCC 1, the Hon'ble Supreme Court explained the words, "from time to time", as follows:

"49. At this juncture, we may fruitfully refer to the meaning given to the words "from time to time" in certain dictionaries and the description made in certain other texts. In "Words and Phrases", Volume 17 A, 1974, "from time to time" has been enumerated in various contexts. We may think it appropriate to reproduce certain contexts which are useful in the present case. "The phrase "from time to time" means as occasion may arise, at intervals, now and then occasionally. *Florey v. Meeker*, 240 P. 2d 1177, 1190, 194 Or. 257."

In constitutional amendment, authorizing Legislature to alter salaries of named county officers "from time to time", the quoted phrase does not mean from "term to term". *Almon v. Morgan County*, 16 So.2d 511, 514, 245 Ala. 241."

The phrase "from time to time", as used in the Constitution, authorizing the Legislature to increase the number of judges of the Supreme Court from time to time, means occasionally; that is, as occasion requires, and therefore the words cannot be held to mean that the Legislature may not decrease the number of judges after an increase thereof. *State v. McBride*, 70 P.25, 27, 29 Wash. 335."

The Century Dictionary defines the phrase 'from time to time' to mean 'occasionally'; and the Universal Dictionary defines 'from time to time' to mean, 'at intervals; now and then.' The phrase is used in such meaning in Acts 1898, c. 123, para 95, which directs the police commissioners of Baltimore, at the request of the park commissioners, to detail from time to time members of regular police force for preservation of order in the parks. Upshur v. City of Baltimore, 51 A. 953, 955, 94 Md. 743.

The county board of supervisors had no authority to alter an election precinct in September, under statute providing that board may, from time to time, change the boundaries of precincts and providing that changes might be made at regular or special meeting in July, since the two provisions were in pari materia and should be construed together in the light of all the provisions of the statute, the words "from time to time" meaning "at times to recur," and not "at any time." Laws 1885, p. 193 para 29, Laws 1871-72, p. 380, para 30, S.H.A. ch. 46, para 29, 30. County Board of Union County v. Short, 77 Ill App. 448.

50. In The Law Lexicon, The Encyclopedic Law Dictionary: (2nd edition, 1997, page 764), the words have been conferred the following meaning:-

"From time to time - "as occasion may arise". The words "from time to time" mean that an adjournment may be made as and when the occasion requires and they will not mean adjournment from one fixed day to another fixed day. The words "from time to time" are words which are constantly introduced where it is intended to protect a person who is empowered to act from the risk of having completely discharged his duty when he has once acted, and therefore, not being able to act again in the same direction. The meaning of the words "from time to time" is that after once acting the donee of the power may act again; and either independently of, or by adding to, or taking from, or reversing altogether, his previous act."

51. In Blacks Law Dictionary: (5th edition page 601), it has been defined as follows:-

"From time to time - Occasionally, at intervals, now and then."

52. In Stroud's Judicial Dictionary: (5th edition volume 2 page 1053), it has been stated as follows:- "From time to time 'as occasion may arise' (as per William, J., Bryan v. Arthur, 11 A. & E 117)."

53. Thus, the conspectus of authorities and the meaning bestowed in the common parlance admit no room

of doubt that the words "from time to time" have a futuristic tenor and they do not have the etymological potentiality to operate from a previous date. The use of the said words in the Section 16 of the Act cannot be said to have conferred the jurisdiction on the State Government or delegate to issue a notification in respect of the rate with retrospective effect. Such an interpretation does not flow from the statute which is the source of power."

(x) In *Nal Layout Residents Association v. Bangalore Development Authority* reported in 2018 (12) SCC 400, the Hon'ble Supreme Court, held as follows:-

35. However, when the State has exercised its power under Section 48(1) by withdrawing from acquisition there is nothing in the Land Acquisition Act, 1894 to indicate that such Notification cannot be amended varied or rescinded by issuing a notification in like manner. In the event, it is accepted that after issuance of Notification under Section 48, there is no power to amend, vary or rescind any such Notifications, it may cause undue hardship. Take an example of simple mistake whereby Notification under Section 48 has been issued where acquisition has been completed in all respects and acquired land had already been utilized. We are thus of the opinion that there may be several circumstances where Notifications under Section 48 may be required to be amended, modified or rescinded. As observed above, there is nothing in the Act, which indicates that after exercising power under Section 48, the State Government exhaust its jurisdiction to vary, amend, modify or rescind the notification. Thus, the applicability of Section 21 of General Clauses Act in exercise of power under Section 48 of Act 1894 by a Notification cannot be denied.

(xi) In *Industrial Infrastructure Development Corporation (Gwalior) vs. Commissioner of Income Tax* reported in 2018 (4) SCC 494, the Hon'ble Supreme Court, held as follows:-

"25. The general power, under Section 21 of the General Clauses Act, to rescind a notification or order has to be understood in the light of the subject matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after an enforceable right has accrued under the notification or order. Moreover, Section 21 has no application to vary or amend or review a quasi

judicial order. A quasi judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules under which it is made."

39. Tamil Nadu General Clauses Act, 1867, has been enacted for shortening the language used in Tamilnadu Acts and for other purposes. Section 13 of the Tamil Nadu General Clauses Act, 1867 states that,

"When powers and duties to be exercised and performed.- Where an Act confers a power or imposes a duty, then the power may be exercised and the duty shall be performed from time to time as occasion requires."

Section 15 of the said Act, reads thus:-

"15. Revocation and alteration of rules, by-laws and orders.- Where an Act confers a power to make any rules or by-laws, or 2[to issue notifications or orders,] the power shall be construed as including a power exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, ~~and~~ amend or vary the rules, 2[by-laws, notifications or orders].

2 In sections 10 and 15, for the words "to issue orders", the words "to issue notifications or orders" and for the words "by-laws or orders", the words "by-laws, notifications or orders" were substituted by section 3 of, and the Second Schedule to, the Tamil Nadu Repealing and Amending Act, 1966 (Tamil Nadu Act XXXVI of 1955).

In so far as this Act applies to the added territories, for the words "to issue orders," the words "to issue notifications or orders" and for the words "by-laws or orders," the words "bylaws, notifications or orders" were substituted by section 4 of, and the Second Schedule to, the Tamil Nadu (Added Territories) Extension of Laws (No. 2) Act, 1961 (Tamil Nadu Act 39 of 1961)."

40. Section 15 of the Tamil Nadu General Clauses Act, 1891, is more or less similar to Section 21 of the General Clauses Act, 1897, and therefore, we are of the view that judgments, relating to power to rescind, revoke, amend or vary the orders issued, can be made applicable to the case on hand.

41. Contention of the petitioner that vested rights induced the District Judge, Nagapattinam to submit a report to the High

Court is unacceptable, as the District Judge, Nagapattinam, has only sent the statistics of the pendency of cases, as per the directions of the High Court.

42. Bare reading of the G.O.Ms.No.218, Home (Cts.III) Department, dated 07.05.2019, shows that the High Court has considered the number of taluks in Nagapattinam District; distance between Mayiladuthurai and Nagapattinam about 57 kms; no direct bus facility from many parts of the district to Nagapattinam, object of formation of an Additional District Court to facilitate the litigants and lawyers, the statistics furnished by the District Judge, Nagapattinam that out of 851 pending cases in District Court, Nagapattinam, 444 cases; i.e., more than 50% of the total number of cases are from Mayiladuthurai Sub Court jurisdiction, except execution petitions and criminal revision petitions. High Court has also considered that if a new court is constituted at Mayiladuthurai, then the cases in District Court would be split up between the Principal District Court and the Additional District Court at Mayiladuthurai, resulting in reducing the pendency in District Court, Nagapattinam, to 425 cases. Cases arising out of Mayiladuthurai region can be withdrawn to the Additional District Court, at Mayiladuthurai. Yet another factor, that has been taken note of is that constituting a Family Court at Nagapattinam was also on the cards, apart from constitution of a Special Mahila Court, and in the event of Constitution of a Family Court at Nagapattinam, all the HMOPs pending on the file of Sub Court at Mayiladuthurai, would stand transferred to Family Court at Nagapattinam, which would result in reduction of work, in the Court at Mayiladuthurai. Considering all the above, High Court has found that constitution of an additional court at Mayiladuthurai is required and accordingly sent the proposal to the government to issue appropriate orders. Accordingly, Government have issued G.O.Ms.No.218, Home (Cts.III) Department, dated 07.05.2019.

43. Though the petitioner has contended that the 2nd respondent has not considered the existing Sub Courts and Magisterial Courts in Mayiladuthurai, compared to the Courts in Nagapattinam, we are inclined to accept the said contention for the reason that the issue pertains to constitution of an additional district court, whether it should be at Mayiladuthurai or Nagapattinam.

44. Yet another contention made by the petitioner is that six years data alone would show the status of the pendency of cases and not one year. No substantive provision has been pointed out in support of the above contention. On the contra, from the files it could be seen that by constituting an additional Court at Mayiladuthurai, about 918 cases would be

transferred to the Court at Mayiladthurai, and that disposal of the cases would be quicker.

45. Expediency and utility of the Court at Mayiladthurai than at Nagapattinam has been considered and decision taken. Administration of justice is to vindicate the cause of the litigant public, by comparing all pros and cons, like, distance, pendency, speedy justice and the action to be taken by the authority. State Government is empowered to take a decision, in consonance with Sections 3, 3A, 5 and 10 of the Tamil Nadu Civil Courts Act, 1873. Scope of judicial review of the decision is very much limited, unless it is shown that the decision making process is capricious, arbitrary whimsical so as to offend any provision in the constitution or the provisions of the Tamil Nadu Civil Courts Act, 1873. On the said aspect this Court deems 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 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 Jayantibhai 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 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 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 Bank of India v. T.Jogam reported in 2007 (7) SCC

236, the Hon'ble Supreme Court has held that it is well settled principle of law that Judicial review is not against the decision, but is against the decision making process.

(viii) In State of Maharashtra v. Prakash Prahland Patil reported in 2009 (12) SCC 159, the Hon'ble Supreme Court, at Paragraphs 5 and 6, held as follows:

"5. The scope for judicial review has been examined by this court in several cases. It has been consistently held that the power of judicial review is not intended to assume a supervisory role or don the robes of omnipresent. The power is not intended either to review governance under the rule of law nor do the courts step into the areas exclusively reserved by the supreme lex to other organs of the State. A mere wrong decision, without anything more, in most of the cases will not be sufficient to attract the power of judicial review. The supervisory jurisdiction conferred upon a court is limited to see that the authority concerned functions within its limits of its authority and that its decisions do not occasion miscarriage of justice.

6. The courts cannot be called upon to undertake governmental duties and functions. Courts should not ordinarily interfere with a policy decision of the State. While exercising power of judicial review the court is more concerned with the decision making process than the merit of the decision itself."

(ix) 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 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 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 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 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.

37. Proportionality, requires the Court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. Courts entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate, i.e. well balanced and harmonious, to this extent court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere.

38. Leyland and Anthony on Textbook on Administrative Law (5th edn. OUP, 2005) at p.331 has amply put as follows:

"Proportionality works on the assumption that administrative action ought not to go beyond what is necessary to achieve its desired results (in every day terms, that you should not use a sledgehammer to crack a nut) and in contrast to irrationality is often understood to bring the courts much closer to

reviewing the merits of a decision".

39. Courts have to develop an indefeasible and principled approach to proportionality till that is done there will always be an overlapping between the traditional grounds of review and the principle of proportionality and the cases would continue to be decided in the same manner whichever principle is adopted. Proportionality as the word indicates has reference to variables or comparison, it enables the Court to apply the principle with various degrees of intensity and offers a potentially deeper inquiry into the reasons, projected by the decision maker."

(x) In Union of India v. Rajasthan High Court reported in 2017 (2) SCC 599, the Hon'ble Supreme Court, at Paragraph 13, while discussing the scope of judicial review, held as follows:

"13.The powers under Article 226 are wide - wide enough to reach out to injustice wherever it may originate. These powers have been construed liberally and have been applied expansively where human rights have been violated. But, the notion of injustice is relatable to justice under the law. Justice should not be made to depend upon the individual perception of a decision maker on where a balance or solution should lie. Judges are expected to apply standards which are objective and well defined by law and founded upon constitutional principle. When they do so, judges walk the path on a road well-travelled. When judicial creativity leads judges to roads less travelled, in search of justice, they have yet to remain firmly rooted in law and the Constitution. The distinction between what lies within and what lies outside the power of judicial review is necessary to preserve the sanctity of judicial power. Judicial power is respected and adhered to in a system based on the rule of law precisely for its nuanced and restrained exercise. If these restraints are not maintained the court as an institution would invite a justifiable criticism of encroaching upon a terrain on which it singularly lacks expertise and which is entrusted for governance to the legislative and executive arms of government. Judgments are enforced, above all, because of the belief which society and arms of governance of a democratic society hold in the sanctity of the judicial process. This sanctity is based on institutional prestige. Institutional authority is established over long years, by a steadfast commitment to a calibrated exercise of judicial power. Fear of consequences is one reason why citizens obey the law as well as judicial decisions. But there are far stronger reasons why they do so and

the foundation for that must be carefully preserved. That is the rationale for the principle that judicial review is confined to cases where there is a breach of law or of the Constitution."

(xi) In *Royal Medical Trust v. Union of India* reported in 2017 (16) SCC 605, the Hon'ble Supreme Court, on the scope of judicial review, held as follows:

"The principle of judicial review by the constitutional courts have been lucidly stated in many an authority of this Court. In *Tata Cellular v. Union of India*¹⁷, dealing with the concept of Judicial Review, the Court held:-

"Lord Scarman in *Nottinghamshire County Council v. Secretary of State for the Environment* proclaimed:

'Judicial review' is a great weapon in the hands of the judges; but the judges must observe the constitutional limits set by our parliamentary system upon the exercise of this beneficial power." Commenting upon this Michael Supperstone and James Goudie in their work *Judicial Review* (1992 Edn.) at p. 16 say:

"If anyone were prompted to dismiss this sage warning as a mere obiter dictum from the most radical member of the higher judiciary of recent times, and therefore to be treated as an idiosyncratic aberration, it has received the endorsement of the Law Lords generally. The words of Lord Scarman were echoed by Lord Bridge of Harwich, speaking on behalf of the Board when reversing an interventionist decision of the New Zealand Court of Appeal in *Butcher v. Petrocorp Exploration Ltd.* 18-3-1991." Observance of judicial restraint is currently the mood in England. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.

Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself."

44. After so stating, reference was made to the law enunciated in *Chief Constable of the North Wales Police v. Evans* (1982) 3 All ER 141 wherein, it has been ruled:-

"Judicial review, as the words imply, is not an

appeal from a decision, but a review of the manner in which the decision was made.

* * * Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

45. In the said case, the Court also referred to R. v. Panel on Take-overs and Mergers, ex. P. Datafin plc (1987) 1 All ER 564 wherein Sir John Donaldson, M.R. Commented:-

"An application for judicial review is not an appeal."

46. The three Judge Bench further held:-

"The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?

2. Committed an error of law,

3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers."

47. The Court further opined that in the process of judicial review, it is only concerned with the manner in which the decisions have been taken. The extent of the duty is to act fairly. It will vary from case to case. Explicating further, it ruled:-

"Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(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.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

48. Thereafter, the Court referred to the

authorities in *R. v. Askew* 20 and *Council of Civil Service Unions v. Minister for Civil Service*²¹ and further expressed:-

"At this stage, *The Supreme Court Practice*, 1993, Vol. 1, pp. 849-850, may be quoted:

"4. *Wednesbury principle*.— A decision of a public authority will be liable to be quashed or otherwise dealt with by an appropriate order in judicial review proceedings where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it. (*Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.*, per Lord Greene, M.R.)" We may hasten to add, though the decision was rendered in the context of justification of grant of contract but the principles set out as regards the judicial review are of extreme significance.

49. Discussing at length, the principle of judicial review in many a decision, the two Judge Bench in *Reliance Telecom Ltd. & Another v. Union of India & Another*²², has held:-

20 (1768) 4 Burr 2186 : 98 ER 139 21 (1985) 1 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174 22 (2017) 4 SCC 269 "As we find, the decision taken by the Central Government is based upon certain norms and parameters. Though criticism has been advanced that it is perverse and irrational, yet we are disposed to think that it is a policy decision which subserves the consumers' interest. It is extremely difficult to say that the decision to conduct the auction in such a manner can be considered to be mala fide or based on extraneous considerations."

50. Thus analysed, it is evincible that the exercise of power of judicial review and the extent to which it has to be done will vary from case to case. It is necessary to state with emphasis that it has its own complexity and would depend upon the factual projection. The broad principles have been laid down in *Tata Cellular* (supra) and other decisions make it absolutely clear that judicial review, by no stretch of imagination, can be equated with the power of appeal, for while exercising the power under Article 226 or 32 of the Constitution, the constitutional courts do not exercise such power. The process of adjudication on merit by re-appreciation of the materials brought on record which is the duty of the appellate court is not permissible.

51. The duty of the Court in exercise of the power of judicial review to zealously guard the human rights, fundamental rights and the citizens' right of

life and liberty as also many non-statutory powers of governmental bodies as regards their control over property and assets of various kinds. (See : Union of India and Anr. v S.B. Vohra²³)”

46. Going through the entire file, and giving due consideration to contentions made by the petitioner, we are of the view that none of the grounds raised, rationalise the claim of the petitioner. There are no merits in the writ petition, warranting interference.

47. In the light of the above discussion and decisions, writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Insp.Cell)

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Sub Assistant Registrar

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