

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D : 01.12.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE

and

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

W.P.No.15095 of 2020

R.Muthukrishnan

...Petitioner

...vs...

1.The Chief Secretary to the
Government of Tamil Nadu,
Secretariat, Fort St. George,
Rajaji Salai, Chennai - 600 009.

2.The Principal Secretary in the
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Rajaji Salai, Chennai-600 009 ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records in respect of the impugned notification, namely, Notification, G.O.Ms.No.326, Health and Family Welfare (AB2) Department, dated 4th September 2020, titled " Certain offences declares as compoundable - Rule under the Tamil Nadu Public Health Act, 1939", and to quash the same for its being illegal and unconstitutional and to order the Respondents to repay/refund to the persons concerned the amount of fine collected from them by the Respondents for alleged offences declared as compoundable under the impugned notification.

For Petitioner : Mr.R.Muthukrishnan
Parti-in-person

For Respondents : Mr.V.Jayaprakash Narayanan
State G.P.

O R D E R

SENTHILKUMAR RAMAMOORTHY J.,

In this writ petition, G.O.Ms.No.326, Health and Family Welfare (AB2) Department, dated 04.09.2020 (G.O.Ms. No.326), is challenged. By G.O.Ms.No.326, rules were framed pursuant to powers conferred by Sections 1, 3 and 8 of the Tamil Nadu Public Health Act, 1939 (the TN Public Health Act). Under the said rules, offences punishable under Sub- section (2) of Section 76 of the TN Public Health Act were declared as compoundable upon payment of fine as stipulated therein. The Petitioner also seeks a consequential order of refund of the amount collected as fine in respect of the above mentioned compoundable offences.

2. Section 76 of the TN Public Health Act deals with the power of the State Government to confer special powers on officers to control a notified disease. The COVID-19 pandemic was declared as a notified disease in the State of Tamil Nadu under G.O.Ms.No.95, Health and Family Welfare (P1) Department, dated 13.03.2020 (G.O. Ms. No.95), by exercising powers under Section 62 of the TN Public Health Act. Pursuant thereto, by G.O.Ms.No.96, Health and Family Welfare (P1) Department, dated 15.03.2020, in terms of Section 76(1)(a) of the Public Health Act, it was declared that there is a threat of out-break of COVID-19 in the State of Tamil Nadu. Thereafter, the TN Public Health Act was amended by the Tamil Nadu Ordinance No.10 of 2020 which was published in the Tamil Nadu Government Gazette dated 04.09.2020. The said ordinance was subsequently replaced by an enactment. Under the said ordinance/enactment, several provisions of the TN Public Health Act were amended. In particular, Section 76(2) was substituted by the following:

4. In section 76 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) When a declaration under clause (a) or clause (b) of sub-section (1) comes into operation and until it is withdrawn, the Collector of the district or any person duly authorized by him by general or special order, or if empowered in this behalf by rules made under this Act, the Health Officer or any other officer of the local authority concerned or any Police Officer or any officer of the Government other than the Collector of the district may, subject to such exceptions, restrictions, limitations and conditions and to such control as may be prescribed, either generally or in the case of the notified disease to which the declaration relates, exercise the following powers, namely:-

(a) to order the evacuation of infected houses and houses adjoining them or in their

neighbourhood, or generally of all houses in an infected locality;

(b) to make vaccination and preventive inoculations compulsory subject to the provisions of sub-section (3);

(c) to direct-

(i) that persons arriving from places outside the local area, or residing in any building adjacent to, or in the neighbourhood of, an infected building, shall be examined by a medical officer;

(ii) that persons in isolation or in quarantine shall be examined or required to undergo necessary tests by a medical officer;

(iii) that the clothing, bedding or other articles belonging to such persons shall be disinfected, if there is reason to suspect that they have been exposed to infection;

(iv) that any such person shall give his address and present himself daily for medical examination at a specified time and place, for a period not exceeding fourteen days;

(d) to take such measures as may be necessary-

(i) in respect of, or in relation to, persons exposed to infection from any notified disease, or likely to infect other persons with any such disease; and

(ii) in respect of, or in relation to, articles exposed to infection from any notified disease, or likely to infect persons with any such disease,

Including in the case of (i), the placing of restrictions on the movement of such persons, isolation or quarantine of such persons, as the case may be, and in the case of (ii), the destruction of such articles and the placing of restrictions on their export from, import into, or transport within, the local area;

(e) to direct that at any place within or outside the local area, any consignment of grain exported from, or imported into, such area by rail, road or otherwise, shall be examined and, if necessary unloaded and disinfected in any specified manner;

(f) to close all or any existing market, and to appoint special places, where markets may be held;

(g) to impose restrictions on the operation of public and private transport;

(h) to ensure prohibition of spitting in public places, observance of social distancing norms, wearing of masks and such other instructions that may be issued, from time to time, by the Government, in the interest of public health and safety;

(i) to issue standard operating procedures to be followed in salon and spa, gymnasium and such other public places;

(j) to ensure adherence of the guidelines issued by the Government to be followed in containment zones.

Explanation.- For the purpose of this clause, "containment zone" means the area demarcated as such, based on the cluster of infected cases reported therein, by the Collector of the district or the Commissioner of the City Municipal Corporation, as the case may be;

(k) to restrict or prohibit congregation of persons in public places, religious institutions and places of worship;

(l) to ensure the functioning of offices, both the government and private, and educational institutions as per the directions of the Government or the Collector of the district;

(m) to ensure prohibition or restriction on the functioning of shops, commercial establishments, factories, workshops, godown, etc., as per the directions of the Government or the Collector of the district;

(n) to ensure duration of services in essential or emergency services such as banks, media, health care, food supply, electricity, water supply, fuel etc., as per the directions of the Government or the Collector of the district.

(o) to provide for inspection and, if required, detention of any vehicle, vessel, or any other form of transport, departing, arriving at or passing through the local area;

(p) to direct any clinical establishment to admit, isolate and manage cases arising out of public health emergencies and to furnish report or return in such form and in such manner as may be prescribed and to provide such services as directed.

Explanation.- For the purpose of this clause, "clinical establishment" means a clinical establishment as defined in clause (a) of section 2 of the Tamil Nadu Clinical Establishments (Regulation) Act, 1997 (Tamil Nadu Act 4 of 1997);

(q) to prohibit any such activity that may be inimical to the public health;

(r) to ensure dissemination of information pertaining to the notified diseases, disease control and preventive measures, etc., to the public and to check dissemination of false information on the subject in the mass media; and

(s) to carry out such other activity or measures for the regulation, control and prevention of the notified diseases, as may be directed by the Government or the Collector of the district."

3. The impugned rule was issued pursuant to the amendment to the TN Public Health Act. As stated earlier, the impugned rule declares the offences under Section 76(2) as compoundable offences. The present writ petition is filed by way of a public interest litigation in these facts and circumstances.

4. We heard Mr.R.Muthukrishnan, as a party-in-person for the Petitioner and Mr.V.Jayaprakash Narayanan, the learned Government Pleader on behalf of the Respondents.

5. Mr.Muthukrishnan advanced the following contentions. His first contention was that G.O.Ms.No.326 is issued in the name of the Governor of Tamil Nadu but has been signed by the Principal Secretary to the Government. Section 138-A of the TN Public Health Act enables the Government to declare offences against the TN Public Health Act or the rules or bye-laws and further empowers the executive authority or health officer or police officer to compound offences which are declared as compoundable by the Government. In effect, the power under Section 138-A is exercisable by the Government and not by the Governor, whereas, the impugned rule is issued in the name of the Governor. If issued by the Governor, it should have been signed under order of the Governor, whereas it is signed by the Principal Secretary. According to Mr.Muthukrishnan, this would render the impugned rule as illegal. His second contention is that the impugned rule deals

with actions such as violation of quarantine measures, non-wearing of masks, spitting in public places, violation of social distancing norms by individuals in public places, violation of standard operating procedures in salons and spas, gymnasias, commercial establishments and non-adherence of the guidelines issued by the Government in respect of containment zones. According to Muthukrishnan, none of these activities were declared as offences under the TN Public Health Act. Unless actions are declared as offences under the statute, the Government is not entitled to declare the offences as compoundable under Section 138-A. As such, he submits that the collection of fines in respect of actions that do not qualify as offences under the statute is completely without jurisdiction and is, therefore, unconstitutional.

6. On the contrary, Mr. Jayaprakash Narayanan submits that the impugned rule is sustainable. With regard to the contention that the impugned rule is issued in the name of the Governor, he pointed out that, as per Article 166 of the Constitution of India, the State Government acts in the name of the Governor. In addition, as per the Tamil Nadu Government Business Rules and Secretariat Instructions and, in particular, Rule 7 thereof, all executive orders shall be issued in the name of the Governor. He submitted that the impugned rule was issued in the name of the Governor for the aforesaid reason. He further submits that Section 138-A empowers the Government to frame the rule. In addition, he pointed out that Section 128 of the Public Health Act also confers additional rule making powers on the Government. By referring to the amendments to Section 76(2) of the TN Public Health Act, he pointed out that all the actions that are set out in the rule have been classified as offences by way of the said amendment. Therefore, he concluded his submissions by stating that the impugned rules are valid and sustainable and that the present writ petition is liable to be rejected.

7. We considered the submissions of the party-in-person and the learned Government Pleader and examined the materials on record.

8. The first question that arises for consideration is whether the present writ petition is maintainable as a public interest litigation. The main contention of the party-in-person appears to be that the Government is not empowered to collect fines in respect of the matters set out in the impugned rule because the said activities are not offences. On perusal of the impugned rule, we find that the activities in question are all activities pertaining to the control of the COVID-19 pandemic. In particular, the following activities are dealt with therein: violation of quarantine measures; non-wearing of masks; spitting in public places; violation of social distancing norms by individuals in public places; violation of standard operating procedures in salons, spas, gymnasias and commercial establishments; and non-

adherence to the guidelines issued by the Government in respect of containment zones. All these measures are ex facie reasonable and intended to prevent the spread of the Covid-19 infection. Significantly, we are not convinced that there is public interest in endeavouring to prevent the Government from enforcing such measures. Indeed, we are of the view that the present writ petition, if allowed, would work against public interest. Therefore, we conclude that the present writ petition is not maintainable as a public interest litigation. Nonetheless, we proceed to consider the petition on merits.

9. As regards the contention that the impugned rule has been issued in the name of the Governor but was not signed by the Governor, the learned Government Pleader pointed out that this is in order to ensure compliance both with the Tamil Nadu Government Business Rules and Article 166 of the Constitution. Rule 7 was relied upon, in this regard, and the said Rule is as under:-

"7. The Council shall be collectively responsible for all executive orders issued in the name of the Governor in accordance with these rules, whether such orders are authorized by an individual Minister on a matter appertaining to his portfolio or as the result of discussion at a meeting of the Council or otherwise."

Upon perusal thereof and in view of Article 166 of the Constitution, we find that the contention of the learned Government Pleader is liable to be accepted.

10. The second issue relating to the alleged non-declaration of the activities mentioned in the impugned rule as offences remains to be considered. As stated above, Rule 76(2) was amended by the Ordinance and, thereafter, by the Act that replaced the Ordinance. Upon perusal of the amended Section 76(2), we find that all the activities specified in the impugned rules are covered therein. In addition, we find that Section 134 (1) and (2) of the TN Public Health Act provides for penalties for offences against the Act and, in particular, in respect of the contravention of any of the provisions specified in the first and second columns of Schedule-1 and Schedule II thereto. Both Schedule-1 and 2 refer to offences and continuing offences, respectively, under Section 76(2). While Section 134 read with Schedule I and II prescribed a fine for such offences, Section 140 empowers the executive officer of a local authority or a member of the public health establishment to arrest an offender against the TN Public Health Act. For the present purposes, it is sufficient to extract Section 134(1)(a) and 140(2)(a), which are as under:

S.134. Penalties for offences against the Act,
etc.

(1) Whoever-

(a) contravenes any of the provisions of this Act specified in the first and second columns of Schedule I;

S.140. Powers of executive officer and public health staff to arrest offenders against Act, etc.

(2) The offences referred to in sub-section (1) are-

(a) offences against any of the provisions of this Act or any rule or by-law made thereunder;

As such, the contention of Mr.Muthukrishnan that the actions specified in the impugned rule are not offences is liable to be rejected.

11. In the result, the Petitioner failed to make out a case to interfere with the impugned rule. Consequently, the writ petition fails and is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rrg

To

1.The Chief Secretary to the
Government of Tamil Nadu,
Secretariat, Fort St. George,
Rajaji Salai, Chennai - 600 009.

2.The Principal Secretary in the
Health and Family Welfare Department,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Rajaji Salai, Chennai - 600 009.

+1cc to the Government Pleader SR.NO.38412

W.P.No.15095 of 2020

NRC CO
SDR 11/12/2020