IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.11244, 11245, 30185 of 2012, 28505 of 2013,
6985 & 12050 of 2014
and
M.P.Nos.1, 1,1, 2, 2, 2, 3, 3, 4 of 2012
and
M.P.Nos.1 & 2 of 2013
and
M.P.Nos.1 to 3 of 2014

1 RED GIANT MOVIES
REP BY ITS AUTHORIZED SIGNATORY
M.SHENBAGAMOORTHY S/O.MURUGESAN NO.180
MURASOLI ACHAGAM KODAMBAKKAM HIGH ROAD
CHENNAI 34

...PETITIONER IN WP NO.11244,11245
& 30185 OF 2012, 28505 OF 2013.

1 RED GIANT MOVIES
REP. BY ITS AUTHORIZED SIGNATOR
S.SARAVANAMUTHU S/O.SELLADURAI HAVING OFFICE
AT NO.180 MURASOLI ACHAGAM KODAMBAKKAM
HIGH ROAD CHENNAI-34.

...PETITIONER IN WP Nos.6985
& 12050 OF 2014

Vs

1 THE COMMISSIONER
COMMERCIAL TAX DEPARTMENT CHEPAUK CHENNAI

2 THE SECRETARY
COMMERCIAL TAXES AND REGISTRATION DEPARTMENT
FORT ST.GEORGE CHENNAI

...RESPONDENTS 1 & 2 IN WP
Nos.11244,11245, 30185 OF 2012,
28505 OF 2013, 6985 & 12050 OF 2014

3 MR.SUNIL PALIWAL I.A.S.
NO.26 NARMATHA ST 4TH MAIN ROAD RIVER
VIEW ENCLAVE MANPAKKAM CHENNAI-125.

4 DR.K.MANIVANNAN
NO.129 DEFENCE COLONY NADAMBAKKAM
CHENNAI-89.

...RESPONDENTS 3 & 4 IN WP Nos.30185 OF 2012

3 MR.S.K.PRABHAKARAN I.A.S.
FATHERS NAME NOT KNOWN COMMERCIAL TAXES AND
REGISTRATION DEPARTMENT
FORT ST. GEORGE CHENNAI

4 DR.K.MANIVASAN I.A.S.
FATHERS NAME NOT KNOWN NO.129 DEFENCE
COLONY NANTHAMBAKKAM CHENNAI-89

... RESPONDENT 3 & 4 in WP No.28505 of 2013

3 M.N.RAJAM
17/7 MILLWAUKEE APARTMENTS 1ST FLOOR
BALAJI NAGAR 3RD STREET ROYAPETTAH
CHENNAI-14

4 A.L.RAGHAVAN
17/7 MILLWAUKEE APARTMENTS 1ST FLOOR
BALAJI NAGAR 3RD STREET ROYAPETTAH
CHENNAI-14

5 T.RAJA SHREE
SRINIVASA NILAYAM NO.10 POROR SOMASUNDARAM
STREET T.NAGAR CHENNAI-17

6 N.V.ANANDHAKRISHNAN @ BABU
OLD NO.7 NEW NO.12 KRISHNASAMY STREET
ABIRAMIPURAM CHENNAI-18

7 V.S.RAGHAVAN
OLD NO.6 NEW NO.11 SCHOOL VIEW ROAD
RAMAKRISHNA NAGAR CHENNAI-28
(R7 GIVEN UP VIDE ORDER DT:29/01/2015 BY
SVNJ IN WP.12050/14 AS PER THE MEMO
DT:29/01/2015 FILED IN WP.12050/2014)

8 L.R.ESWARI
NO.1 SARADHAMMBAL STREET GOKULAM COLONY
T.NAGAR CHENNAI-17

9 C.S.GANESAN (SHANKAR GANESH)
B.B.C. FLATS 3RD FLOOR 14 SOUTH BOAG ROAD
T.NAGAR CHENNAI-17

... RESPONDENT 3 TO 9 in WP No.12050 of 2014

Prayer in WP. 11244/12: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, by calling for records and quash the Government Order (d).No.159 dated 16.04.2012 passed by the 2nd respondent.

WP No.11245 of 2012

Calling for records and quash the G.O.No.89 Commercial Tax and Registration Department dt 21.7.2011 and the consequent guideline proceedings No. Sa.Ku.4/569/2012 dt 9.1.2012 of the 2nd respondent.

WP No.30185 of 2012

Calling for the records from the office of the 2nd respondent and quash the impunged order in G.O.474 dated 30.10.2012 passed by the 2nd respondent.

WP No.28505 of 2013

Calling for the records from the office of the 2nd respondent and quash the impugned order in G.O.557, dated 10.10.2013 passed by the 2nd respondent and direct the respondents 1 & 2 to grant exemption under Tamilnadu Enterainment Tax Act.

WP No.6985 of 2014

Calling for the records from the office of the 2nd respondent and quash the impugned order in G.O.(D) No.90 dated 26.2.2014 passed by the 2nd respondent inrespect of the date of grant of exemption under Tamil Nadu Entertainment Tax Act from 26.2.2014 and direct the 2nd respondent to grant exemption from 14.2.2014 to 25.2.2014

WP No.12050 of 2014

Calling for the records pertaining to the impugned order in G.O.No.002 dated 3.1.2012 passed by the 2nd respondent in so far as the appointment of the respondents 3 to 9 is concerned and quash the same and consequently direct the 1st and 2nd respondents to constitute a new committee to view and recommend films for grant of exemption to entertainment tax.

For Petitioner : Mr.R.Raman Laal
[in all W.Ps]
For Respondents For R1 & R2 : Mr.V.Veluchamy
Government Advocate
[in all W.Ps]

No appearance

W.P.No.30185 of 2012	-	R3 & R4
W.P.No.28505 of 2013	-	R3 & R4
W.P.No.12050 of 2014	-	R3 to R6, R8 & R9 and R7-given up

COMMON ORDER

The Writ Petition in W.P.No.11244 of 2012 is filed, to call for the records pertains to G.O.(d).No.159 dated 16.04.2012 passed by the 2nd respondent and quash the same.

1.1. The Writ Petition in W.P.No.11245 of 2012 is filed, challenging the Government Order passed in G.O.Ms.No.89, Commercial Tax and Registration Department dated 21.07.2011 and the consequential guidelines issued by the second respondent in proceedings dated 09.01.2012.

1.2 The Writ Petition in W.P.No.30185 of 2012 is filed to quash the Government order passed in G.O.Ms.No.474 dated 30.10.2012.

1.3 The Writ Petition in W.P.No.28505 of 2013 is filed, to quash the impugned order in G.O.Ms.No.557 dated 10.10.2013 passed by the second respondent and further, direct the respondents 1 and 2 to grant exemption to the Petitioner's Movie under the Tamil Nadu Entertainment Tax Act.

1.4 The Writ Petition in W.P.No.6985 of 2014 is filed, challenging the Government Order passed in G.O.(D).No.90 dated 26.02.2014 passed by the 2nd respondent in respect of the date of grant of exemption under Tamil Nadu Entertainment Tax Act from 26.02.2014 and direct the 2nd respondent to grant exemption from 14.02.2014 to 25.02.2014.

1.5 The last Writ Petition in W.P.No.12050 of 2014 is filed to quash the Government Order passed in G.O.No.002 dated 03.01.2012 passed by the second respondent in so far as the appointment of the respondents 3 to 9 is concerned and consequently, direct the 1st and 2nd respondents to constitute a new committee to view and recommend films for grant of exemption to entertainment tax.

2. The petitioner is a Firm, involved in the production and distribution of films mainly in the State of Tamil Nadu. The petitioner states that it has produced about eight movies and distributed several other movies throughout India. The Government of Tamil Nadu under the Tamil Nadu Entertainments Tax Act, 1939, granted exemption from payment of entertainment tax for the movies having their title in Tamil by passing the Government Order bearing G.O.Ms.No.72 dated 22.07.2006. The said Government Order was followed with another Government Order bearing G.O.Ms.No.89, dated 21.07.2011, wherein certain additional conditions are imposed for grant of exemption from payment of Entertainment tax under the Tamil Nadu Entertainments Tax Act, 1939. The guidelines / conditions for grant of

exemption under the Government order are issued by the first respondent / Commissioner of Commercial Tax Department in proceedings dated 09.01.2012.

3. The Government issued orders in G.O.No.002 dated 03.01.2012, constituting a committee comprising of persons as official members and other persons as ex-officio members to the said committee. The said committee constituted to view and assess the movies in respect of the applications submitted by the producers / distributors for grant of exemption under the Tamil Nadu Entertainments Tax Act, 1939.

4. The petitioner submitted an application for exemption before the first respondent on 30.01.2014 for their movie namely 'Idhu Kathirvelan Kadhal'. After the film was certified by the Film Censor Board, the first respondent refused to give any acknowledgement of receipt of the application even though the application was submitted on 30.01.2014. The first respondent is required to nominate a committee, which is to view the movie and recommend, if the same is eligible for exemption under the Tamil Nadu Entertainments Tax Act or not. The petitioner was forced to file a writ petition in W.P.No.3203 of 2014.

5. The learned counsel for the petitioner reiterated that whenever the petitioner approaches the respondents, seeking exemption regarding their movies, there is an apparent discrimination and thus, the very constitution of the Committee is not in accordance with the purpose and object for grant of exemption from payment of Entertainment Tax.

6. The learned counsel for the petitioner made a submission that the first and second respondents are constantly discriminating the petitioner, because the movies are produced and distributed and sometimes starred in by Mr.Udhayanidhi Stalin, the Partner of the Petitioner company, who is the son of Mr.M.K.Stalin, the DMK Party Treasurer and Former Deputy Chief Minister of Government of Tamil Nadu, presently, the Hon'ble Chief Minster of Tamil Nadu. For all the movies produced and distributed by the petitioner, Entertainment Tax Exemption was denied on non existent grounds. Thus, the petitioners were forced to approach this Hon'ble Court by filing several writ petitions i.e., W.P.Nos.11244, 11245 of 2012 in respect of the Movie 'Oru Kal Oru Kannadi'; W.P.No.30185 of 2012 in respect of the Movie 'Neer Paravai'; W.P.No.28505 of 2013 for the Movie 'Vanakkam Chennai'; W.P.No.11245 of 2012, the petitioner has challenged G.O.No.89 dated 21.07.2011 and the consequential proceedings issued in G.O.No.2 dated 09.01.2012. The petitioner also challenged the rule making power of the respondents to pass the above referred G.O in W.P.No.30808 of 2013.

7. The respondents refused to constitute a Committee in respect of the movie 'Oru Kal Oru Kannadi', which was produced by the petitioner and therefore, the petitioner approached this Hon'ble Court by way of a writ petition in W.P.No.10211 of 2012. Pursuant to the directions of this Court on 12.04.2012, the respondents 1 and 2 constituted a Committee to view and certify the movie 'Oru Kal Oru Kannadi'. Even in respect of the Movie 'Idhu Kathirvelan Kadhal', the respondents 1 and 2 refused to processes the application for Entertainment Tax Exemption by reason of which, the petitioner was forced to file another writ petition in W.P.No.3023 of 2014. Even for that movie, the petitioner approached the Court and pursuant to the directions issued by this Court, a Committee was constituted. Ultimately, exemption was granted after deliberately dragging on the issue under one pretext or the other. Since the exemption was granted from 26.02.2014, the petitioner filed W.P.Nos.6985 of 2014 for getting exemption from the movie 'Idhu Kathirvelan Kadhal' from the date of release of the movie i.e., from 14.02.2014.

8. The learned counsel for the petitioner reiterated that there was an absolute discrimination in respect of the applications submitted by the petitioners for several movies for grant of exemption under the Tamil Nadu Entertainments Tax Act. Thus, on each stage, they are forced to file writ petition even for constitution of a Committee. Under these circumstances, the petitioner challenged the very Government orders as well as the guidelines issued.

9. In respect of the said movie, 'Idhu Kathirvelan Kadhal', though the exemption was granted, it was granted belatedly, which caused irreparable loss to the petitioners. As far as the movie 'Oru Kal Oru Kannadi' is concerned, the exemption was rejected without assigning any valid reason.

10. The learned counsel for the petitioner reiterated that certain movies, where the title contains words in 'English' language, had been granted exemption and therefore, there is an element of Favouritism and Nepotism by the respondents 1 and 2 in the matter of grant of exemption from payment of Entertainment Tax. At the outset, it is contended that Committee has not been constituted properly and the Members of the Committee are not impartial and had not acted in consonance with the very purpose and object of grant of exemption from payment of Entertainment Tax. In one writ petition, the petitioner has impleaded all the Committee Members as respondents. The allegations are raised that the guidelines issued by the Government for grant of Exemption had not been followed. The Committee has taken unilateral decisions and further, exemptions are granted in a whimsical manner without considering the guidelines issued by the Government. Thus, the entire exercise

of the Committee for grant of exemption is perverse and tainted with malafides. Under those circumstances, the writ petitioner was forced to file writ petition, challenging the constitution of Committee itself. However, the fact remains that all these incidences occurred long before right from the year 2012 to 2014 and under these circumstances, this Court directed the learned counsel for the respondents to submit the recommendations of the Committee pursuant to the application submitted by the petitioner for granting exemption to their movie namely 'Oru Kal Oru Kannadi'. Pursuant to the directions, the learned counsel produced the recommendations of the Committee. The recommendations of the committee as far as the movie 'Oru Kal Oru Kannadi' is concerned, the Commissioner, Commercial Tax Department in his letter dated 16.04.2012 sent a report to the Secretary to Government, Commercial Tax and Registration Department, Chennai - 9.

11. As far as the movie namely 'Neerparavai' is concerned, the report was submitted by the Commissioner, Commercial Tax Department in letter dated 19.10.2012 to the Secretary to Government, Commercial Taxes and Registration Department, Chennai - 9.

12. As far as the other movie namely 'Vanakkam Chennai' is concerned, the Commissioner, Commercial Taxes, submitted his report to the Government in letter dated 08.10.2013.

13. The Committee appointed for the purpose of viewing the movie submitted its recommendations. Perusal of the observations would reveal that all the members of the Committee had taken a consistent view and under these circumstances and after a lapse of many years, this Court is not inclined to go into the findings of the Committee. This apart, the recommendations of the Committee are the opinion of its members. Opinions may differ from person to person and in normal circumstances, Court cannot interfere with the recommendations of such Committees. It is a general principle that the Expert opinions are to be followed in all circumstances except on extraordinary circumstances, if any malafide or illegality is established. Court cannot act as an Expert body for the purpose of confirming an opinion with reference to the contents in the movie. Thus, this Court is of the considered opinion that interference at this length of time is not desirable.

14. However, the petitioners have raised the allegation of malafides and such allegations are broad in nature. In the absence of specific allegations, it may not be possible for this Court to interfere with the recommendations as well as the Government Order passed pursuant to the recommendations to undo the exercise done by the Committee. But the manner in which the

entire exercise is done by the Committee as well as the Government seems to be not in consonance with the established principles. The recommendations made as well as the credibility of the members are certainly disturbing the mind of this Court as the petitioner has produced number of documents to establish that the Committee members are appointed at the whims and fancies of the Government and to suit their convenience. It is contended that all such appointments were on Political basis and therefore, common man cannot expect any impartiality from such Committee constituted, in order to accommodate the men and women belong to the ruling party or having close affinity with the party leaders.

15. The petitioners have raised an allegation that in some of their movies, Mr.Udhayanidhi Stalin, Son of Mr.M.K.Stalin, is an Actor and this is also one of the reason for rejecting the application filed by the petitioners, seeking exemption from payment of Entertainment Tax.

16. In respect of the said allegations, the opinion formed by the petitioners cannot be brushed aside as there is some substance. However, this is the unfortunate situation in our great Nation, wherein people holding responsible public posts are acting with the evil elements of Favouritism and Nepotism. Favouritism, Nepotism and corrupt activities are anti-developmental, anti-national and unconstitutional. Such evil elements are not only creating trouble in the mind of the Court, but it will have greater impact for upholding the constitutional mandate of social justice. One can imagine if Favouritism, Nepotism and corrupt activities are allowed to go on to such an extent, the common man will suffer and we will not march towards the goal of social justice as enunciated in the Preamble of the Constitution of India. Therefore, appointment of women and men of integrity in public posts, specifically in such Expert Committees are of paramount importance.

17. Political parties in our great Nation is thriving hard to rule the Country. Many members of the Political Party are also struggling to get Governmental positions and under those circumstances, the leaders of the Party once elected, must act freely, fairly and only in the interests of the people of our great Nation and strictly in accordance with the Constitutional Philosophy and Ethos. Thus, the democracy will survive only if the women and men of integrity is appointed in public posts.

18. Blaming an institution is of no matter. Institutions are always majestic. Institutions are created with the noble purpose and objects. Our Nation is having good laws to govern such institutions. However, if women and men of integrity is not administering the institution, then that becomes an agony, and

leads to destruction. Thus, institution need not be blamed. The women and men manning the institutions alone are to be blamed for such illegal activities of Favouritism, Nepotism and corrupt activities.

19. The definition of corruption is not confined only on demand and acceptance of illegal gratification. Corruption in many other forms are far more dangerous than illegal gratifications. Those corrupt activities in the mind are the cause for destruction of the institutions in this Country. Therefore, people should realise that the appointment of women and men of integrity and honesty alone is the solution for the purpose of upholding the institutional values, recognition and majesty.

20. This Court is of the humble opinion that the Governmental institutions have no heart and life of its own. It remains as a building with infrastructures. It is the women and men of integrity, who injects heart and soul to these institutions for the welfare and benefit of the common people. Thus, the institutional integrity includes the engagement of authorities possessing the virtue of integrity and honesty. Once the individual's character is lost, the institutional values are lost, the credibility is lost and therefore, the governmental approach in these aspects must be cautious and in consonance with the constitutional perspectives.

21. The Government of the day is appointing number of Expert Committees, public appointments, etc., However, the sanctity in selection is to be protected and in the event of any violation, illegality or unconstitutionality is identified, the Government of the day must act with iron hand and no such person whatsoever high he may be, cannot be shown any leniency or misplaced sympathy in order to achieve the goal of social justice and equality.

22. Our Constitution has noble ideas and principles. Undoubtedly, we are thriving hard to achieve those goals. However, conviction of mind in the matters of upholding the institutional values and strength are of vital. Thus, the mechanism of control must be far more transparent than that of the system prevailing now. Unless effective steps are taken, the constitutional mandate of effective public administration cannot be provided to the citizen of this great Nation. Thus, this Court has no contrary opinion regarding judicial restraint to be exercised in administrative policies. However, the Courts are bound to express its anguish regarding the happenings in the public Administrations. That exactly is the reason why there is a clash between judicial restraint and judicial activism. Undoubtedly, the Court cannot run the Government. However, the

High Court has got a constitutional duty to protect the constitutional principles and the values. While exercising the constitutional powers, Courts cannot close its eyes in respect of such happenings in the public administration. The Government of the day irrespective of the political parties, must think about all these aspects.

23. As far as the present writ petitions are concerned, this Court could easily visualize the possibilities of Favouritism and discrimination. However, for want of evidences and in view of the fact that there is no specific malafide allegations against the persons, this Court is unable to consider the relief as such prayed for. However, the Committees overall exercise was improper as the members of the Committee have certain personal affinity with the Government or the Political leaders, who were ruling the State. Courts cannot undo the exercise in the event of not establishing malafide with a concrete proof. Mere statements are insufficient. However, inference can be drawn based on certain actions. In the present case, the Court could able to draw an inference. However, due to efflux of time, this Court is not inclined to undo the exercise already concluded long back. Thus, the Government of the day is expected to consider the following aspects and appoint Committees and authorities in Government organizations and institutions.

(1) The women and men of integrity having merit must be selected and appointed in Expert Committees, Governmental organizations and institutions etc.,

(2) Integrity and honesty must be the criteria, which is to be assessed at the first instance and the merits are to be considered. When the merits are being equal priority, should be given to the integrity and honesty.

(3) All such selections and appointments are to be made in a transparent manner and by providing equal opportunity to all the eligible women and men, who all are eligible for such appointments. All such selection and appointments are to be made beyond the Political affinities, aspirations and ideologies, keeping in mind that it is public appointments.

(4) If each Political party appointing their own men in such Expert Committees, if allowed to be continued, then there is no scope for revival of social justice, equality in opportunities, merit and integrity.

24. In view of the facts and circumstances as well as the principles disclosed in the aforementioned paragraphs, the Government is expected to revisit the entire process and appointment the Committees, grant of exemptions for movies and formulate a policy decision, which can work free from

Favouritism, Nepotism and corrupt activities, enabling the people of this great Nation to get social justice from the Government of the day.

25. In result, all these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Kak
To
1. The Commissioner,
Commercial Tax Department,
Chepauk, Chennai.

2. The Secretary,
Commercial Taxes and Registration Department,
Fort St.George,
Chennai.

3. The Chief Secretary to Government,
Fort St.George,
Chennai - 600 009.

+6 Ccs to M/s.R.Ramanlaal, Advocate, Sr.No. 31371, 31372, 31373, 31375, 31376, 31377.

+1 CC to The Special Government Pleader(Taxes), Sr.No. 31442, 31443, 31445, 31446.

+1 CC to M/s.R.Ramanlaal, Advocate, Sr.No. 31374.(15/09/2021)

W.P.Nos.11244, 11245, 30185
of 2012, 28505 of 2013,
6985 & 12050 of 2014

SKY(CO)
LS(24/08/2021)