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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.No.17696 of 2021

and

W.M.P.Nos.18862 and 18864 of 2021

H.Rajaram

.. Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Chief Secretary,
Chief Secretary's Office,
Secretariat, Chennai 600 009.

2. Government of Tamil Nadu,
Rep. by the Additional Chief Secretary,
Home, Prohibition and Excise Department,
Chennai 600 009.

3. V.Krishnamurthy

4. Amit Anand Tiwari

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the impugned order bearing G.O. (Ms.) No.312 dated 06.08.2021 passed by the 2nd respondent and consequently quash the same as unconstitutional, arbitrary and contrary to the settled principles of law.

For the Petitioner : Mr.Nithyaesh Natraj

For the Respondents : Mr.R.Shunmugasundaram
Advocate-General
assisted by Mr.P.Muthukumar,
State Government Pleader
for RR 1 and 2



ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

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Though the submission in this case is commenced with the caveat that the personnel appointed are not sought to be attacked, it is possible that it is such personnel against whom the petitioner canvasses.

2. This court had declined to receive this so-called public interest litigation on a previous date and had requested the petitioner to consider, upon consultation with senior members of the Bar, as to whether the seemingly trivial matter had to be pursued. Such request was not made because the court was shy of dismissing or not receiving an undeserving petition but to ensure that a sense of harmony prevailed and there was no discord as to who ought to represent the State, irrespective of whichever government may be in power. Unfortunately, the court's attempt may have exposed the court to the subsequent filing of documents to sustain an utterly unmeritorious cause.

3. For a start, it was an uninformed petition in that the petitioner was not even aware as to which notification applied to the matter as the notification sought to be assailed had been amended. It was irresponsible on the part of the petitioner to approach this court with a public interest litigation by relying on an outdated notification.

4. Next, the petitioner engages in tautology in trying to suggest that there is a distinction between an order made in the name of the Governor and an order made on the authority of the Governor.

5. In the constitutional scheme of things, the role of the Governor is limited in his executive functioning. There are only a few subjects that the Governor of a State has exclusive authority to decide on his own, in terms of the Constitution. However, the Governor is the nominal head of the government in a State and every State functions in the name of the Governor and contracts, notifications and rules are issued under the authority of the Governor.

6. In practice, what is done is that the government of the



day recommends a matter of business to be transacted upon the authority of the Governor or his consent being obtained in such regard. It is possible that the Governor may not agree with the nature of the business, whereupon the Governor may send the matter back for reconsideration; however, the primacy accorded to the elected government of the day is that upon its re-assertion of the matter, the Governor, as the figurative head, may be bound, which the polite expression "aid and advise" used in the Constitution in such context implies. There is no basis to the underlying submission of the petitioner that the government of the day may not have the authority to appoint any Additional Advocate-General or any other person to represent it in a court of law in any matter or in any manner that the government may choose to do. It is true that the Constitution only provides for the post of an Advocate-General. It is equally true that Article 165 of the Constitution ought not to have been referred to in one of the impugned notifications. The authority to appoint in this case is under a notification issued by the government itself, as amended. Such notification permits regular advocates to be named as representing the State in matters before the High court and even the Supreme Court. Further, when an authority has the jurisdiction to pronounce on any aspect, the mere reference to a wrong source or an erroneous provision would have no bearing on the power of the functionary to carry out the relevant action.

7. There is no merit in the petition and it may have been better if the petition had not been pressed.

W.P.No.17696 of 2021 is dismissed with costs. Consequently, W.M.P.Nos.18862 and 18864 of 2021 are closed.

Sd/-
Deputy Registrar(CS)

// True Copy//

Sub Assistant Registrar

sra

To:

1. The Chief Secretary,
Government of Tamil Nadu,
Chief Secretary's Office,
Secretariat, Chennai 600 009.



2. The Additional Chief Secretary,
Government of Tamil Nadu,
Home, Prohibition and Excise Department,
Chennai 600 009.

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+1cc to the Government Pleader, S.R.No.44906

W.P.No.17696 of 2021

RLD(CO)
SU(08/09/2021)