

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.12.2019

DELIVERED ON : 03.01.2020

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.34813 of 2019

M.Kannadasan

Petitioner

Vs.

1.Union of India rep. by
Ministry of Home Affairs,
Jai Singh Marg,
Hanuman Road Area,
Connaught Place,
New Delhi, Delhi-110 001.

2.Thiru.Banwarilal Purohit,
Governor of Tamil Nadu,
Raj Bhavan,
Guindy, Chennai-600 022.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 1st respondent to take appropriate action by removing the 2nd respondent from the post of Governor of State of Tamil Nadu for his failure to act in accordance with the provisions of Constitution viz., not passing orders on the aid and advice of the Council of Ministry of Government of Tamil Nadu dated 09.09.2018 in respect of release of 1) Tmt.Nalini, 2) Suthendraraja @ Santhan, 3) Sriharan @ Murugan, 4) Robert Pyas, 5) Jayakumar, 6) Ravichandran and 7) Perarivalan and pass such further or other orders.

For Petitioner : Mr.S.Doraisamy

For Respondents: Mr.G.Rajagopal,
Assistant Solicitor General
assisted by Mr.V.Chandrasekaran for R1

Mr.Vijay Narayan, Advocate General
assisted by Mr.V.Jayaprakash Narayanan,
Government Pleader for R2

O R D E R

M.SATHYANARAYANAN, J.

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This Writ Petition, styled as a Public Interest Litigation, is filed by a resident of KMK Garden, Kundrathur, Kancheepuram

District and according to him, he is working as an Agent for Man Power Supply Agency and also claims that he is the President of "Kanchipuram District Thanthai Periyar Dravidar Kazhagam", which is a non political organization. The petitioner would state that he follow the principles of the rationalist leader late Thanthai Periyar E.V.Ramasamy, who throughout his life worked for social reformation, human rights, upliftment of downtrodden community, eradication of superstitious and religious practice among the public and preached until his death for casteless and religionless society.

2. The petitioner would further state that Mr.Rajiv Gandhi, Former Prime Minister of India was assassinated on 21.05.1991 at Sriperumbudur and a case in Crime No.329 of 1991 was registered by the Sriperumbudur Police Station on 22.05.1991 and later on, it was transferred to the file of Crime Branch -Central Investigation Department [CB-CID] and again, it was transferred to the file of Central Bureau of Investigation [CBI] and the said agency, in-turn, has registered a case afresh in R.C.No.9 of 1991 and took up the investigation. It is averred by the petitioner that CBI, during the course of investigation, effected arrest of 26 persons including 5 women and out of them, 13 persons are Indians and remaining are Srilankan Tamils. The case, after investigation, has culminated into a Charge Sheet against 41 persons, which include the leader of the "Liberation Tigers of Tamil Eelam [LTTE]" - Velupillai Prabhakaran and out of 41 persons, 21 persons remained in judicial custody and 12 of them died during investigation and 3 of them were absconding.

3. The petitioner would further aver that the charge sheet was taken on file by the Special Designated Court under Terrorism and Disruptive Activities (Prevention) Act [TADA] in C.C.No.3 of 1992 and after trial, judgment was delivered on 28.01.1998 finding that all the 26 persons were guilty of the offences and they were imposed with sentence of death. Appeals were preferred before the Hon'ble Supreme Court of India in C.A.No.321 of 1998 etc. batch and vide judgment dated 12.05.1999, the Hon'ble Apex Court had acquitted all the 26 persons for the offences under TADA Act and however, confirmed the conviction of death sentence for the offences under Sections 302 r/w. 120B IPC in respect of Tvl. Nalini, Suthendraraja, Sriharan and Perarivalan and in respect of Tvl. Robert Payas, Jayakumar and Ravichandran, it was modified to life sentence and all the other 19 persons were in incarceration from 12.05.1999.

4. The petitioner would further state that one of the female prisoners, namely Tmt.Nalini, gave a representation to the Governor of Tamil Nadu for commutation of the death sentence and it was rejected and challenging the same, she filed W.P.No.17655 of 1999 and subsequently, it was taken up by the Hon'ble Supreme Court of India, who, vide order dated 18.02.2014, commuted the death sentence to life sentence in respect of Tvl. Sriharan, Suthendraraja and Perarivalan and inssofar as Tmt.Nalini is concerend, following the advise of the Council of Ministers, the Governor of Tamil Nadu has passed an order dated 24.04.2000 commuting the death sentence into life

sentence.

5. Grievance now expressed by the petitioner is that the Council of Ministers has passed a resolution on 09.09.2018, recommending and advising the Governor of Tamil Nadu to order premature release of 7 persons and despite lapse of nearly 15 months, the Governor of Tamil Nadu is yet to take a call and therefore, such inaction amounts to violation of the provisions of the Constitution. The petitioner also points out that Mrs.Nalini earlier filed W.P.Sr.No.67881 of 2019, praying for issuance of a Writ of Mandamus directing the Governor of Tamil Nadu to counter sign the proposal of the second respondent / State of Tamil Nadu and release her and it was dismissed as not maintainable, vide order dated 18.07.2019. The petitioner, in this regard, has also submitted a representation dated 22.11.2019 to the Union of India, represented by Ministry of Home Affairs, New Delhi, pointing out the inaction on the part of the Governor of Tamil Nadu with regard to the recommendation made by the Council of Ministers for premature release and prayed for appropriate action to remove the Governor of Tamil Nadu and it was acknowledged on 03.12.2019. The petitioner, alleging inaction on the part of the first respondent, came forward to file this writ petition.

6. Mr.S.Doraisamy, learned counsel appearing for the petitioner has invited the attention of this Court to the judgment of the Hon'ble Supreme Court of India in UPPSC v. Suresh Chandra Tewari [1987 (4) SCC 176] and would submit that it is obligatory on the part of the Governor to act on the aid and advise of the Council of Ministers with regard to the recommendation for premature release and further drawn the attention of this Court to the decision in S.R.Bomma and Others v. Union of India and Others [1994 (3) SCC 1] and would submit that as per the observations made in the said judgment, the Governor, being a high constitutional functionary, is expected to act himself more fairly, cautiously and circumspectly and the inaction on the part of the Governor of Tamil Nadu in considering the recommendation made by the Council of Ministers is highly arbitrary, malafide and also exhibiting partisan attitude for the reason that he was a member of a particular political party and sympathizer of an organization and therefore, prays for appropriate orders.

7. This Court has carefully considered the arguments advanced by the learned counsel appearing for the petitioner and also perused the materials placed before it.

8. It is relevant to extract Article 156 of the Constitution of India.

"Article 156.- Term of office of Governor : (1) The Governor shall hold office during the pleasure of the President.

(2) The Governor may, by writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this article, a Governor shall hold office for a term of

five years from the date on which he enters upon his office.

Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office."

9. Nature of office, sanctity, constitutional role and removal of Governor came up for consideration before the Hon'ble Supreme Court in the judgment in B.P.Singhal v. Union of India and another [(2010) 6 SCC 331] and it is relevant to extract the following portions of the said judgment:

"A Governor is neither the employee nor the agent of the Union Government. The Governor constitutional role is clearly defined and bears very limited political overtones. Like the President, Governors are expected to be apolitical, discharging purely constitutional functions, irrespective of their earlier political background. Governors cannot be politically active. Reputed elder statesmen, able administrators and eminent personalities, with maturity and experience are expected to be appointed as Governors. While some of them may come from a political background, once they are appointed as Governors, they owe their allegiance and loyalty to the Constitution and not to any political party and are required to preserve, protect and defend the Constitution (as it clear from the terms of oath of affirmation by the Governor, under Article 159 of the Constitution).

[Paras 44 to 46]

A Governor cannot be removed on the ground that he is out of sync with the policies and ideologies of the Union Government or the party in power at the Centre. Governors need not be in "sync" with the policies of the Union Government. They are not required to subscribe to the ideology of the party in power at the Centre. A Governor cannot be removed on the ground that the Union Government or party in power loses "confidence" in him. A change in government at the Centre is not a ground for removal of Governors holding office to make way for others favoured by the new Government.

[Paras 83(iii) and 46]

Though Governors, Ministers and the Attorney General, all hold office during the pleasure of the President, there is an intrinsic differences between the office of a Governor and the offices of Ministers and Attorney General. The Governor is the constitutional head of the State. He is not an employee or an agent of the Union Government nor a part of any political team. On the other hand, a Minister is a hand-picked member of the Prime Minister's team. The relationship between the Prime Minister and a Minister is purely political. Though the Attorney General holds a public office, there is an element of lawyer-client relationship between the Union Government

and the Attorney General. Loss of confidence will therefore be a very relevant criterion for withdrawal of pleasure in the case of a Minister or the Attorney General, but not a relevant ground in the case of a Governor." [Para 70]

It was further observed in Para 80 that "judicial review of withdrawal of pleasure is limited in the case of a Governor, whereas it is virtually nil in the case of a Minister or an Attorney General". The Hon'ble Supreme Court, in the above cited judgment, has laid down the proposition that "Where a prima facie case of arbitrariness or mala fides is made out, the Court can require the Union Government to produce records/materials to satisfy itself that the withdrawal of pleasure was for good and compelling reasons. What will constitute good and compelling reasons for withdrawal of President's pleasure under Article 156(1) would depend upon the facts of the case. It is not possible to put the compelling reasons for removal of Governor under any specific heads." [Paras 82, 83(ii) and 69]

10. In S.Nalini v. Governor of Tamil Nadu and others [(2019) 6 MLJ 129], one of the convicts in Rajiv Gandhi assassination case, namely Tmt.Nalini filed a Writ of Mandamus directing the first respondent therein, namely Governor of Tamil Nadu to countersign the proposal of the second respondent/State of Tamil Nadu made on 09.09.2018 and to release her immediately. The Registry of this Court expressed doubt as to the maintainability of the writ petition and accordingly, it was listed "For Maintainability" before a Division Bench of this Court. The Division Bench of this Court consisting of Hon'ble Mr.Justice R.Subbiah and Hon'ble Mr.Justice C.Saravanan had taken into consideration the following decisions,

(i) K.A.Mathialagan v. Governor of Tamil Nadu [(1973) 1 MLJ 131 - Para 8]

(ii) Nabam Rebia v. Registrar General, Gauhati High Court [2016 SCC Online SC 94 - Paras 8, 15]

(iii) Rameshwar Prasad v. Union of India [LNIND 2006 SC 1219 - Paras 7, 9, 14, 15]

(iv) Shri.Pratap Sing Raojirao Rane v. Governor of Goa [AIR 1999 BOM 53- Para 8]

(v) State of Rajasthan v. Union of India [LNIND 1977 SC 214 - Para 10]

as well as the scope and purport of Article 361 of the Constitution of India and held as follows in paras 16 and 17:

"16. It is to be stated that Article 361 of The Constitution of India insulates the Governor of the State from being questioned or make him answerable before any Court with respect to the discharge of his official duties. Article 361 of The Constitution of India gives complete immunity and privilege to the Governor of the State in discharge of his

constitutional obligation. Therefore, questioning the discharge of act of the Governor or failure to discharge his constitutional obligations cannot be subjected to judicial scrutiny under Article 226 of The Constitution of India by arraying him as a party to the writ proceedings. In this case, even assuming that the Governor of the State did not take into account the Advice given by the Council of the Ministers, it will not be a ground for the petitioner to file this writ petition and contend that the protection of life and personal liberty guaranteed under Article 21 of the Constitution of India has been infringed. The privileges and immunity conferred on the Governor of the State under Article 361 of The Constitution of India is a clear bar for the petitioner to file the present writ petition. The Governor of the State cannot therefore be equated with the instrumentalities of the Government enumerated under Article 12 of The Constitution of India who are amenable to the jurisdiction of this Court under Article 226 of The Constitution of India.

17. Thus, in the light of the above discussions and decisions of the Supreme Court, it is abundantly clear that the Governor of the State is insulated from being questioned or made answerable to the Courts with respect to discharge of his constitutional functions and duties. The immunity so conferred on the Governor of the State is unfettered and it cannot be intruded by this Court in exercise of the power conferred under Article 226 of The Constitution of India. The personal immunity under Article 361 of the Constitution of India is clear and specific in not to proceed against the President or a Governor of a State, and therefore, the present writ petition, arraying the Governor of the State as respondent No.1 is not maintainable."

11. In the light of the well settled position of law, this Court is precluded from issuing any positive direction to the first respondent to take appropriate steps and place necessary materials before His Excellency, President of India for removal of the Governor of Tamil Nadu in the light of the observations made in Para Nos.81 of the judgment in B.P.Singhal case (cited supra), that "exercise of pleasure by the President under Article 156(1) of the Constitution of India should be on the advise of the Council of Ministers under Article 74(1)" and that apart, in the light of the observations made in Paras 82 and 83 (iv) of the said judgment that "the decision for withdrawal of President's pleasure under Article 156(1) is open to judicial review but in a very limited extent and as there is no need to assign reasons, any removal as a consequence of withdrawal of pleasure will be assumed to be valid and will be open to only a limited judicial review". It was observed in para 83 that "the Court will not interfere merely on the ground that a different view is possible or that the material or reasons are

insufficient" and therefore, this Court is not inclined to entertain this writ petition.

12. The decisions relied on by the learned counsel appearing for the petitioner have no application to the prayer sought for by the petitioner and it merely define the role of the Governor. In the considered opinion of the Court, the prayer sought for by the petitioner is per se not maintainable.

13. In the light of the reasons assigned above, this writ petition deserves dismissal.

14. In the result, this Writ Petition is dismissed as not maintainable. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Jvm

To

Union of India rep. by
Ministry of Home Affairs,
Jai Singh Marg, Hanuman Road Area,
Connaught Place, New Delhi, Delhi-110 001.

+lcc to Mr.S.Doraisamy, Advocate, S.R.No.596

+lcc to Mr.V.Chandrasekaran, Advocate, S.R.No. 370

W.P.No.34813 of 2019

PM(CO)
GN(03/02/2020)

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