



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.5267 of 2022

Elephant G.Rajendran

.. Petitioner

Vs.

1. The Home Secretary
Union of India
Sastri Bhawan, New Delhi - 110 011.
 2. The Secretary
Department of Culture
Union of India
Sastri Bhawan, New Delhi - 110 011.
 3. The Director
Central Bureau of Investigation
Lodhy Road, New Delhi.
 4. The Director General
Archeological Department
No.24, Tilak Marg, New Delhi.
 5. The Home Secretary
Government of Tamil Nadu
Secretariat, Chennai - 600 009.
 6. The Director General of Police
Mylapore, Chennai - 4.
 7. The Additional Director General of Police
Idol Wing CID.
Guindy, Chennai - 32.
- .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Mandamus directing the 3rd respondent namely the Director, Central Bureau of Investigation to appoint a team headed by an officer not below the rank of Joint Director to take legal action and to recover the antiques as stated above



with the assistance of Home Department, Enforcement Directorate, Customs Department of Union of India under this Hon'ble Court monitoring and with further direction to file an action taken report every fortnight before this Hon'ble Court.

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For the Petitioner : Mr.Elephant G.Rajendran
Party-in-Person

For the Respondents : Mr.A.R.Sakthivel
Senior Panel Counsel
for Respondents 1 & 2

Mr.Hasan Md. Jinnah
Public Prosecutor
Assisted by Mr.A.Gopinath
Govt. Advocate (Idol Wing)
for Respondents 6 & 7

Mr.R.Shunmugasundaram
Advocate General
Assisted by Mr.A.Gopinath
Govt. Advocate (Crl. Side)
Ms.A.G.Shakeena
for Respondent 5

ORDER

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

The writ petition has been filed seeking a direction to the third respondent / Director, Central Bureau of Investigation to appoint a team headed by an officer not below the rank of Joint Director to take legal action and to recover the antiques as stated in the writ petition with the assistance of Home Department, Enforcement Directorate, Customs Department of Union of India under the monitoring of this Court.

2. The petitioner appearing in person has made a reference to many idols lying in different countries alleged to have been stolen and prayed to issue appropriate direction for recovery of those idols by nominating an officer not below the rank of Joint Director. He also made a reference to different idols listed in the writ petition and the Government Order issued by the Home (SC) Department in G.O.Ms.No.885 dated 01.08.2018, wherein, the matter was transferred to Central Bureau of Investigation under Section 6 of the Delhi Special Police Establishment Act, 1946.



3. It is submitted by the petitioner that even if the idols are in foreign countries, this Court can pass appropriate order to recover those idols and for that, a reference to an order of the Subordinate Court has been made.

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4. Learned Public Prosecutor, appearing for the respondents 6 and 7, opposed the petition submitting that the petitioner has not given the true and correct facts to the Court, inasmuch as the issue regarding the theft of idols and investigation has already been dealt with by a Division Bench of this Court in the case of Elephant G.Rajendran v. The State of Tamil Nadu [order dated 30.11.2018 in WP Nos.20392 & 20963 of 2018].

5. The order in Elephant G.Rajendran supra was the subject matter of an appeal before the Apex Court in Civil Appeal Nos.3918-3919 of 2019 decided on 12.04.2019 in State of T.N. v. Elephant G. Rajendran, (2019) 14 SCC 29. The directions of the Division Bench in paragraph 45(3) and (4) were modified in the manner indicated in the judgment of the Apex Court and the order of the Division Bench in paragraph 48 was set aside. The Apex Court, while considering the judgment of this Court, framed following questions:-

(1) Whether the State of Tamil Nadu was justified in transferring all the under investigation cases being investigated by the special team constituted for idol theft cases and all such future cases to the Central Bureau of Investigation vide its G.O. dated 1-8-2018?

(2) Whether the impugned judgment of the High Court dated 30-11-2018 [Elephant G. Rajendran v. State of T.N., 2018 SCC OnLine Mad 8842] quashing the Government Order dated 1-8-2018 is sustainable?

(3) Whether the High Court, in exercise of jurisdiction under Article 226 of the Constitution of India can appoint a police officer after his superannuation to head a Special Investigation Team (SIT) to carry out investigations and other functions, which can be exercised by a police officer under the Code of Criminal Procedure?

(4) Whether the impugned judgment of the High Court dated 30-11-2018 [Elephant G. Rajendran v. State of T.N., 2018 SCC OnLine Mad 8842] directing Respondent 2 to continue to head the Idol Wing of CID after his



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superannuation on 30-11-2018 is sustainable?

(5) Whether the 10 directions issued by the High Court in para 45 of the impugned judgment [Elephant G. Rajendran v. State of T.N., 2018 SCC OnLine Mad 8842] are contrary to law and are unsustainable being beyond the scope of Article 226 of the Constitution of India?

(6) Whether the High Court could have declared the Government Order dated 29-11-2018 appointing Thiru. Abhay Kumar Singh, IPS, Additional Director General of Police, Idol Wing-CID, Chennai as redundant without there being any challenge to the said Government Order before the High Court in the writ petitions, in question?

6. Answering the questions (1) and (2), the Supreme Court held that the order of the State of Tamil Nadu, dated 01.08.2018 transferring the investigation to C.B.I as invalid as it was passed pending the interim order of the stay granted by this Court. It also held that this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, can appoint a Special Investigation Team and monitor the investigation. So as to effectively monitor, the Court had issued 10 directions constituting a Special Investigation Team to be part of the Idol Wing to be headed by the Special Officer and directing them to investigate the cases of Idol Theft and direction was also issued to the Central Bureau of Investigation and other central agencies to co-operate wherever necessary. The Supreme Court of India had considered each of the said ten directions and approved the directions of the High Court appointing Special Officer and Team and direction to the Idol Wing, headed by the Special Officer, to continue to investigate and file charge sheet in respect of the pending cases as also the future cases and direction to the C.B.I and other agencies of the Central Government to continue to give appropriate support to the Special Officer and his team. It is useful to extract the relevant paragraphs and the judgment of the Hon'ble Supreme Court of India.

“ 75.4. By Direction 4 the High Court directed the Special Officer to investigate the cases thoroughly and submit all the reports before the Court in a sealed cover to enable the Court to monitor the investigation. We have noticed that an Additional Director General of Police was



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appointed to head the Idol Wing by order dated 29-11-2018, it was not necessary for the High Court to burden itself with scrutinising each and every report and requiring each and every report to be submitted before the Court. There being a higher officer posted in the Idol Wing, progress and result of the investigation ought to have been reported to the Additional Director General of Police and the report in the High Court was necessary when certain directions were required by the Special Officer. We modify Direction 4 to the effect that report of progress of the investigation shall be submitted to the Additional Director General of Police of Idol Wing and report to the High Court may be submitted by the Special Officer only when any further directions are required from the High Court.

75.5. With regard to Direction 5, by this direction the Special Officer is directed to continue to not only investigate and file charge-sheets and prosecute in the pending cases but also to continue to do so in the cases arising in future during his tenure. No exception can be taken.

75.6. Direction 6 which requires CBI and other agencies of the Central Government shall continue to give appropriate support to the Special Officer. No exception can be taken since CBI itself sent letter dated 19-9-2018 communicating its support."

Hence, the investigation is to be made now in the manner directed by the Apex Court.

7. The petitioner, without narrating the above facts, despite being the petitioner in the case supra, has filed the present writ petition seeking a direction to the Directorate of the Central Bureau of Investigation to nominate an Officer not lower than the rank of Joint Director for recovery of idol with the help of the Home Department. The prayer was made ignoring the fact that the recovery of idols would be a part of investigation and pursuant to the order passed by this Court, followed by the order of the Apex Court, investigation and all consequential action would be taken by the Officer nominated for it, i.e. the Idol Theft Wing.



8. In view of the above and since the subject would be governed by the order of the Apex Court in the case supra, direction of the nature sought by the petitioner cannot be granted. Accordingly, the writ petition is dismissed. There will be no order as to costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

kpl/drm

To:

1. The Home Secretary
Union of India
Sastri Bhawan, New Delhi - 110 011.

2. The Secretary
Department of Culture
Union of India
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Secretariat, Chennai - 600 009.

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Mylapore, Chennai - 4.

7. The Additional Director General of Police
Idol Wing CID, Guindy, Chennai - 32.

+2 ccs to Mr. Elephant G. Rajendran, Advocate Sr.NO. 16561

+1 cc to Mr. A.R. Sakthivel ., Advocate Sr.NO. 15720

W.P.No.5267 of 2022

SPD (CO)

A.SK (16/03/2022)