BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 30.01.2019	Delivered on 18.03.2019

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

AND

THE HONOURABLE MR.**JUSTICE P.D.AUDIKESAVALU**

W.P(M.D.). No.25215 of 2018

K.Kathiresan ... Petitioner

versus

1.The Union of India,
rep. By the Secretary to Government,
Ministry of Home Affairs,
North Block, Cabinet Secretariat,
Raisina Hill,
New Delhi 110 001

2.The State of Tamil Nadu,
rep. By the Chief Secretary to Government,
Secretariat,
Chennai 600 009.

3.The Principal Secretary to
The Governor of Tamil Nadu,
Raj Bhavan, Chennai

4.The State of Tamil Nadu,
Secretary to Government,
Home Department,
Secretariat,
Chennai 600 009

5.The Director General of Police,
No.4, Radhakrishnan Salai,
Mylapore, Chennai 4.

6. The Chief Commissioner of Income Tax,
MG Road, Nungambakkam, Chennai 34.

7. The Principal Director of Income Tax (Investigation)
Ayakar Bhavan, Nungambakkam,
Chennai 34.

8.The Central Bureau of investigation,
rep by its Director
No.5, 6th floor, CGO Complex,
Lodhi Road, Jawaharlal Stadium Marg,
New Delhi 110 003.

9.The Joint Director,
Central Bureau of investigation South Zone,
3rd Floor, Shahstri Bhavan
26, Haddows Road,
Nungambakkam Chennai 6

10. The Director of Vigilance & Anti Corruption
No.293, MKN Road,
Alandur, Chennai 16.

11.The UPSC,
rep. By its Secretary,
Empanelment Committee for selection of
Head of Police force for States,(HOPF)
Dholapur House, Shah Jahan Road,
New Delhi 110 069

12.T.K.Rajendran,
Director General of Police,
No.4, Dr.Radhakrishnan Salai,
Mylapore, Chennai-4

13.Ashok Kumar, IPS

14.Rama Mohana Rao, IAS

15.Apurva Varma, IAS,

16.V.K.Sasikala ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Declaration as stated therein.

Prayer in WP(MD). 25215 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Declaration, declaring the appointment order issued in favour of the 12th respondent vide Government of Tamilnadu, G.O.(2D) No.184, home (SC) Department, Dated 30.06.2017 is illegal, obtained by committing fraud on the appointing authority and not in consonant with the dictum of Prakash singhs case and consequently take appropriate steps to appoint Head of Police Force for the State of Tamilnadu by strictly adhering to the provisions of the Tamilnadu Police(Reforms) Act, 2013 and following the dictum delivered in the catena of judgments of the Hon'ble Supreme Court of India in the field by considering my written Representation dated 12.12.2018 and further order for a Court Monitored investigation by directing the 8th respondent to constitute a Special Investigation Team(SIT) to investigate into the episode of involvement of high level bureaucrats in the missing of Gutkha

Scam documents which was submitted to the 2nd and 5th Respondent by the 7th respondent in person and through special messenger on 11.08.2016 and to complete the Investigation within a time limit specified by this Hon'ble Court and to pass such further or other orders as this Hon'ble may deenm fit and proper in the circumstances of the case and thus render justice.

For petitioner : Mr.A.Kannan

For Respondents : Mr.V.Kathirvelu, ASGI,
assisted by Mr.V.Kalaiyendran, CGSC, for R-1

Mr.Aravind Pandian, A.A.G.,
Mr.K.Chellapandian, A.A.G,
assisted by Mr.A.K.Baskara Pandian, Spl.G.P.,
for respondents 2 to 5

Mr.Ejaz Khan, Spl.P.P.,
for respondents 8 and 9

Mr.N.Dilip Kumar,
for respondents 13 and 15.

Mr.AR.L.Sundaresan, Senior counsel,
for Mr.R.Murali, for R12.

Mr.K.Anbarasan,
for Mr.N.Raja Senthoorpandian, for R-16

No appearance for respondents 6, 7, 10, 11 and 14.

O R D E R

K.K.SASIDHARAN, J.

Introductory :-

The petitioner, who is stated to be a Trade Union leader, filed three Writ Petitions in his lifetime, giving it a brand name, “Public Interest Litigation”, targeting only a particular officer of the Indian Police Service, viz., Thiru.T.K.Rajendran, Director General of Police, the head of Police Force in the State of Tamil Nadu. This is the second writ petition challenging his appointment at the instance of the petitioner, and the third one for a direction to the Election Commission to remove him from the post of Director General of Police was filed after reserving this matter for judgment and it was dismissed by order dated 12 March 2019.

Facts summarized :-

2. (a). The petitioner in his affidavit filed in support of the Writ Petition contended that while shortlisting the name of Thiru.T.K.Rajendran for appointment to the post of Director

General of Police and forwarding the same to the Central Government, the State suppressed material particulars relating to the seizure of incriminating documents suggesting receipt of illegal gratification by the 12th respondent. The petitioner placed reliance on the counter affidavit filed by the Principal Director (Investigation) Income Tax Department, Chennai, before the Principal Bench of this Court in W.P.No.19335 of 2017, to substantiate his contention that there was a reference in the seized documents relating to the part played by the 12th respondent for permitting gutkha trade and the receipt of illegal gratification. It is the further contention of the petitioner that the Central Bureau of Investigation should be directed to constitute a special investigating team to investigate the gutkha scam involving high level bureaucrats and to unearth the documents which were found missing from the office of the Chief Secretary, Government of Tamil Nadu.

(b) The petitioner contended that only a person of highest moral and ethical standard and integrity should be appointed as Director General of Police. According to the petitioner, it was not correct on the part of the Union Public Service Commission to short list a tainted person and appoint him as the head of the police force by the State.

(c) The Joint Secretary to the Government, Home (S.C.) Department, filed a counter affidavit in answer to the contentions raised in the affidavit filed in support of the Writ Petition. The Home Department took up a contention that in view of the earlier order in the Writ Petition filed by the petitioner in W.P.(MD) No.12482 of 2017, the present Writ Petition is not maintainable. According to the Home Department, the investigation relating to the Gutkha scam has already been transferred to the Central Bureau of Investigation (hereinafter referred to as "CBI"). The CBI is now investigating the matter. It was further contended that there are only allegations made against the 12th respondent and only a CBI investigation would reveal the truth.

Submissions :-

3 (a) The learned counsel for the petitioner contended that the State, suppressing the material records, projected the 12th respondent as a person with integrity and values. The Chief Secretary to the Government was a member of the selection committee constituted by the Union Public Service Commission and there was no attempt made by her to inform the committee about the seizure of incriminating documents by the Income Tax Department and involvement of the 12th respondent in the Gutkha Scam. The learned counsel contended that the counter affidavit filed by the CBI before the Principal Bench clearly indicates the role played by the 12th respondent. It was further contended that the 12th respondent is not eligible to occupy the post of Director General of Police on account of the serious misconduct, which is now pending investigation by the CBI.

(b) The learned Additional Advocate General appearing on behalf of the State submitted that the State placed all the relevant materials before the selection committee. There was no case registered against the 12th respondent and as such, the Government was correct in sending his name along with others for appointment as Director General of Police.

(c) The learned Senior Counsel for the 12th respondent contended that the entire issue now raised by the petitioner has already been considered and decided by this Court in the earlier round of litigation in W.P.(MD) No.12482 of 2017. The present Writ Petition is another attempt made by the petitioner with ulterior motives. According to the learned Senior Counsel, in view of the order dated 28 July 2017 in W.P.(MD) No.12482 of 2017, the present Writ Petition is barred by the principles of *res judicata.*

(d) The learned counsel for the 13th respondent submitted that the former Director General of Police has no say in the matter and he was unnecessarily impleaded as a party to the Writ Petition.

(e) The learned counsel for the 16th respondent submitted that unnecessary allegations were made against the 16th respondent without any basis.

Discussion:-

4. The petitioner challenges the Government Order in G.O.(2D) No.184 Home (SC) Department dated 30 June 2017, appointing the 12th respondent as the Director General of Police, the Head of Police Force, in the State of Tamil Nadu. The immediate provocation for filing this Writ Petition appears to be the counter affidavit filed by the Principal Director (Investigation) Income Tax Department, Chennai, before the Principal Bench of this Court in W.P.No.19335 of 2017 indicating that several incriminating documents were seized during the search conducted at the premises of a gutkha dealer.

5. The basis for the challenge appears to be the incriminating documents seized by the Income Tax Department during the course of the search.

6. The petitioner earlier filed a Writ Petition in W.P.(MD) No.12482 of 2017, challenging the very same Government Order in G.O.(2D) No.184 Home (SC) Department, dated 30 June 2017, appointing the 12th respondent as the Director General of Police, Tamil Nadu.

7. The petitioner has raised an issue in the earlier Writ Petition that the State suppressed relevant materials from the Central Government in order to help the 12th respondent. This Court has already dealt with the said issue in the order dated 28 July 2017 in W.P.(MD) No.12482 of 2017.

8. The paragraph 15 of the order dated 28 July 2017 clearly shows that relevant materials were produced by the State before the Union Public Service Commission. We extract the relevant portion hereunder:-

> 15(A).The Government of Tamil Nadu, pursuant to the direction given in Prakash Singh's case cited supra, enacted "The Tamil Nadu Police (Reforms) Act, 2013". Section 3(1) of the Act provides that the Government shall appoint the Director General of Police from amongst the five senior-most Police Officers of the Department empaneled by the Union Public Service Commission for the post of Director General of Police, having regard to the length of service, good record and range of experience for heading the Police Force.
>
> (B) The State Government forwarded the names of senior-most Police Officers to the Union Public Service Commission for appointment to the post of Director General of Police. The Union Public Service Commission considered the service records of all the officers and empaneled the fifth respondent and five other officers for appointment.
>
> (C) The Head of Police Force must be thorough with the functioning of all the Branches of the Force. Then only, he would be in a position to discharge the function efficiently and in a highly professional manner. The Supreme Court in Prakash Singh's case cited supra observed that the empanelment of officers for appointment to the post of Director General of Police shall be on the basis of length of service, good record and range of experience for heading the Police Force. It is clear from the selection file that the fifth respondent satisfied the eligibility criteria as indicated in the judgment in Prakash Singh's case.
>
> (D) It is the contention of the petitioner that relevant materials were not forwarded to the Union Public Service Commission and as such, the Selection Committee constituted by the UPSC had no occasion to consider the incriminating materials against the fifth respondent. In other words, it is the case of the petitioner that in case the materials collected by the Income Tax Department were all placed before the Union Public Service Commission, the decision would

have been different. There is absolutely no merit in the said contention for the following reasons:

(i) There was no direct implication of the fifth respondent in any of the records seized by the Income Tax Department, except the entries regarding the payment made to the intermediary to be given to the police officers including Commissioner of Police. Mere allegation alone would not be sufficient to deny appointment, unless it is corroborated by acceptable evidence.

(ii) There was no case registered against the fifth respondent for corruption or misconduct as on the date on which his name was forwarded by the State Government to the UPSC. Similarly, there was no case pending or contemplated against the fifth respondent as on the date on which he was empaneled by the UPSC.

(iii) The allegation was to the effect that the Gutkha Manufacturer has paid money to the Commissioner of Police through Mr.Rajendran. It was not the case of the Partner of the Gutkha Firm, who was examined by the Income Tax officials, that he made payment directly to the fifth respondent or that he personally or otherwise confirmed the receipt of money from Mr.Rajendran by the beneficiary.

(iv) Even before forwarding the name of the fifth respondent along with the names of other Police Officers to the UPSC by the State Government for empaneling the eligible officers, the Vigilance and Anti-Corruption examined the alleged intermediary Mr.Rajendran. In his statement, Mr.Rajendran stated that no such payment was made by him to the Police Officers. In view of the said statement and in the absence of any corroborative materials suggesting acceptance of illegal gratification by the fifth respondent, the State Government was not expected to forward the alleged incriminating materials to the UPSC, even if the Government was in possession of such materials handed over by the Income Tax Department.

(v) There should be at least prima facie materials suggesting receipt of illegal gratification by the fifth respondent. Mere entries in the records regarding illegal gratification without any kind of supportive materials would not amount to legal evidence. Since the intermediary denied the allegations that payment was routed through him and that he paid money to the Police Officers, the appointment of fifth respondent is not vitiated on the ground of non-production of incriminating materials before UPSC by the State.

9. The eligibility of the 12^{th} respondent to occupy the post of Director General of Police was dealt with in paragraph 16 of the earlier order in W.P.(MD) No.12482 of 2017.

10. The order dated 28 July 2017 in W.P.(MD) No.12482 of 2017 has become final. There was no challenge to the said order at the instance of the petitioner. Even in the subsequent judgment in W.P.No.19335 of 2017, the First Bench made it clear that the direction to the CBI was essentially to investigate all aspects of the offence of illegal manufacture, supply and distribution of gutkha, which poses health hazard to people in general and youth in particular, and to punish the guilty. The Division Bench opined that it is to instill faith of the common man in the fairness and impartiality in the process, the investigation was entrusted to the CBI. The order passed by the Division Bench has become final, consequent to the dismissal of the Special Leave Petition by the Hon'ble Supreme Court.

11. The petitioner unsuccessfully challenged the appointment of the 12^{th} respondent earlier in W.P.No.12482 of 2017. The petitioner after making cosmetic changes to the affidavit filed in support of the earlier Writ Petition, filed this fresh Writ Petition, placing reliance on the counter affidavit filed by the Principal Director, (Investigation) Income Tax Department before the Principal Bench. Based on the counter affidavit, the Division Bench was pleased to direct the CBI to take up the investigation. The investigation is now pending. There is no question of canceling the appointment of the 12^{th} respondent on the basis of the observation contained in the counter affidavit filed by the Income Tax Department or reference to the names of certain officials in the documents seized by the Income Tax Department while searching the premises of the gutkha manufacturers. It is only after the investigation, it would be possible to arrive at a conclusion as to whether the 12^{th} respondent was also involved in the Gutka scam. In any case, it would not be legally possible to set aside the order dated 30 June 2017, in view of the finality attached to the earlier order in W.P.(MD) No.12482 of 2017.

PETITIONER - MERE NAME LENDER:

12. This Court has already held in the earlier round of litigation in W.P.(MD)No.12482 of 2017 that the petitioner is only

a name lender. We reproduce the relevant observation below :-

> 19(A). The details furnished by the petitioner in this Writ Petition and his access to the records kept in the custody of public authorities clearly show that he is only a name lender and he is acting at the behest of others. We are fortified in the above conclusion on account of the indication in the order dated 27 January, 2017 in W.P.No.1846 of 2017, that the initiation of Public Interest Litigation was an attempt to obtain the seal of approval from the High Court to the view taken in the office memo of the Commissioner of Police dated 22 December, 2016.
>
> (B). The petitioner is a Trade Union Leader based at Madurai. The petitioner has exhibited extensive knowledge of the entire background relating to the appointment of the fifth respondent. The background facts clearly reveals that the petitioner has taken up the cause of others who are personally interested in the subject matter. We have reasons to suspect the bona fides of the petitioner in filing this Writ Petition. The attempt of the petitioner does not appear to uphold the institutional integrity. In fact, there is no challenge to the appointment of fifth respondent at the instance of the other empaneled candidates.

13.This Writ Petition was heard finally on 30 January 2019 and judgment was reserved. Subsequently, the petitioner filed another Writ Petition in W.P.(MD) No.5775 of 2019 to direct the Election Commission of India to restrain the 12th respondent, from functioning as Director General of Police. The Writ Petition was dismissed by the Division Bench by order dated 12 March 2019.

Petitioner – lending shoulder to fire the gun:-

14. The successive Writ Petitions filed by the petitioner targeting a particular officer of the police Department clearly shows that he is dancing to the tunes of others. The petitioner has been lending his shoulder to others to fire the gun. He has given a brand name, "Public Interest Litigation" to make it appear as if everything was in larger public interest.

15. The petitioner is making an attempt to give a new life to a dead litigation by producing documents which were very much available with him when the earlier Writ Petition was filed. The materials produced by the petitioner are not sufficient to quash

the order appointing the 12th respondent as the head of the police force in the State of Tamil Nadu. We are therefore of the view that the Writ Petition deserves to be dismissed.

16. In the upshot, we dismiss the Writ Petition. No costs. Consequently, connected miscellaneous petitions in W.M.P.(MD) Nos.22841, 22842 of 2018 and 965 and 966 of 2019 are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To
1.The Secretary to Government,
Ministry of Home Affairs,
North Block, Cabinet Secretariat,
Raisina Hill,
New Delhi 110 001

2.The Chief Secretary to Government,
Secretariat,
Chennai 600 009.

3.The Principal Secretary to
The Governor of Tamil Nadu,
Raj Bhavan, Chennai

4.The Secretary to Government,
Home Department,
Secretariat,
Chennai 600 009

5.The Director General of Police,
No.4, Radhakrishnan Salai,
Mylapore, Chennai 4.

6. The Chief Commissioner of Income Tax,
MG Road,
Nungambakkam,
Chennai 34.

7. The Principal Director of Income Tax (Investigation)
Ayakar Bhavan,
Nungambakkam,
Chennai 34.

8. The Director,
Central Bureau of investigation,
No.5, 6th floor, CGO Complex,
Lodhi Road, Jawaharlal Stadium Marg,
New Delhi 110 003.

9.The Joint Director,
Central Bureau of investigation South Zone,
3rd Floor, Shahstri Bhavan
26, Haddows Road,
Nungambakkam Chennai 6

10. The Director of Vigilance & Anti Corruption(DVAC)
No.293, MKN Road,
Alandur, Chennai 16.

11. The Secretary,
The UPSC,
Empanelment Committee for selection of
Head of Police force for States,(HOPF)
Dholapur House,
Shah Jahan Road,
New Delhi 110 069

+1 CC to M/s.R.MURALI, Advocate (SR-54600[F] dated 18/03/2019)

+1 CC to M/s.A.KANNAN, Advocate (SR-54796[F] dated 18/03/2019)

+1 CC to M/s.V.MALAIYENDRAN, Advocate (SR-54823[F] dated 19/03/2019)

TAR

Order in
W.P(M.D.). No.25215 of 2018
18.03.2019

KM/(10.04.2019) 11P 15C