



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P. (MD) .No.1926 of 2020

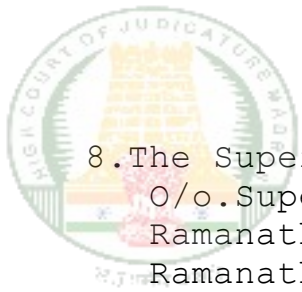
WEB COPY

Mr.I.Mohamed Razvi

.. Petitioner

Vs.

- 1.The Chief Secretary,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.The Home Secretary,
State of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.
- 3.The Joint Director,
Central Bureau of Investigation Head of Zone,
3rd Floor, E.V.K Sampath Building,
College Road,
Chennai-600 006.
- 4.The Director General of Police (DGP)
CBCID, SIDCO Electronic Complex,
1st Floor, Guindy,
Chennai-600 032.
- 5.The Chairman,
Tamil Nadu Public Service Commission,
TNPSC Road,
V.O.C Nagar,
Park Town,
Chennai-600 003.
- 6.The Director General of Police (DGP)
State of Tamil Nadu,
Dr.Radhakrishnansalai,
Mylapore,
Chennai-600 004.
- 7.The District Collector,
O/o.Collectorate Complex,
Ramanathapuram District,
Ramanathapuram.



8.The Superintendent of Police,
O/o.Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the 4th respondent to hand over the investigation to the hand of 3rd respondent to bring out the real facts, by doing free and fair investigation, within a time frame as fixed by this Court.

For Petitioner : Mr.K.Neelamegam
For R5 : Mr.Issac Mohanlal, Sr. Advocate
for Mr.V.Paneer Selvam
For R1,R2, R6 to : Mr.Veera kathiravan
R8 Additional Advocate General
for Mr.B.Saravanan
Government Advocate

ORDER

P.VELMURUGAN, J.,

This Writ Petition is filed for the issuance of a Writ of Mandamus, to direct the fourth respondent to hand over the investigation to the third respondent to bring out the real facts, by doing a free and fair investigation.

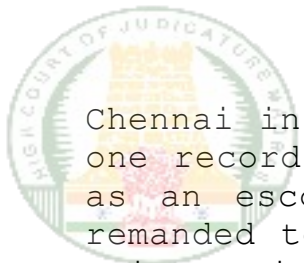
2.Heard Mr.K.Neelamegam, learned counsel appearing for the petitioner, Mr.Issac Mohanlal, learned Senior Counsel appearing for the fifth respondent and Mr.Veerakathiravan, learned Additional Advocate General-III appearing for the Respondents 1, 2, 6 to 8.

3.The case of the petitioner is that the Tamil Nadu Public Service Commission(hereinafter referred to as TNPSC in short) had conducted Group-IV examination in the month of September 2019. The TNPSC published the exam result in the month of November 2019 and called for online certificate verifications from the selected candidates. At that point of time, a news was published in the media including news papers and Whats-app that out of top 100 candidates, most of the candidates who have written the examination in particular centres, have been selected provisionally. On seeing the same, TNPSC have conducted a preliminary enquiry and subsequently, filed a complaint before the 4th respondent for the alleged malpractice said to have been indulged in two of the examination centres in Ramanathapuram District. Based on the said complaint, the fourth respondent have



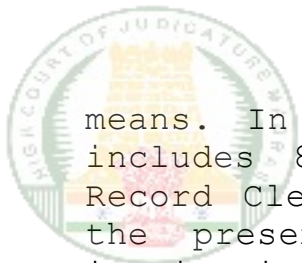
registered a case. During the investigation, the fourth respondent also arrested some of the candidates, who wrote examination in the said centres and also alleged that during the transmission of answer coding sheets, on the way, those answer sheets were tampered and manipulated. This was published in the news paper and the petitioner apprehends that the top officials in the Public Service Commission might have involved in the malpractice/scam. If the fourth respondent conducted the investigation, the truth would not come out, as the higher officials of the Public Service Commission have also involved in the said scam. If at all, a fair and effective investigation had been conducted, the actual truth would come out. In case, any higher officials or top rank officials or other influential persons are involved in the malpractice/scam, there is a possibility of making influence on the investigation. If any independent agency like CBI conducted the investigation, the truth will come out, without being influenced by any one. Now, the people of Tamil Nadu apprehend that whether a fair investigation would be conducted and the entire truth will come out and the Petitioner's faith is that if an independent agency like CBI investigate the matter, there may be a fair investigation and therefore, the petitioner has filed the present Writ Petition styled as "Public Interest Litigation" stating that there are so many possibilities for the involvement of high officials in the State and since CBCID would not reach them, the real culprits would not be brought in to the probe circle. The high level malpractice of TNPSC Group-IV examination is having a national impact and if the State agency is deployed in the process of investigation, it would lack in the investigation. In the said malpractice and scam, higher officials are involved, but the fourth respondent has arrested only some of the candidates, middlemen, one Record Clerk and Typist of the fifth respondent, only to show that the investigation is in a proper direction. Therefore, the people of Tamil Nadu apprehend that as to whether they would get real justice. The Central Bureau of Investigation is the only suitable agency to conduct a free and fair investigation to probe into the alleged malpractice.

4.The fourth respondent in his counter affidavit has stated that based on the complaint given by TNPSC, they registered a case in Crime No.4 of 2020 for the offences under Sections 120A, 120-B, 121 IPC, r/w 464, 466, 468, 470, 471, 481, 482, 484, 485, 487 and 488 IPC @ 120-B, 420, 465, 468, 471 IPC and also registered another case in Crime No.2 of 2020 pertaining to TNPSC 2017 Group II-A Examination and also yet another criminal case has been registered in respect of 2016-VAO Examination. After completion of examination, the answer sheets packed and sent from Taluk Examination Centres at Ilayangudi to the District Treasury at Sivagangai, escorted by the Revenue Officers in the rank of Tahsildar. Thereafter, the answer paper bundles were brought to



Chennai in ABT parcel van under the Supervision of 2 TNPSC staff, one record clerk and one Typist of TNPSC and one Police Constable as an escort. The Record Clerk, who was arrested by CBCID and remanded to judicial custody, was in contact with one of the main private individual, who is the kingpin in this case, who had played a major role in organizing the entire operation and they are conducting a free and fair investigation and no higher officials of the TNPSC have involved in this case and there is no necessity to transfer the investigation to CBI.

5.The first respondent has also filed an affidavit stating that the petitioner, without the knowledge of the progress made in the investigation, baldly claimed that only few people have been arrested, in Group-II A Examination case. So far 59 persons have been arrested, which includes 40 candidates, 3 Police Personnel, 2 Village Administrative Officer, 1 Deputy Manager of a Private Bank, 1 record Clerk of TNPSC and 12 other persons and one candidate is absconding and yet to be arrested. The main accused persons were taken into police custody and subjected for interrogation and valuable evidence including incriminating documents have been collected from them. Based on the complaint given by TNPSC, CBCID has registered a case in Crime No.4 of 2020 on 23.01.2020 for the malpractice in Group-IV 2019 Examination conducted in Rameswaram Taluk and Keezhakarai Taluk Centres. The entire offence was committed mainly by few private individuals in connivance with 1 Record Clerk and one Typist of TNPSC. Another case in CBCID OCU-I Cr.No.2 of 2020 has been registered for the malpractice committed in Group II-A Examination conducted in the year 2017. Therefore, the meticulous investigation in the above two cases exposed that similar malpractice occurred in VAO Examination held in the year 2016, for which, another case in ATC Cr.No.2 of 2020 has been registered and the investigation is in progress. Therefore, since the investigation is in progress, there is no need to transfer the case to any other agency. In Group-IV 2019 Examination, it has been found in the investigation that totally 99 candidates said to have been involved in the malpractice, out of which, 39 candidates passed using unfair means. In this case, 115 persons have been arrested which includes 95 candidates, two Government Staff of TNPSC, 1 Driver of the vehicle which carried answer sheet bundles and 17 other persons. Valuable evidence including documents, money and vehicle used for the commission of offence have been recovered. The house of the main accused was searched through Search Warrant and incriminating materials like, gold and silver articles have been seized. In Group II-A examination, so far 59 persons, have been arrested, which includes 40 candidates 3 Police Personnel 2 VAO, 1 Deputy Manager of a Private Bank, 1 Record Clerk of TNPSC and 12 other persons and one candidate is absconding and yet to be arrested. In VAO 2016 Examination, 9 candidates have passed by using unfair



means. In the said case, 17 persons have been arrested, which includes 8 candidates, 1 main accused, 1 Police Constable, 1 Record Clerk belonging to TNPSC and 6 other persons. Therefore, the present writ petition is filed only on the ground of imagination and also the fourth respondent is conducting a free and fair investigation and as the investigation is in progress, there is no need to transfer the case to any other agency. There is no specific allegation against any of the Investigating Officers in this case.

6.The fifth respondent in his counter affidavit stated that the TNPSC had invited applications from the eligible candidates to fill up the vacancies to various posts included in Group IV Services for the year 2018-2020. As per schedule, the last date for submission of application was 14.07.2019 and totally 16,31,648 candidates applied and out of which, 16,29,865 candidates were admitted for written examination. The written examination was held on 01.09.2019 and after evaluation of OMR sheets, the rank list was published on 12.11.2019. The list of provisionally selected candidates for certificate verification was published on 30.11.2019 and the candidates were informed to upload their certificates through online between 05.12.2019 and 18.12.2019. When the online verification of certificates was in progress, a news was published in the media including Whats-app to the effect that out of top 100 candidates, most of the candidates, who have written the Examination in particular Centres, have got selected and therefore, some kind of malpractice would have been committed during the written examination. Once the above news published in the media, it came to the notice of the Commission and the Commission decided to conduct a full fledged investigation and to find out the malpractice, if any, and they conducted an preliminary enquiry and prima facie found that during the written examination in two of the centres viz., Keelakarai and Rameswaram, some of the candidates are involved in certain malpractice. The Commission had decided to verify the OMR sheets of all the candidates those who were provisionally selected and called for certificate verification and subsequently, *prima facie* found that there was a malpractice and tampering of the OMR sheets. Therefore, the TNPSC gave a complaint to the fourth respondent, who in turn, have registered a case and the investigation is in progress. Even in the preliminary enquiry found that no high officials of the Commission are involved in the malpractice and there is no necessity to transfer the investigation.

7.The learned Additional Advocate General-III appearing for the first respondent would submit that the investigation is going on in right track and so far almost all the accused, who alleged to have been involved in the malpractice in the various examinations, have been arrested and incriminating materials have

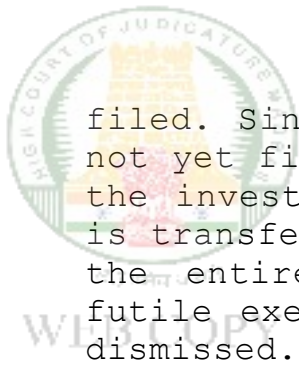


been collected from them and there is no specific allegation against the Investigating Officer have been received by the first respondent so far and the forth respondent is conducting a free and fair investigation and no need to transfer the case to any other agencies like Central Bureau of Investigation.

WEB COPY

8.The learned counsel appearing for the fourth respondent would submit that on receipt of the complaint from TNPSC, the fourth respondent has registered a case and conducting a free and fair investigation and so far, they have arrested almost all of the accused and there is no influence by any of the higher officials and so far 115 persons have been arrested, which includes 95 candidates, 2 Government Staff of TNPSC, 1 Driver of the vehicle which carried answer sheet bundles and 17 other persons. Insofar as Group-IV 2019 Examination is concerned, no higher officials alleged to have been involved in the malpractice and there is no necessity to transfer the case. Further, the learned counsel would submit that almost the investigation has come to an end and only awaiting for Forensic Expert Opinion and for filing final report and therefore, at this stage, the investigation cannot be transferred. The learned counsel has also placed reliance on the judgments of the Hon'ble Supreme Court in the case of **Arnab Ranjan Goswami -vs- Union of India and Others.**, reported in **(2020)14 Supreme Court Cases 12** and **Rhea Chakraborty -vs- State of Bihar and Others.**, reported in **2020 SCC Online 654** and submitted that under what circumstances the investigation can be transferred from the State investigating Agency to any other independent investigating agency like Central Bureau of Investigation(CBI) and if all the cases are referred to CBI which would investigate and cannot be any progress and further there is no necessity to transfer the case, unless there is a specific allegation against the investigating officers.

9.The learned counsel appearing for the fifth respondent would submit that soon after publishing the news by media, TNPSC had conducted a preliminary enquiry and found that there was a malpractice in two of the centres, one is Keelakarai and another one is Rameswaram and also found that they have chosen the particular centre to achieve their goal and immediately, the Commission filed the complaint before the fourth respondent and the fourth respondent also registering the case and conducting the investigation. During the investigation, they have found out not only the malpractice committed during Group-IV 2019 Examination, but also they have found some other malpractices in two other examinations viz., one in Group II-A 2017 examination and another one in 2016 VAO examination. None of the higher officials have involved in the malpractice/scam. The fourth respondent conducted a free and fair investigation and most part of the investigation have already been over and only final report alone has to be



filed. Since the investigation is in progress and charge sheet is not yet filed, this Court need not pass any order of transferring the investigation. Therefore, at this stage, if the investigation is transferred from the fourth respondent to the third respondent, the entire effort taken by the fourth respondent will become futile exercise and therefore, the writ petition is liable to be dismissed.

10. Heard Mr.K.Neelamegam, learned counsel appearing for the petitioner, Mr.Issac Mohanlal, learned Senior Counsel appearing for the fifth respondent and Mr.Veerakathiravan, learned Additional Advocate General-III appearing for the respondents 1, 2, 6 to 8 and perused the materials available on record.

11. Admittedly, there was a publication in the news channels regarding the malpractice in Group-IV 2019 Examination conducted by TNPSC. Subsequently, a case was registered by the fourth respondent, based on the complaint given by the fifth respondent. Even in the year 2019, the present writ petition for public interest has been filed by the petitioner apprehending that some of the officials are also involved in the scam and without their help, the scam would not have been succeeded and if the fourth respondent conducted the investigation, the entire truth may not come out. Therefore, if an independent agency like the third respondent would conduct the investigation, the entire truth will come out. Further, the fourth respondent has arrested some of the candidates and lower grade staff like one Record Clerk, one Typist and the middlemen only to show that the investigation is in progress. The State would ensure that a free and fair investigation is being conducted and exhibit the vital role played by the hidden higher officials of the fifth respondent. The case has to be transferred to the Central Bureau of Investigation, as the alleged scam is having a national impact, it would instil confidence in the public mind.

12. Admittedly, the status report filed by the Deputy Superintendent of Police, Crime Branch CID, in which, he has stated that prima facie they have found there is a malpractice and arrested some of the candidates and other prime accused etc and also found that the malpractices have taken place in two other examinations conducted by TNPSC, which clearly shows that this is not for the first time, there are malpractices in TNPSC and other Examinations also and therefore, in order to curb the same from the very root itself and to find out that who are all the root cause for all these malpractices and as to whether any higher officials, who are now in service or retired staff are involved or any other external affairs are also involved are all to be found out and removed the same from the root. The malpractices alleged to have been committed in Group-IV and other Examinations are



certainly having a national impact, crores of the educated youngsters are waiting for the job and also they are running in the race to get a job on merits and trust on the system, putting their tiredless effort and they are facing the examination being conducted by the various agencies including TNPSC. If some of the persons diverting the root and make entry by back door, the people will lose faith on the system and the real eligible candidate not only will lose it if the candidates like these persons, who entered into back door would further pollute the system and no eligible candidates could enter into service and after some time, the back door entries will occupy the entire system. It would also endanger to the Society and certainly the people especially the law abiding citizen would lose faith and trust in the system and they will also try to take the other mode or to take law into their own hands. Therefore, there is a national impact in the said system.

13. Though the learned counsel appearing for the fourth respondent placed reliance on the decisions of the Hon'ble Apex Court supra, the decisions are not made applicable to the present case on hand. But those cases have been filed by one of the parties to that cases to transfer the case from one agency to another agency. The Hon'ble Apex Court dealt with the matter and also given certain guidelines under what circumstance the investigation can be transferred from the State Investigating agency to any other independent investigating agency like CBI. No doubt, every case cannot be conducted by CBI, only in some rare and exceptional cases otherwise, CBI would be flooded with the large number of cases and would find it impossible to have proper investigation in all the cases.

14. It is a settled proposition that the transfer of investigation to CBI is not a matter of routine powers conferred by Articles 32 and 226 of the Constitution. The Supreme Court and the High Courts in rare and exceptional cases, where the Court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State Police lacks credibility and it is necessary for having a fair, honest and complete investigation and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. In this regard, it is pertinent to refer the case in ***K.V.Rajendran -vs- Superintendent of Police, CBCID South Zone, Chennai and others***, reported in (2013) 12 ***Supreme Court Cases 480***, which is also referred to in the citations placed supra by the learned counsel for the fourth respondent. In ***K.V.Rajendran's*** case (cited supra), the Hon'ble Supreme Court referred to several judgments. The relevant paragraphs are extracted hereunder:

<https://hcservices.ecourts.gov.in/hcservices/> The issue involved herein, is no more res



integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual. (Vide: Gudalure M.J. Cherian and Ors. v. Union of India and Ors. MANU/SC/0463/1992 : (1992) 1 SCC 397; R.S. Sodhi v. State of U.P. and Ors. MANU/SC/0013/1994 : AIR 1994 SC 38; Punjab and Haryana Bar Association, Chandigarh through its Secretary v. State of Punjab and Ors. MANU/SC/0220/1994 : AIR 1994 SC 1023; Vineet Narain and Ors. v. Union of India and Anr. MANU/SC/0926/1996 : AIR 1996 SC 3386; Union of India and Ors. v. Sushil Kumar Modi and Ors. MANU/SC/0086/1997 : AIR 1997 SC 314; Disha v. State of Gujarat and Ors. MANU/SC/0841/2011 : AIR 2011 SC 3168; Rajender Singh Pathania and Ors. v. State (NCT of Delhi) and Ors. MANU/SC/0950/2011 : (2011) 13 SCC 329; and State of Punjab v. Davinder Pal Singh Bhullar and Ors. etc. MANU/SC/1476/2011 : AIR 2012 SC 364).

14. In Rubabbuddin Sheikh v. State of Gujarat and Ors., this Court dealt with a case where the accusation had been against high officials of the police department of the State of Gujarat in respect of killing of persons in a fake encounter and the Gujarat police after the conclusion of the investigation, submitted a charge sheet before the competent criminal court. The Court came to the conclusion that as the allegations of committing murder under the garb of an encounter are not against any third party but against the top police personnel of the State of Gujarat, the investigation concluded by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of



the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Thus, the Court held that even if a charge sheet has been filed by the State investigating agency there is no prohibition for transferring the investigation to any other independent investigating agency.

15. In *State of West Bengal v. Committee for Protection of Democratic Rights* MANU/SC/0121/2010 : AIR 2010 SC 1476, a Constitution Bench of this Court has clarified that extraordinary power to transfer the investigation from State investigating agency to any other investigating agency must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. (See also: *Ashok Kumar Todi v. Kishwar Jahan and Ors.* MANU/SC/0162/2011 : AIR 2011 SC 1254).

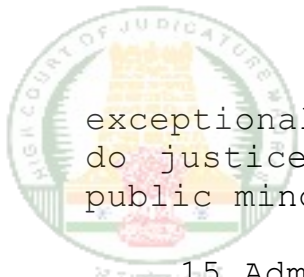
16. This Court in the case of *Sakiri Vasu v. State of U.P.* (SCC p.416, para 31) held:

'31.....this Court or the High Court has power under Article 136 or Article 226 to order investigation by the CBI. That, however should be done only in some rare and exceptional case, otherwise, the CBI would be flooded with a large number of cases and would find it impossible to properly investigate all of them.'

17. In view of the above, the law can be summarised to the effect that the Court could exercise its Constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is *prima facie* found to be tainted/biased.

Considering the above facts and circumstances of the present case do not present special features warranting transfer of investigation to CBI."

The principles laid down in the above mentioned judgments ie., the power of transferring such investigation must be in rare and



exceptional cases where the Court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, is squarely applicable to the present case on hand.

15. Admittedly, in this case, there is malpractice and scam, during the examination conducted by the fifth respondent, so far, the fourth respondent has not filed charge sheet or final report. The fourth respondent has filed status report, in which, he has stated that the investigation is in progress and two more scam have been found out and in all the three cases, some of the accused have been arrested and no higher officials are involved, which creates suspicion in the mind of the public. So without the help of any higher officials, the alleged malpractice and scam could not have been done. It is the duty of the State to remove the doubts in the mind of the public. Otherwise, candidates will not approach the Commission in future in a right way to enter into service, they always try to find out a wrong way and therefore, it is bounden duty of this Court to remove all these bad impressions. Therefore, we find that this is a rare and exceptional case even though there is no specific allegation against any of the Investigating Officers, still there is a doubt in the mind of the public. Therefore, in order to justify and instil confidence in the mind of the public, this Court finds it just and proper and that this is a very suitable case to transfer the investigation from the fourth respondent to the third respondent. Since the alleged allegation expressed is having a national impact and this Court has got the power to transfer the investigation from the state agency to any other independent investigating agency and this Court finds that this is a rare of the rarest case and considering the exceptional situation, this Court deems it fit that if the investigation is being done by CBI, it will dig out the entire truth to light and remove the bad impression in the mind of the general public at large.

16. For all the above reasons, this Writ Petition is allowed. The fourth respondent is directed to hand over the investigation of the cases to the third respondent and on receipt of such cases, the third respondent is directed to take over the cases from the fourth respondent and to conduct a free and fair investigation and file a charge sheet as early as possible without any inordinate delay. No costs.

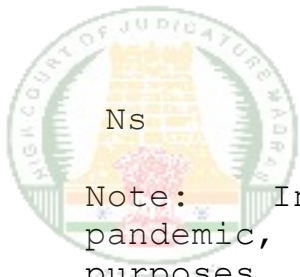
Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

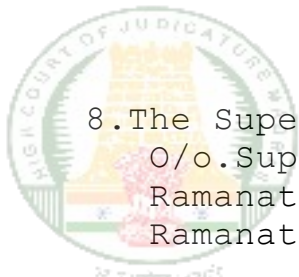


Ns

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Chief Secretary,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.The Home Secretary,
State of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.
- 3.The Joint Director,
Central Bureau of Investigation Head of Zone,
3rd Floor, E.V.K Sampath Building,
College Road,
Chennai-600 006.
- 4.The Director General of Police (DGP)
CBCID, SIDCO Electronic Complex,
1st Floor, Guindy,
Chennai-600 032.
- 5.The Chairman,
Tamil Nadu Public Service Commission,
TNPSC Road,
V.O.C Nagar,
Park Town,
Chennai-600 003.
- 6.The Director General of Police (DGP)
State of Tamil Nadu,
Dr.Radhakrishnansalai,
Mylapore,
Chennai-600 004.
- 7.The District Collector,
O/o.Collectorate Complex,
Ramanathapuram District,
Ramanathapuram.



8.The Superintendent of Police,
O/o.Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-39018[F] dated
16/12/2021)

+1 CC to M/s.SPL GP (SR-38837[F] dated 15/12/2021)

**W.P. (MD) .No.1926 of 2020
14.12.2021**

SE (CO)
SB(19.01.2022) 13P 11C