

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH  
and  
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.7514 of 2020

V.Senthilbalaji

.. Petitioner

Vs.

1. The State of Tamil Nadu  
Represented by its Chief Secretary,  
Secretariat, Fort St. George,  
Chennai.
2. The Secretary to Government  
Health and Family Welfare Department,  
Secretariat, Fort St. George,  
Chennai.
3. The Secretary to Government  
Revenue and Disaster Management Department,  
Secretariat, Fort St. George,  
Chennai.
4. The District Collector /  
The Chairman,  
District Rural Development Agency,  
Karur District,  
Karur.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorarified mandamus to call for the records in pursuant to the impugned order passed by the fourth respondent vide in his proceedings in NA.KA.A3/3135/2019 dated 31.03.2020 and quash the same as illegal and arbitrary and consequently directing the fourth respondent to restore the administrative sanction granted in NA.KA.A3/3135/2019, dated 28.03.2020 and release of Rs.60,00,000 (Sixty Lakhs only) out of Aravakurichi MLA constituency development scheme fund towards purchase of 10 ventilators for Government Medical College Hospital, Karur as mentioned in the petitioner's letter dated 27.03.2020.

For Petitioner

..Mr.S.Prabakaran, Senior Counsel  
for Mr.K.Balasubramani

For Respondents .. Mr.V.Jayaprakash Narayanan, GP

ORDER

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

The petitioner herein is a Member of the Legislative Assembly. Upon realizing the need as could be seen from the letter of the Dean, Government Medical College and Hospital, Karur, dated 25.04.2020 qua the facilities and adequate amenities to be provided to deal with the pandemic situation, a letter was sent by him to the 4th respondent offering a sum of Rs.60,00,000/- (Rupees Sixty Lakhs only) for the purchase of machineries from the Member of Legislative Constituency fund.

2. The petitioner has been elected as the Member of the Legislative Assembly from Aravakurichi Constituency. This Constituency comes within the District of Karur. The Medical College and the Government District Hospital Head Quarters are situated at Karur. It is needless to state that Aravakurichi Constituency comes within the District of Karur. Under those circumstances, the petitioner made the offer. The offer made by the petitioner was accordingly accepted by the 4th respondent on 28.03.2020. The aforesaid order also indicates the need for utilization of the amount towards first aid and purchase of adequate materials on a war-footing. But, surprisingly within a period of 3 days thereafter, the impugned order has been passed by the 4th respondent on the premise that as per the scheme governing the utilization of the fund by a Member of Legislative Assembly, any amount by a Member of the Legislative can only be utilized within his constituency. Accordingly, the earlier order passed facilitating utilization of Rs.60,00,000/- dated 28.03.2020 was cancelled. Challenging the same, the present writ petition has been filed.

3. Mr.S.Prabakaran, the learned senior counsel appearing for the petitioner, submitted that the impugned order has been passed on the extraneous consideration. A technical approach has been adopted. There is no dispute with respect to the need for utilization of the amount given from the fund by the petitioner. Aravakurichi Constituency comes within the Karur District. The District Hospital is situated at Karur. When a District Hospital is situated at Head Quarters, it is meant to be used for the entire population in the District. In such view of the matter, there is no violation of the guidelines governing and therefore, the impugned order will have to be set aside and the writ petition will have to be allowed.

4.Mr.V.Jayaprakash Narayanan, the learned Government Pleader, submitted that the impugned order has been passed only on the ground that the sanction of amount by the earlier order was contrary to the guidelines governing and accordingly, a Member of the Legislative Assembly is permitted only to utilize the amount within his constituency. Therefore, it cannot be utilized otherwise. Incidentally, it is submitted by the Government Pleader that subsequently, a Government Order has been passed in G.O.(Ms).No.130, Rural Development and Panchayat Raj(SGS.1) Department dated 27.072020, by which, from the fund allotted to the Members of Legislative Assembly was reduced to be utilized to deal with the pandemic situation. Therefore, there is no need for the utilization of the above said fund.

5.Upon hearing the learned counsel appearing for the petitioner and the respondents, we are of the view that the writ petition deserves to be allowed. As rightly submitted by the learned senior counsel appearing for the petitioner, the 4th respondent has clearly misunderstood the guidelines governing. It is nobody's case that the general public hailing from Aravakurichi Constituency cannot utilize the services of the Government General Hospital at Karur. Admittedly, the hospital is situated at Head Quarters. It is to be utilized for the entire population in the District and so also, the Government Hospital. The machineries to be purchased apart from the measures to deal with pandemic situation at Government General Hospital in Karur and Government Medical College are certainly to be used for the benefit of the people of Aravakurichi. On the contrary, there is no District Hospital at Aravakurichi, nor the existing hospital would have the same facility as the one functioning at Karur. Even assuming that the machineries are to be used not only for the people of Aravakurichi, but also the other Constituencies which come within the Karur District, there is nothing wrong in the fund allotted. It certainly serves the public interest. A Government Hospital functioning at the District level is not expected to treat the general public based upon the constituency as the treatment is meant for every body.

6.The Government Order relied upon by the Government Pleader would also nullify the stand taken resulting in passing of the order impugned in the writ petition. When the money allotted for the subsequent year 2020-21 in favour of Members of Legislative Assembly to be utilized for each constituency is reduced to be utilized for the entire State, utilizing a part of such fund for the betterment of the general public of the constituency among other constituencies situated within the District cannot be stated to be contrary to the guidelines governing. It is not as if the well established hospital with all facilities is available at Aravakurichi and the petitioner has ignored it and offered the fund at the District Level.

Further more, the impugned order has been passed on the request made by the petitioner. However, he has not been heard. The need for utilization is also not disputed in the impugned order. In fact, the earlier order passed on 28.03.2020 itself speaks of the need. It is stated that every day the State is spending about 6.8 crores towards controlling the pandemic. It had also made a request to the Central Government for more allotment. Thus, the need is certainly more.

7.We are dealing with the pandemic situation. Help from any source is expected to be welcomed by the Government. Therefore, such a technical approach cannot be countenanced either on fact or on law merely because further amount has been sanctioned through out the State to be utilized to deal with the pandemic situation, it cannot be stated that the fund provided by the petitioner is not required to be utilized. Utilizing more fund to deal with the pandemic situation will cater to the need of the general public better. Only by pleading financial crunch, the Government thought fit to pass G.O.(Ms).No.130, Rural Development and Panchayat Raj(SGS.1) Department dated 27.072020. If that is the case, any reliance placed upon it to decline the offer made by the petitioner also cannot be sustained.

8.We may further note that the Dean, Government Medical College and Hospital, Karur District has also sent a letter to the Hon'ble Member of Parliament, Karur Constituency, indicating the need for the provision of adequate funds. However, we do not wish to go into the question of the impugned order having been passed on extraneous consideration or malice in law.

9.In the result, this writ petition is allowed and the impugned order stands set aside and consequently, the 4th respondent is directed to utilize the fund of Rs.60,00,000/- from the one allotted to the Member of Legislative Assembly, Aravakurichi Constituency as sought for by the petitioner. we make it clear that what is important is the allotment of fund and therefore, nothing prevents the 4th respondent or the medical authorities at the District Level in utilizing the fund to deal with the COVID situation as they wish. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

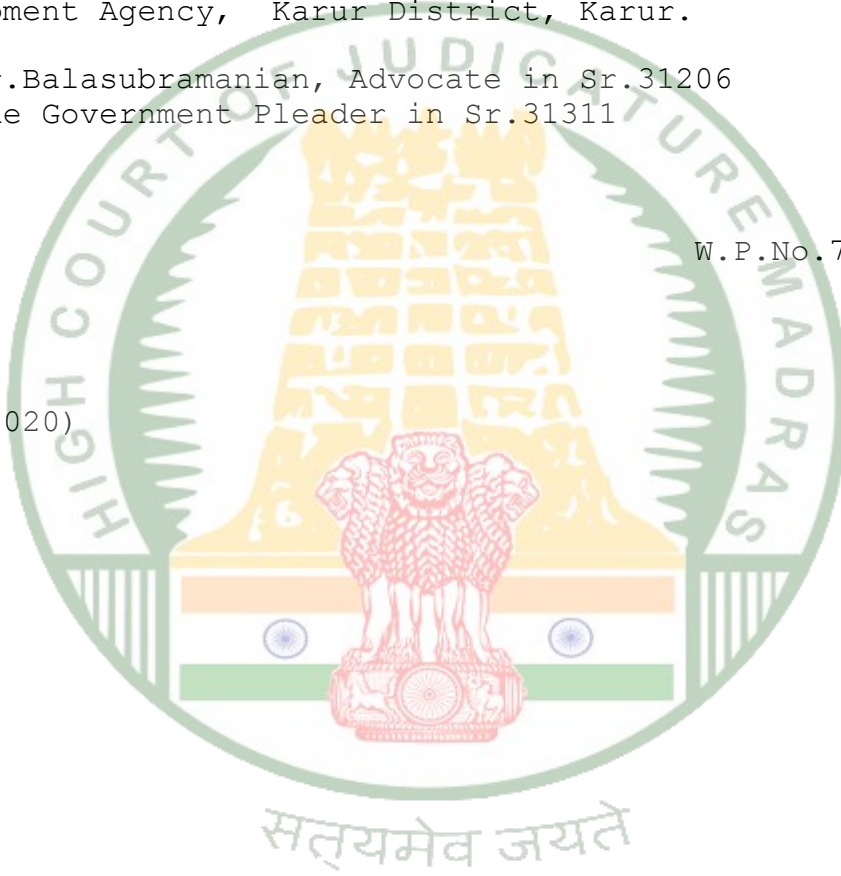
1. The Chief Secretary, Government of Tamil Nadu,  
Secretariat, Fort St.George, Chennai.
2. The Secretary to Government, Health and Family Welfare  
Department, Secretariat, Fort St.George, Chennai.
3. The Secretary to Government, Revenue and Disaster Management  
Department, Secretariat, Fort St.George, Chennai.
4. The District Collector/The Chairman, District Rural  
Development Agency, Karur District, Karur.

+2cc to Mr.Balasubramanian, Advocate in Sr.31206

+1cc to the Government Pleader in Sr.31311

W.P.No.7514 of 2020

LN(CO)  
RV(12.10.2020)



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