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W.A.No.1413 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2022

CORAM :

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

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.A.No.1413 of 2022

G.Sendrayan

... Appellant

vs

1.The Secretary to Government,
Cooperative, Food and Consumer Department,
Secretariat,
Chennai 600 009

2.The Registrar of Cooperative Societies,
No.170, Periyar EVR High Road,
Kilpauk, Chennai

3.The Additional Registrar/Managing Director,
Tamil Nadu State Apex Cooperative Bank,
Chennai.

4.The Executive Engineer (PWD)
Building (C&M) Division,
Salem 636007

... Respondents

Prayer: Appeal filed under Clause 15 of Letters Patent Act against the order in WP No.25287 of 2021 dated 14.05.2022.



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For the Appellant : Mr.L.P.Shanmugasundaram

For the Respondents : Mr.R.Shunmugasundaram,
Advocate-General,

Assisted by Mr.P.Muthukumar,
State Government Pleader,
Assisted by Ms.A.G.Shakeela

JUDGMENT

(Judgment of the Court was delivered by
the Hon'ble Chief Justice)

The writ appeal has been filed against the order dated 14.05.2022 in WP No.25287 of 2021. The writ petition was filed was filed to challenge the Government Order in G.O.Ms.No.99, Cooperative Food and Consumer Department, dated 09.11.2021. The writ petition was dismissed vide order dated 14.05.2022.

2. The facts set out in the writ petition are that the appellant was elected as President of the Yercaud Lamp Cooperative Society, Yercaud, Salem District. According to the appellant, a State Level Training Institute was proposed at Semmaduvu Village, Manjakuttai Panchayat, Yercaud Taluk, Salem District, to benefit tribal, poor and downtrodden persons and women and many other categories, vide



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Government Order in G.O.(Ms).No.5, Co-operation, Food and Consumer Protection Department, dated 20.01.2020. Contract was also awarded for constructing the training centre. However, vide order dated 28.07.2021, the first respondent issued order to stop the construction of the training institute. The said order was challenged in W.P.No.23369 of 2021.

3. Subsequently, the Government passed an order dated 09.11.2021 to supersede the earlier order dated 20.01.2020, by which they had sanctioned the construction of State Level Cooperative Training Institute at Yercaud. It was also proposed to construct a National Level Training Institute at Kodikkanal. At present, there are two State Level Training Centres at Chennai and Madurai whereas the proposed training institute at Kodaikkanal would be of national level. The said order was challenged by the appellant in W.P.No.25287 of 2021.

4. Learned counsel for the appellant submitted that despite sanction of amount for a State Level Training Institute at Yercaud, and even when the work has started as a consequence, a decision



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was taken to stop the work and thereafter, previous sanction was withdrawn. According to learned counsel, a sum of Rs.10 crore has already been spent on construction, and withdrawal of the project at the present juncture would result in wastage of public exchequer. Learned counsel further submitted that the society has also contributed financially to the project. Thus, withdrawal of the project by the respondents would affect even the interest of the society, and the appellant being the president of the society, has rightly maintained the writ petition to challenge the proceedings dated 28.07.2021 and the subsequent Government Order dated 09.11.2021, to supersede and withdraw the earlier Government Order to sanction the project at Yercaud. According to learned counsel, learned Single Judge has failed to consider the fact that withdrawal of the project from Yercaud would deprive those who are in need of training and development in and around the District of Salem, as Kodaikkanal is not close to the said district but situated nearly 300 km away. The prayer is accordingly to set aside the impugned order dated 14.05.2022 and direct the respondents to continue the project.



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5. Learned Advocate-General, in support of the order of learned Single Judge, would submit that the Government is competent to take a policy decision and the jurisdiction of this court to cause interference in a policy decision is very limited. It is only when such decision is said to be arbitrary or in violation of the statutes or the constitution. A case of that nature has not been brought before this court. The reason to supersede the Government Order has been specifically given. A decision was taken to open a National Level Training Institute at Kodaikkanal, to serve the State in a better way. To avoid waste of public exchequer, it was decided to withdraw the Government Order for State Level Training Institute at Yercaud. Two state level training centres are operating at Chennai and Madurai. Thus, one more centre is not required.

6. It is further submitted that the project was at a very initial stage when the Government Order dated 09.11.2021 was issued, and it is incorrect to state that a sum of Rs.10 crore has been incurred on it. The appellant has failed to produce any document to support such a claim. The appellant could have produced photographs to show the stage of construction. Thus, the allegation



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made by the appellant that Rs.10 crore has already been spent on the project is for the sake of argument. In fact, only around Rs.32 lakhs has been incurred to start the project.

7. It is further submitted that the society to which the appellant belongs has not contributed financially towards the project as there is nothing on record to prove the same. Even if they have incurred any amount, it would be refunded by the Government. Learned Advocate-General further submits that there is every apprehension that the appellant is espousing the cause of the contractor whose work has been stopped because of the withdrawal of the project. In view of the above, no interference may be caused in the order of learned Single Judge. Referring to certain judgments of the Hon'ble Supreme Court, learned Advocate-General prays for dismissal of the writ appeal.

8. We have considered the rival submissions of the parties. Some important dates that are required for disposing of the writ appeal are as under:

(i) On 25.06.2018, the Registrar of the Cooperative Societies



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requested the Secretary to Government to make an announcement under Rule 110 of the Tamil Nadu State Legislative Assembly Rules for the proposal to establish a State Level Training Institute at Yercaud, Salem District and also requested the Government to constitute a committee headed by the Additional Registrar, Tamil Nadu Cooperative Union, to work out the modalities for the proposed institute;

- (ii) On 22.10.2018, the Government issued an order in G.O.Ms.No.145, Cooperation, Food and Consumer Protection Department under which, a four member committee was constituted to suggest the modalities and infrastructure to be created for the proposed institute;
- (iii) On 13.12.2018, the Government issued a further order in G.O.Ms.No.165 to revise the committee so as to keep seven members, in the place of four;
- (iv) A further communication was made vide letter dated 13.06.2019 with regard to the details of the project and also to request the Government to announce under Rule 110, the establishment of the institute before the Legislative Assembly;
- (v) On 20.01.2020, the Government issued an order in



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G.O.Ms.No.5 to grant administrative sanction for the purpose of establishment of the training institute at Yercaud;

(vi) On 22.01.2020, a letter was sent to the Additional Registrar/ Managing Director, Tamil Nadu Apex Cooperative Bank Ltd., to take further action to execute the Government Order for the establishment and construction of the Training Institute at Yercaud;

(vii) Thereafter, on 20.03.2020, various announcements were made for establishment of the State Level Training Institute at Yercaud and an initial amount of Rs.15.85 crore was sanctioned on the floor of the Legislative Assembly;

(viii) On 09.05.2020, the Registrar of the Cooperative Society sent a letter to the Additional Registrar/Managing Director of Tamil Nadu State Apex Cooperative Bank to take further action for the establishment of the training institute.

9. In view of the above, it is clear that when the initial funding of Rs.15 crore had been sanctioned and credited to the account of the Public Works Department, they were to start the construction of the work and accordingly, the work was announced and it was to be



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undertaken by P.W.D. The work was awarded to a contractor and the construction therein was at the initial stage. It was then stopped for the reason that a decision was taken by the Government to open a National Level Training Centre at Kodaikkanal. It is however, true that additional amount was sanctioned, enhancing it from the initial amount of Rs.15 crore to Rs.61 crore. The initial amount of Rs.15 crore was credited but, immediately thereafter, the construction work was stopped, followed by withdrawal of the earlier Government Order.

10. The first issue for our consideration is as to whether the Government Order dated 09.11.2021 under challenge is unconstitutional, illegal and in violation of the statutes. The challenge to the said Government Order has been made on the ground that when initial decision was made to open a training institute at Yercaud, the project could not have been withdrawn abruptly without assigning any reason. We find that the Government Order under challenge gives reason for its withdrawal. It is true that the State level project was initially sanctioned at Yercaud, Salem District but subsequently, the Government decided to open a



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national Level Training Institute at Kodaikkanal. It is to avoid waste of public exchequer because with the opening of national Level Training Institute, there was no requirement of state Level Training Institute at Yercaud. It is not that in the State of Tamil Nadu, such type of Institute exists at every district, rather, only two training institutes are operating at Chennai and Madurai. Third institute would be at national level at Kodaikkanal. Looking to the facts of the case, we find the policy decision of the State Government to supersede the earlier Government Order does not suffer from any illegality or arbitrariness. It was issued to save the public exchequer and to serve the public in a better manner. Instead of opening a state Level Training Institute, a national Level Training Institute would be much more beneficial and useful to the people.

11. It is settled law that judicial review in the matter of policy decision of the Government is not available in ordinary course, rather it can be only in exceptional circumstances, which is not brought out in this case. Further, we find that amount of Rs.10 crore has not been incurred as alleged by learned counsel for the appellant, so as to show that after incurring huge amount to



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construct an institute at Yercaud, suddenly shifting the training institute to Kodaikkanal would result in waste of public money. If really after spending considerable amount in construction at Yercaud, if there is an abrupt change of location to Kodaikkanal, a ground could have been made out for holding the decision to be arbitrary. But as stated by learned Advocate-General, only a sum of Rs.32 lakh has been incurred at the initial stage and it would be used for some other purpose.

12. The other aspect is with reference to the appellant. There is nothing on record to show that the society to which the appellant belongs to had incurred any amount towards the project, so as to be affected severely. It is already taken note that the relocation of the project is for the reason that initially, it was a State Level Training Institute but now it would be a National Level Training Institute. Even otherwise, it is well within the realm of the Government to take a policy decision and in the instant case, instead of bringing a State Level Training Institute, a decision has been taken to open a National Level Training Institute and accordingly, we find no illegality in the decision of the Government in doing so. The



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appellant having not contributed in terms of money, cannot raise any issue on the decision taken by the Government, which does not suffer from any arbitrariness.

13. In the light of the aforesaid, we find that learned Single Judge has dealt with all the issues raised before him and came to the conclusion that there exists no illegality in the decision of the Government in passing the Government Order.

14. We would further refer to the decisions of the Supreme Court summarised by the learned Single Judge in the order in WP No.25287 of 2021. Paragraphs 29 to 34 for the order are quoted below:

“29. In a decision of the Hon'ble Supreme Court reported in (2002) 10 SCC 226 in the matter of Union of India and others v. Kannadapara Sanghatanegala Okkuta & Kannadigara, the question posed before the Hon'ble Supreme Court was that, whether the decision taken by the Union Government, i.e., Ministry of Railways to locate the Zonal Headquarters of the South-western Railway at Hubli instead of Bangalore, which was already decided to be at Bangalore, is a justifiable decision and in that case, whether the present decision taken to locate at Hubli instead of Bangalore can be questioned successfully before the



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Court of law.

30. In that case, it was an earlier decision of the Union Government to locate the Zonal Headquarters of South-western Railway at Bangalore. Some initial work seems to have been undertaken to locate the office at Bangalore, however, subsequently, a revised decision was taken by the Government to relocate it at Hubli instead of Bangalore. The said decision taken by the Union Government to locate at Hubli instead of Bangalore was questioned before the High Court of Karnataka, where the ground of legal malafide was alleged, which was accepted by the High Court of Karnataka and the writ petition was allowed, thereby the decision taken by the Union Government to locate the South-western Railway Headquarters office at Hubli instead of Bangalore was set aside.

31. As against which, the Union Government approached the Hon'ble Supreme Court by filing Civil Appeal Nos. 7014 and 7015 of 2001, where the Hon'ble Supreme Court in the aforecited decision has held as follows :

“4. It is contended by the learned Solicitor-General that where the headquarters of a zonal Railway should be is only a question of policy and it is no business of the court to interfere with a policy decision. He drew out attention to the fact that it is the Ministry of Railways which had initially decided with the approval of the Union Cabinet that the headquarters be set up at Bangalore, but no notification establishing the



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headquarters at Bangalore was ever issued under the Railways Act. Thereafter, it is the Union Cabinet which took a decision that the headquarters should be shifted from Bangalore to Hubli. This fact is not disputed.

5. We do not find any basis for the High Court coming to the conclusion that the decision of the Union Cabinet was vitiated on account of legal mala fides. Merely because an administrative decision has been taken to locate the headquarters at Bangalore, which decision is subsequently altered by the same authority, namely, the Union Cabinet, cannot lead one to the conclusion that there has been legal mala fides. Why the headquarters should be at Hubli and not at Bangalore, is not for the court to decide. There are various factors which have to be taken into consideration when a decision like this has to be arrived at. Assuming that the decision so taken is a political one, it cannot possibly give rise to a challenge on the ground of legal mala fides. A political decision, if taken by a competent authority in accordance with law, cannot per se be regarded as mala fide. In any case, there is nothing on the record to show that the present decision was motivated by political consideration. The observation of the High Court that there has been a change in the decision because there was a change of the Governments and a different political party had come into power, is not supported by any basis. That the court will not interfere in questions of policy decision is clearly brought out by the following



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passage from a decision of this Court in Delhi Science Forum v.Union of India [(1996) 2 SCC 405] when at p. 413, it was observed as follows: (SCC p. 413, para 7)

7. What has been said in respect of legislations is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in court of law. The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies. Privatisation is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained? What are to be the safeguards to prevent the abuse of the economic power? What is the mechanism of accountability to ensure



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that the decision regarding privatisation is in public interest? All these questions have to be answered by a vigilant Parliament. Courts have their limitations ? because these issues rest with the policy-makers for the nation. No direction can be given or is expected from the courts unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provision. The new Telecom policy was placed before Parliament and it shall be deemed that Parliament has approved the same. This Court cannot review and examine as to whether the said policy should have been adopted. Of course, whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court.?

6. We further find that the High Court has issued a direction to the appellants herein to locate the zonal office of the Railways at Bangalore. Apart from the fact that in matters of policy the court will not interfere, such a direction could under no circumstances have been issued. If a case had been made out, and in this case no such case had been made out, that a decision to locate at Hubli was not in accordance with law, then the only direction which could have been issued by the court was



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to consider as to where the headquarters should be located. It is not the function of the court to decide the location or the situs of the headquarters, it is the function of the Government. On this ground also, the decision of the High Court is incorrect.“

32. In fact, this decision of the Hon'ble Apex Court was followed by a Division Bench of this Court in a related issue reported in (2011) 4 CTC 113, in the matter of Dr.G.Krishnamurthy v. Chief Secretary to the Government of Tamil Nadu and others.

33. In the said G.Krishnamurthy's case, the issue was that, the then State Government of Tamil Nadu, which was in the regime between 2006 and 2011 decided to construct a new Assembly and Administrative Office of the Secretariat at Omandurar Government Estate, for which, 1100 crores of Rupees was spent and a massive structure was built. However, since the State Government was voted out of power in 2011 Election, a new dispensation had come, which had taken a decision to relocate the Assembly and Secretariat Complex at Fort St. George instead of Omandurar Government Estate Building and that proposal was questioned by the petitioner by way of Public Interest Litigation before a Division Bench of this Court in the aforecited case.

34. Where the Division Bench, after having taken note of the Karnataka's case cited supra, i.e., (2002) 10 SCC 226, has rejected the plea of the petitioner, by making the following



observations :

5. We have perused the Writ Petition and considered the submission made by the learned Counsel for the parties.

6. The question that falls for consideration firstly, is as to whether such a relief can be sought for by designing the Writ Petition as a Public Interest Litigation; and secondly, whether this Court, under Article 226 of the Constitution of India, can interfere with the administrative and policy decisions of the Government and decide as to whether the State Secretariat will be located, in the new building or in the old building.

7. It is well settled that Public Interest Litigation is not meant to be a weapon to challenge the financial, economic or other decisions which are taken by the Government in exercise of their administrative power. No doubt, a person personally aggrieved by any such decision, which he regards as illegal, can impugn the same in a Court of law, but a Public Interest Litigation for such cause cannot be entertained. Such a litigation cannot per se be on behalf of the poor and the downtrodden. It has also been settled by the Apex Court that the forum of Public Interest Litigation is not meant for serving political purpose or solving political problem; political problem ought to be solved through political process, and not through judicial process. The Concept of Public Interest Litigation is evolved for the purpose of safeguarding the interest and welfare of the poor people



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who are in a disadvantaged position and not to decide the propriety of the policy decision of the Government.

8. De Smith, in his book 'Judicial Review', on the question of limitation of Courts in the matter of policy decisions, observed thus:

Asserting the Constitutional capacity of the Courts in these situations does not, however, mean that the Courts should not recognize both their own Constitutional and relative institutional limitations. As we have already discussed in relation to the question of 'justiciability', decisions involving 'policy' - the utilitarian calculation of the public good? such as decisions about the levels of taxation or public expenditure are, Constitutionally, in the realm of the legislature. In respect of other decisions, the relative institutional capacity of Courts and the legislature, executive and other bodies will be relevant to the extent and degree of judicial intervention. Decisions that are polycentric, involving the allocation of scarce resources (for example, whether a hospital should provide very expensive treatments) are similarly not normally suited to decisions by Courts. Decisions taken by experts, and those best able to calculate risk, indicate some measure of institutional respect?

The author further says as follows:

"Substantive review in English law has been dominated by the Concept of Unreasonableness closely identified with the famous formulation by Lord Greene,



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M.R. in the Wednesbury case, that the Courts can only interfere if a decision 'is so unreasonable that no reasonable authority could ever come to it'. That formulation attempts, albeit imperfectly, to convey the point that Judges should not lightly interfere with official decisions on this ground. In exercising their powers of review, Judges ought not to imagine themselves as being in the position of the Competent Authority when the decision was taken and then test the reasonableness of the decision against the decision they would have taken. To do that would involve the Courts in a review of the merits of the decision, as if they were themselves the recipients of the power. For that reason, Lord Greene in Wednesbury thought that an unreasonable decision under his definition 'would require something overwhelming' (such as a teacher being dismissed on the ground of her red hair)?

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10. In the instant case also, in our view, it is for the Government to decide as to which building shall be comfortable for the purpose of establishing the State Secretariat. If the Government takes a policy decision to run the Secretariat from the old building, this Court cannot issue a direction to the Government to change their decision.

11. For the aforesaid reasons, we do not find any merit in this Writ Petition and the same is, therefore,



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*dismissed. However, there shall be no order as to costs.
Consequently, the connected Miscellaneous Petitions are
closed.”*

15. The principle laid down in the judgments referred to above makes it clear that the scope of judicial review on policy matters is very limited.

16. Thus, for all the reasons given above, we do not find any error in the order of the learned Single Judge so as to cause interference therein. The writ appeal is accordingly dismissed. There will be no order as to costs. Consequently, C.M.P.No.9051 of 2022 is also dismissed.

(M.N.B., CJ.) (N.M., J.)
01.07.2022

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M.N.Bhandari, CJ.
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