



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MRS.JUSTICE N.MALA

W.P.Nos.22532 of 2014 and 8801 of 2020
and W.M.P.No.10684 of 2020

W.P.No.22532 of 2014

Saravanan Dakshinamurthy

.. Petitioner

-vs-

1. The State of Tamil Nadu
Rep. By its Chief Secretary,
Fort St. George, Chennai.
2. The State of Tamil Nadu,
Rep. by its Secretary,
Home Department, Fort St. George,
Chennai.

.. Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration to declare Section 10 and 14 (2) of the Tamil Nadu Police (Reforms) Act, 2013 as arbitrary, unreasonable and ultra vires to Article 14 and 21 of the Constitution of India and hence unconstitutional and further direct the respondents to forthwith constitute Police Complaints Authority at the District and State level strictly in consonance with the directions of the Hon'ble Supreme Court in Prakash Singh & Others -vs- Union of India & Ors. (2006 (8) SCC 1).

W.P.No.8801 of 2020

A.G.Maurya

.. Petitioner

-vs-

1. Union of India,
Through Secretary, Ministry of Law
and Justice, Dept. of Legislative Affairs,
Lok Nayak Bhawan, Khan Market,
New Delhi 110003.



2. State of Tamil Nadu
Through Home Secretary,
Government of Tamil Nadu,
Namakkal Kavignar Maaligai,
Fort St. George, Chennai 600 009.

.. Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration to declare Section 10, 13 and 14 (2), 16 and 19 of the Tamil Nadu Police (Reforms) Act, 2013, (Act 22/2013) are unconstitutional, illegal and bad in law so long as they are arbitrary, discriminatory and violative of Article 14 of the Constitution.

For the Petitioner in

WP.22532 of 2014

: Mr.A.Yogeshwaran

WP.8801 of 2020

: Mr.Subhang Nair MAH

For the Respondents

: Mr.R.Shunmugasundaram
Advocate General
assisted by Mr.S.Silambanan
Addl. Adv. General and
Mr.C.Selvaraj, G.A. &
Ms.A.G.Shakeena for RR 1 and 2
in WP.22532 of 2014 and
for R-2 in WP.8801 of 2020

: Mr.N.Ramesh for R-1
in WP.8801 of 2020

* * * * *

ORDER

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

The writ petitions have been filed to challenge Sections 10, 13, 14(2), 16 and 19 of the Tamil Nadu Police (Reforms) Act, 2013 holding it to be arbitrary and unconstitutional and thereby ultra vires of Article 14 and 21 of the Constitution of India. Further direction has been sought on the respondents in W.P.No.22532 of 2014 to forthwith constitute Police Complaints Authority at the District and State level especially in consonance with the direction of the Apex Court in Prakash Singh and Ors. vs. Union of India, (2006) 8 SCC 1.

2. Learned counsel for the petitioners submit that certain provisions under the Act of 2013 offend the direction given by



the Apex Court in the judgment supra. The State Government was under obligation to constitute Police Complaints Authority in consonance with the direction of the Apex Court, but ignoring the aforesaid, the respondents have brought the legislation to constitute the State Level Police Complaint Authority so also the District Level Police Complaint Authority by taking the Home Secretary to be the Chair Person of the State Police Complaint Authority and the District Collector for the District Police Complaint Authority. As per the judgment of the Supreme Court in the case of Prakash Singh, supra, the Chair Person of the State Police Complaint Authority is to be a retired Judge of the High Court, but ignoring the aforesaid, the Home Secretary has been made the Chair Person. Therefore, the aforesaid provisions of the Act of 2013 have to be struck down.

3. It is further submitted that the issue of constitutional validity can be addressed by this Court having jurisdiction under Article 226 of the Constitution of India and for that, the petitioners are not required to approach the Supreme Court which is seized of the matter regarding compliance of the judgment in the case of Prakash Singh, supra and it is more so when the petitioners have challenged the constitutional validity of the Act brought by the respondents.

4. A reference of the order of the Apex Court dated 12.06.2020 has been given where even the learned Amicus, Mr. Raju Ramachandran, suggested to the Apex Court to allow the jurisdictional High Court to deal with the applications filed by different States and accordingly, the entire issue of monitoring for implementation of the guidelines be left to the jurisdictional High Court. In view of the above, even a suggestion was given to leave the issues on the jurisdictional Courts even in reference to the implementation of the order of the Supreme Court in the case of Prakash Singh, supra. Therefore, the petitioners have preferred these writ petitions to challenge the provisions of the Act of 2013 to the extent it is offending the direction of the Apex Court.

5. Learned Advocate General has raised serious objection on the maintainability of the writ petitions before this Court. He submits that when the Apex Court is seized of the matter and monitoring the compliance of its judgment in the case of Prakash Singh, supra, this Court should not enter into the issues raised by the petitioners herein. It is more so when the State Government had submitted an affidavit along with the legislation brought by them in the year 2013 to show compliance of the judgment in the case of Prakash Singh, supra and their affidavit has been taken on record without a comment that the Act of 2013 is offending the direction of the Apex Court. It is not that the State Government has not informed the Supreme Court about



the compliance during the course of monitoring and no adverse order on the legislation has been passed, therefore, this Court may not enter into the issue which is pending consideration before the Apex Court.

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6. It is more so when the petitioners are having an opportunity to approach the Apex Court by making an appropriate application to indicate that the State legislation is not in consonance with the direction given by the Apex Court. Instead of approaching the Apex Court, the present petitions have been filed and are otherwise not maintainable.

7. Another argument is that while the matter is pending before the Apex Court and it is monitoring the compliance, it may result in favourable comment on the legislation pending consideration before the Apex Court. If it is struck down by this Court holding it to be ultra vires and it would have serious consequence, therefore, the prayer is to dismiss the writ petitions which may be with liberty to the petitioners to approach the Apex Court on the issues raised herein.

8. Learned Advocate General has further made a reference of the judgment of this Court in the case of Y.Akbar Ahmed vs. Secretary, Home Department, Government of Tamilnadu and Ors. (W.P.No.2342 of 2019, decided on 04.04.2019). In the said case also, the constitution of the State Police Complaint Authority was challenged. The Division Bench refused to intervene in the matter pending consideration before the Apex Court which is monitoring the subject. The writ petition was, therefore, dismissed with costs. A specific reference to para 12 of the judgment was given to decline exercise of jurisdiction and that it is applicable to the present litigation.

9. In reference to the direction in the case of Prakash Singh, supra, it is submitted that the Police Complaint Authority is to be constituted in the manner indicated by the Apex Court till the State makes their own legislation. The direction to form the State Level Police Complaint Authority or District Level Police Complaint Authority was not mandated in the manner directed by the Apex Court rather it was to be complied till a legislation is brought and for that reason also, no adverse order has been passed by the Apex Court despite filing of the affidavit towards compliance along with the production of the legislation brought by the State.

10. The learned counsel for the petitioners in reply, submit that the judgment in the case of Y.Akbar Ahmed, supra, was not in reference to the challenge to constitutional validity of the Act of 2013 but was in regard to the constitution of the Police Complaint Authority. In view of the above, the judgment supra



would not have an application in the matter. It is further submitted that for challenge to the constitutional validity of the Act, the petitioners are not required to approach the Apex Court rather the jurisdiction of this Court under Article 226 of the Constitution of India would be available and therefore, the petitioners have rightly invoked the jurisdiction of this Court to challenge the constitutional validity of the Act, which otherwise could not be a subject matter before the Apex Court in the pending matter, monitoring the implementation of the order. The prayer is, accordingly, to allow the writ petitions.

11. We have considered the rival submissions of the parties and perused the records.

12. The facts on record show that pursuant to the judgment of the Apex Court in the case of Prakash Singh, supra and the directions given therein, the respondents brought the Act of 2013 wherein the provision was made regarding constitution of the State and District Level Police Complaint Authority. The State Government submitted the Act of 2013 along with the affidavit before the Apex Court to show compliance of the judgment. The Apex Court has not commented on the affidavit or the legislation holding it to be contrary to the direction issued in the Prakash Singh case, supra. The matter is still pending before the Supreme Court to monitor the compliance.

13. It may be true that a suggestion was given by Mr. Raju Ramachandran, learned Amicus Curiae, to allow the jurisdictional High Court to consider the applications and even to monitor the implementation of the judgment of the Apex Court, but, no direction on the aforesaid was given while passing the order on 12.06.2020. The aforesaid is relevant for the reason that monitoring of the compliance of the judgment in the Prakash Singh case is still with the Apex Court.

14. In the light of the aforesaid, if the legislation brought by the respondents is offending the direction given by the Apex Court in the case of Prakash Singh, supra, an appropriate order can be passed on affidavit submitted by the State Government. Till date, no adverse order has been passed despite the legislation having been placed before the Supreme Court and in those circumstance, it would not be proper for this Court to enter into the issues raised by the petitioners.

15. It is no doubt true that in the normal circumstances, this Court is having power to examine the constitutional validity of the provision, if challenged before it, but, the case on hand is of exceptional nature. It is for the reason that the legislation under challenge was brought in compliance of the judgment of the Supreme Court and the subject matter is



still pending before it to monitor the compliance. It is not that the Apex Court has closed the matter referring it to the High Court to see the compliance.

16. In the instant case, when the matter is still pending before the Apex Court to monitor the compliance, learned counsel for the petitioners could not clarify as to why they did not raise objection to the legislation when it has been placed before the Apex Court showing it to be in violation of the direction in the case of Prakash Singh, supra.

17. In view of the above, we do not find that till the matter is pending before the Apex Court to see the compliance and its monitoring, this Court should enter into the issues raised by the petitioners. Accordingly, we order to close the writ petitions, however, it is with the liberty to the petitioners to approach the Supreme Court on all the issues raised by them in the writ petitions and therefore, we have not made comment on any of the issues for challenge to the legislation which is alleged to have been brought in violation of the direction of the Apex Court, rather the issues have been kept open and otherwise any comment on merits would result in interference in the monitoring of the implementation of the judgment in the case of Prakash Singh, supra.

The writ petitions are closed with the aforesaid observations. No costs. Consequently, W.M.P.No.10684 of 2020 is closed.

Sd/-
Deputy Registrar(CS)

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Sub Assistant Registrar

sra

To:

1. The Chief Secretary to Govt. of Tamil Nadu
Fort St. George, Chennai.
2. The Home Secretary,
Government of Tamil Nadu,
Namakkal Kavignar Maaligai,
Fort St. George, Chennai 600 009.



3. The Secretary, Union of India,
Ministry of Law and Justice,
Dept. of Legislative Affairs,
Lok Nayak Bhawan, Khan Market,
New Delhi 110003.

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+1cc to Mr.N.Ramesh, Advocate, S.R.No.39397
+1cc to the Government Pleader, S.R.No.39817

W.P.Nos.22532 of 2014
and 8801 of 2020

CA (CO)
CT/07/07/2022