

In the High Court of Judicature at Madras

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| Reserved on : 13.7.2023 | Delivered on : 18.7.2023 |
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.20711 of 2018

R.S.Bharathi, Member of
Parliament, Organising
Secretary, Dravida
Munnetra Khazagam,
Anna Arivalayam, Chennai-18.

...Petitioner

Vs

1.The Director of Vigilance and
Anti Corruption, No.293,
MKN Road, Collectors Nagar,
Alandur, Chennai-16.

2.Mr.Edapaddi Palaniswami

(R2 impleaded as per order in Crl.A.No.
1256 of 2022 dated 03.8.2022 by the
Hon'ble Supreme Court of India)

...Respondents

PETITION under Section 482 of the Criminal Procedure Code to
direct the first respondent to register and investigate the complaint
dated 13.6.2018.

For Petitioner : Mr.N.R.Elango, SC for
Mr.R.Girirajan
For Respondent-1 : Mr.Hasan Mohamed Jinnah
State Public Prosecutor
For Respondent-2 : Mr.C.Ariyama Sundaram, SC for
Mr.K.Gowthamkumar &
Mr.M.Mohamed Riyaz

ORDER

Heard Mr.N.R.Elango, learned Senior Counsel appearing on behalf of the petitioner, Mr.Hasan Mohamed Jinnah, learned State Public Prosecutor appearing for the first respondent and Mr.C.Ariyama Sundram, learned Senior Counsel appearing on behalf of the second respondent.

2. The above criminal original petition was filed by the petitioner seeking to direct the first respondent to register and investigate the complaint dated 13.6.2018.

3. The brief facts of the case are as stated hereunder :

(i) This petition was disposed of on 12.10.2018 after contest by a learned Single Judge of this Court directing the first respondent to hand over investigation to the Central Bureau of Investigation (CBI)

and further directing the CBI to conduct the preliminary inquiry within a period of three months. It was made clear in the said order dated 12.10.2018 that if the preliminary inquiry disclosed any cognizable offence, the CBI was further directed to register a case and proceed further in accordance with law.

(ii) The said order dated 12.10.2018 became the subject matter of challenge before the Apex Court in Criminal Appeal Nos.1256 and 1257 of 2022. The said criminal appeals, which were filed before the Apex Court by the aggrieved persons namely both the respondents herein, were disposed of by the Apex Court by a common judgment dated 03.8.2022.

(iii) For proper appreciation, the relevant portions in the said common judgment of the Apex Court are extracted as hereunder :

"4. At the outset, both senior counsel appearing for the parties agree that it was no one's case before the High Court that the investigation should be transferred to the CBI. In fact, it is clear from the record that the original writ petition filed by respondent No.1 was to register a case and investigate the complaint dated 13.06.2018 against the appellant. Subsequently, respondent No.1 sought a new relief by way of a rejoinder filed before the High Court. The relief sought by the respondent No.1 in rejoinder was to direct an impartial investigation by any other Competent Police

Officer or team of Police Officers and also for the High Court to monitor the investigation.

5. Learned counsel for the appellant pointed to the fact that the preliminary enquiry report, which had been submitted in a sealed cover before the High Court, was not even considered by the High Court. In fact, the High Court specifically noted as follows :

'17.Learned Advocate General having stated so, that the respondent had submitted a negative report/closure report not taking cognizance, there is no necessity for this Court to open the sealed cover filed before this Court'. (emphasis supplied)

However, despite not even looking into the enquiry report or the case investigation record, the High Court went on to make certain observations relating to the fairness of the investigation.

6. Apart from the above, it appears that the High Court did not even seek the impleadment of the appellant, who is the main accused in the matter, before transferring the investigation to the CBI.

7. This Court has consistently held that while the power to transfer the investigation of cases to the CBI or other such specialized bodies exists, it must be used sparingly, only in rare and exceptional cases [See K.V. Rajendran Vs. Superintendent of Police, (2013) 12 SCC 480].

8. Having heard the learned senior counsel for the parties and perusing the material placed on record, without expressing any opinion on the merits of these matters, we set aside the impugned order passed by the High Court so far as it directs the respondent No.2 to hand over all the case files and material to the Joint

Director, C.B.I. to conduct a preliminary enquiry against the appellant and the co-accused. We remit the matter back to the High Court to consider the matter afresh, including the preliminary report filed by respondent No.2 against the appellant, and pass appropriate orders in accordance with law.

9. We make it clear that the observations made by the High Court shall not come in its way while deciding the matter afresh."

4. Pursuant to the said common judgment rendered by the Apex Court, the matter came up for hearing on 06.7.2023, on which date, this Court passed the following order :

"This Criminal Original Petition has been filed, seeking a direction to the 1st respondent to register and investigate the complaint, dated 13.06.2018.

2.The matter was posted for hearing pursuant to the order passed by the Hon'ble Apex Court in Criminal Appeal No.1256 of 2022, dated 03.08.2022 wherein the earlier order passed by this Court insofar as this Court directing the Director of vigilance and Anti corruption to hand over all the case files and materials to the Joint Director, C.B.I. to conduct a preliminary enquiry against the appellant therein and the co accused, was set aside and the matter was remanded back to this Court to consider the issue afresh including the preliminary report filed by the Director of Vigilance and Anti corruption.

3. The learned State Public Prosecutor appearing

on behalf of the 1st respondent submitted that the preliminary closure report that was submitted by the Director of Vigilance and Anti Corruption has been rejected by the Vigilance Commissioner and a fresh enquiry has been ordered. It was further submitted that the enquiry is in progress.

4. Mr.N.R.Elango, learned Senior counsel appearing on behalf of the petitioner submitted that in view of the subsequent development as submitted by the State Public Prosecutor, the petitioner must be allowed to withdraw this petition.

5. Mr.M.Mohamed Riyaz, learned counsel appearing for the impleaded 2nd respondent submitted that the 2nd respondent has an objection in the petition being withdrawn by virtue of the order passed by the Apex Court and therefore, insisted that this case must be heard in line with the direction issued by the Apex Court at paragraph No.8 of the order.

6. Post this case on 13.07.2023. On that day, this Court will mainly focus on the preliminary objection raised by the 2nd respondent with regard to he request made for withdrawal of the petition in view of the subsequent development. Hence, the learned counsel appearing on either side shall get ready to address the preliminary objection taken."

5. The case was once again posted for hearing on 13.7.2023 and this Court heard the submissions made by the learned counsel on either side with respect to the preliminary objection raised by the

second respondent regarding the request made by the petitioner for withdrawal of this criminal original petition in view of the subsequent development.

6. Mr.C.Ariyama Sundaram, learned Senior Counsel appearing on behalf of the second respondent has submitted that the Apex Court specifically directed this Court to consider the matter afresh, including the preliminary report that was submitted by the first respondent and to pass appropriate orders and that there is no scope for permitting the petitioner to withdraw this criminal original petition. He has further submitted that an adverse order was passed against the second respondent in the said order dated 12.10.2018 resulting in allowing this criminal original petition and that after having obtained an order in his favour, which was ultimately set aside by the Apex Court, the petitioner cannot be now allowed to withdraw this criminal original petition just because a favourable political climate is prevailing in the State as on date.

7. The learned Senior Counsel appearing on behalf of the second respondent has also submitted that this Court has to necessarily go

through the preliminary inquiry report and satisfy itself with the reasons assigned for submitting a closure report and also the stand taken by the first respondent before the Apex Court while filing the appeal against the earlier order dated 12.10.2018 passed by this Court. He has further submitted that if, ultimately, this Court is satisfied with the reasons assigned and the stand taken by the first respondent before the Apex Court, there is no need for any further inquiry in this case. According to him, if, on the other hand, this Court is not satisfied with the preliminary report submitted by the first respondent and this Court wants to hear the parties on the merits of the case, a copy of the preliminary report must be furnished to the second respondent and thereafter, this Court can hear the matter on merits and take a final decision.

8. The learned Senior Counsel appearing on behalf of the second respondent has concluded his arguments by submitting that the petitioner cannot keep changing his stand just because there is a change in the government in the State of Tamil Nadu, that once a specific stand is taken before a court, it cannot be allowed to be withdrawn or phased out due to the change in guard, that there is a

malafide intention in continuing with the inquiry against the second respondent just because he belongs to the opposition party and that this Court, in exercise of its jurisdiction under Section 482 of the Criminal Procedure Code (for short, the Code), must ensure that ends of justice are secured.

9. In order to substantiate his submissions, the learned Senior Counsel appearing on behalf of the second respondent has relied upon the following judgments :

(i) of the Apex Court in the case of ***S.P.Velumani Vs. Arappor Iyakkam [reported in 2022 (12) SCC 745]***; and

(ii) of a learned Single Judge of the Patna High Court in the case of ***Sanjay Yadav Vs. State of Bihar [reported in 2019 SCC OnLine Patna 601]***.

10. On the contrary, Mr.Hasan Mohamed Jinnah, learned State Public Prosecutor appearing for the first respondent has submitted that the scope of the preliminary inquiry is only to find out as to whether there is a prima facie case to continue with the criminal prosecution, that on receipt of the preliminary report, the first respondent

considered the same and was not satisfied with the findings in the preliminary report, that a communication was made to the Government to accord permission to conduct a fresh inquiry and take a final decision regarding the registration of the first information report, if ultimately a cognizable offence is made out, that on such request made by the first respondent, the State Government accorded permission to conduct a preliminary inquiry afresh and that in view of the same, the first respondent proceeded further with the preliminary inquiry afresh.

11. The State Public Prosecutor appearing for the first respondent has further submitted that this step was taken in line with the earlier stand taken before this Court by the learned Advocate General. In order to substantiate the same, he relied upon paragraph 17 of the earlier order of this Court dated 12.10.2018. He has concluded his arguments by submitting that the second respondent has to necessarily await the final decision to be taken by the first respondent and that there is no cause of action for the second respondent to agitate the dispute at this stage.

12. Mr.N.R.Elango, learned Senior Counsel appearing on behalf of the petitioner has submitted that the Manual of Directorate of Vigilance and Anti Corruption provides for the manner in which the preliminary inquiry must be conducted and placed reliance upon paragraph No.18 of the Manual. He has contended that the preliminary inquiry cannot be conducted like a full-fledged investigation and if that has been done in the earlier report, the very report is illegal. He has further submitted that the second respondent has no locus standi to participate at the stage of preliminary inquiry, that the only reason as to why the Apex Court directed an opportunity to be given to the second respondent was just because of the transfer of investigation to the CBI and that if the transfer of investigation is not going to take place, the second respondent cannot be allowed to seek a copy of the preliminary report or participate in the proceedings and give his defence.

13. The learned Senior Counsel appearing on behalf of the petitioner has also submitted that if, ultimately, the second respondent faces a trial, in order to establish his defence, he can always file an application under Section 91 of the Code and seek to furnish a copy of

the preliminary report and that such a safeguard is well recognized in law. He has concluded his arguments by submitting that the petitioner is not trying to run away by withdrawing this criminal original petition and that the petitioner is always prepared to contest the case on merits and establish as to how a cognizable offence has been made out against the second respondent.

14. The learned Senior Counsel appearing on behalf of the petitioner also relied upon the judgment of the Apex Court in the case of ***Lalita Kumari Vs. Government of Uttar Pradesh [reported in 2014 (2) SCC 1]*** to explain the scope of a preliminary inquiry as stated in paragraph 120.5 of the judgment.

15. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

16. The Apex Court, while remitting the matter back to this Court, specifically directed to consider the matter afresh, including the preliminary report submitted by the first respondent against the

second respondent. In view of the same, the first exercise that was undertaken by this Court was to carefully scrutinize the preliminary inquiry report.

17. The genesis of the inquiry was based on the petition given by the petitioner and on the orders passed by the first respondent dated 22.6.2018 to ascertain as to whether the allegations levelled against the petitioner have any prima facie evidence to proceed further against the second respondent. The five allegations made against the second respondent have been independently dealt with.

18. The Additional Superintendent of Police, Special Investigation Cell of the Vigilance and Anti Corruption Department had inquired nearly 12 witnesses, placed reliance upon nearly 112 documents and thereafter, submitted the preliminary inquiry report. The Enquiry Officer dealt with each allegations put forth by the petitioner separately and considered the relevant materials pertaining to those allegations. Ultimately, the Enquiry Officer had come to the conclusion that there was no sufficient and tangible evidence to substantiate the allegations, that there was no favouritism or abuse of public office or

official position while awarding the contract and that there was no undue pecuniary advantage to anyone. While considering each one of the allegations, the Enquiry Officer had also made specific reliance upon the World Bank Guidelines and taken note of the fact that the World Bank monitored each of those contracts and approved the same.

19. The preliminary inquiry report that was submitted to the first respondent was, in fact, accepted by the first respondent and the same was evident from the special leave petition filed by the first respondent before the Apex Court wherein it had been stated that the Enquiry Officer had already submitted his report and that if the petitioner was aggrieved by the same, the appropriate remedy would be only to proceed further under Section 156(3) of the Code. Before the Apex Court, the first respondent had also taken a stand to the effect that the inquiry did not reveal any cognizable offence. Thereby, the first respondent had specifically sought to set aside the earlier order dated 12.10.2018 passed by this Court.

20. The State Public Prosecutor placed two documents before this Court. The first document is the communication dated 03.3.2023

made by the Tamil Nadu Vigilance Commission to the Secretary to Government, Public (SC) Department. In this communication, the Tamil Nadu Vigilance Commission requested the Government to grant approval as per Section 17A(1) of the Prevention of Corruption (Amendment) Act, 2018 for conducting a preliminary inquiry afresh by the Directorate of Vigilance and Anti Corruption against the second respondent in respect of the allegations made in the petition submitted by the petitioner dated 13.6.2018. By virtue of this communication, the Tamil Nadu Vigilance Commission sought to have a speedy approval from the Government since the matter has to be communicated to this Court whenever the case comes up for hearing.

21. Based on the above communication, the Secretary to Government, Public (SC) Department, through the letter dated 30.3.2023, informed the first respondent that the Government decided to accord permission to conduct the preliminary inquiry afresh based on the petition dated 13.6.2018 given by the petitioner. In view of the same, the first respondent, through the State Public Prosecutor, informed this Court that a fresh preliminary inquiry is going to be conducted against the second respondent.

22. The important issue to be taken into consideration is as to what impelled the ordering of a preliminary inquiry afresh. The inquiry report was submitted on 28.8.2018. The same was accepted by the first respondent and that was the reason why the first respondent filed an appeal before the Apex Court challenging the earlier order passed by this Court dated 12.10.2018. The communications that were placed before this Court do not indicate as to why a preliminary inquiry has been ordered afresh. Either the first respondent should have stumbled upon some new facts/materials or the earlier preliminary inquiry report dated 28.8.2018 must be found to be bad. Without assigning any such reasons, the Government straight away orders for a preliminary inquiry afresh. The only development that took place during the interregnum period was that there was a change in guard and that the Dravida Munnetra Kazhagam won the assembly elections and formed the government on 07.5.2021.

23. It must be borne in mind that the first respondent is an Independent Body belonging to the Executive Organ of the State. Hence, if at all the first respondent is not satisfied with the earlier preliminary inquiry report submitted, immediate action should have

been taken by not accepting the preliminary inquiry report and instead, ordering for a preliminary inquiry afresh. The first respondent did not come to such a conclusion and in fact, the first respondent was satisfied with the preliminary inquiry report filed by the Enquiry Officer. That was the reason as to why the first respondent independently filed an appeal before the Apex Court.

24. Without any change in the circumstances, except for the change in the government during the year 2021, the Government cannot now direct for a preliminary inquiry afresh by disregarding the earlier report, which was, in fact, accepted by the first respondent and the then Government. In the eye of law, there is only one State Government and it is immaterial as to which political party takes over the power. Therefore, for all purposes, a decision taken by the Government should stand and it cannot be reversed without any valid reasons, especially for a change in guard.

25. It will be relevant to refer to some judgments in this regard, which are as follows :

(a) In the judgment of a Division Bench of this Court in the case of **Arappor Iyakkam rep.by its Managing Trustee Jayaram Venkatesan Vs. Director, Directorate of Vigilance and Anti Corruption & Others [reported in 2022 SCC OnLine Mad. 5547]**, it was held as follows :

"53. Coming to the core of the allegations in the complaints of RSB and Arappor Iyakkam, the allegation is to the effect that bureaucrats, viz., Superintending Engineers and Executive Engineers, awarded contracts at the instance of SPV and that is why, in their complaints, the relevant paragraphs which we have extracted above, they have asked for a thorough investigation on the allegations made by them in respect of award of contracts. Had Mr.Gangadhar conducted a proper preliminary enquiry to find out the link between the contractors and SPV, then, there could be some justification in the registration of the FIR against SPV.

54. On the contrary, a reading of the suo motu FIR registered by Mr.Gangadhar in DVAC HQ Cr.No.16 of 2021 clearly shows that it has drawn inspiration from the order dated 19.07.2021 passed by the Division Bench of this Court, in particular, the following observation 'The State should spare no effort in getting to the bottom of the matter and proceed against those found to be responsible for the irregularities', which, for good measure, has also been highlighted by Mr.Gangadhar. We notice that at paragraph 10 of the order dated 20.05.2022 passed in Criminal Appeal No. 867 of 2022, the Supreme Court has extracted the order

of the Division Bench dated 19.07.2021, and has prefaced it with the following observation:

'10. As the matter stood thus, there was a change in the political dispensation of the State Government. Interestingly, the State, while relying upon a CAG report, subsequently recanted from its earlier stand. The High Court, without applying its mind, passed the following order on 19.07.2021.....'

(emphasis supplied)

55. Reverting to the impugned FIR, references are then made to the report of the CAG and after naming 17 persons, including SPV, as accused, the FIR alleges that SPV had caused injudicious award of tenders in connivance with 'unknown officials of the Greater Chennai Corporation'.

56. At the risk of repetition, this FIR which has been registered after a preliminary enquiry by Mr.Gangadhar indicts the name of only SPV and private contractors and not officials of the Chennai and Coimbatore Corporations who had scrutinised the tenders and awarded them. This means that even in the preliminary enquiry, Mr.Gangadhar was unable to find out the officials who were involved in awarding the contracts. The FIR does not allege that SPV scrutinised the contracts and awarded them. In any event, admittedly, SPV had no role in inviting, scrutinizing, and accepting tenders which were concluded at the level of the Commissioner. In fact, the elaborate counter affidavits filed by the Commissioners of the Chennai and Coimbatore Corporations, which have been adverted to, supra, do not merely deny the allegations levelled by Arapoor Ayakkam and RSB. They have explained the

process by which tenders were floated and contracts were awarded in consonance with the Tamil Nadu Transparency in Tenders Act and the Rules made thereunder. They have also explained that the firms referred to by Arappor Ayakkam and RSB were the lowest and successful bidders in a transparent tender process, and therefore, the contracts were awarded to them. At the risk of repetition, it is not the case of Arappor Ayakkam and RSB that the tender notifications were kept in wraps by the two Corporations and were shared only to the alleged benamis of SPV at the cost of excluding other contractors. Resultantly, the impugned FIR has not, in any way, improved the allegations based on perception made in the complaint of Arappor Ayakkam and RSB that as SPV was a Minister, there were irregularities in the award of contracts, those who were awarded contracts are his benamis and therefore, SPV should be shown as an accused.

57. We are not, for a moment, saying that the allegations in the FIR do not make out a prima facie case for investigation. According to us, the allegations in the FIR do not make out a prima facie case to array SPV as an accused based on perceptions. What must also weigh in the balance is the sudden volte-face by the police on account of a change of Government. This fact was noticed by the Supreme Court in the order dated 20.05.2022 in Crl.A.No.867 of 2022 while directing the State to furnish a copy of the preliminary enquiry report of Ms.Ponni to SPV. The Supreme Court has observed:

'19. However, it appears that due to various reasons, the matter could not be listed until 19.07.21. In the meanwhile, the State Government had changed.

In a turn of events, the State Government went back on their earlier stand to close the criminal case. Instead, the State Government submitted before the High Court that they intended to conduct further investigation in the aforesaid matter.

26. We may note that the contention of the State may be appropriate under normal circumstances wherein the accused is entitled to all the documents relied upon by the prosecution after the Magistrate takes cognizance in terms of Section 207 of Cr.P.C. However, this case is easily distinguishable on its facts. Initiation of the FIR in the present case stems from the writ proceedings before the High Court, wherein the State has opted to re-examine the issue in contradiction of their own affidavit and the preliminary report submitted earlier before the High Court stating that commission of cognizable offence had not been made out. It is in this background we hold that the mandate of Section 207 of Cr.P.C. cannot be read as a provision etched in stone to cause serious violation of the rights of the appellant-accused as well as to the principles of natural justice'."

*(b) In the judgment of the Apex Court in the case of **State of Tamil Nadu Vs. K.Shyam Sundar [reported in 2011 (8) SCC 737]**, it was held as follows :*

"32. In State of Karnataka Vs. All India Manufacturers Organisation [AIR 2006 SC 1846], this Court examined under what circumstances the government should revoke a decision taken by an earlier Government. The Court held that an instrumentality of the State cannot have a case to plead contrary from that

of the State and the policy in respect of a particular project adopted by the State Government should not be changed with the change of the government. The Court further held as under:-

'59.It is trite law that when one of the contracting parties is 'State' within the meaning of Article 12 of the Constitution, it does not cease to enjoy the character of "State" and, therefore, it is subjected to all the obligations that "State" has under the Constitution. When the State's acts of omission or commission are tainted with extreme arbitrariness and with mala fides, it is certainly subject to interference by the Constitutional Courts.' (Emphasis added)

33. While deciding the said case, reliance had been placed by the Court on its earlier judgments in State of U.P. Vs. Johri Mal [AIR 2004 SC 3800]; and State of Haryana Vs. State of Punjab [AIR 2002 SC 685]. In the former, this Court held that the panel of District Government Counsel should not be changed only on the ground that the panel had been prepared by the earlier Government. In the latter case, while dealing with the river water-sharing dispute between two States, the Court observed thus:

'16.in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same.'

34. In *M.I.Builders (P) Ltd. Vs. Radhey Shyam Sahu* [AIR 1999 SC 2468], while dealing with a similar issue, this Court held that Mahapalika being a continuing body can be estopped from changing its stand in a given case, but where, after holding enquiry, it came to the conclusion that action was not in conformity with law, there cannot be estoppel against the Mahapalika.

35. Thus, it is clear from the above, that unless it is found that act done by the authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power. Political agenda of an individual or a political party should not be subversive of rule of law."

(c) In the judgment of the First Bench of this Court in the case of **V.Madhav Vs. The Government of Tamil Nadu [reported in 2012 (1) CTC 1]**, it was held as follows :

"23. As noticed above, in the first counter affidavit filed by the first respondent - State it was stated that the selection to the post of the State Chief Information Commissioner was made strictly following the provisions of Section 15(3) of the Act and the selection was fully transparent. A Committee was constituted following the procedure contemplated under the aforesaid provision and the Leader of the Opposition was requested to attend the meeting. But the Leader of the Opposition did not attend the meeting. Consequently, unanimous decision was taken for the appointment of respondent-3 as Chief Information

Commissioner. Pending writ petitions there was change in government and a new government came to power. Then it filed a second counter affidavit taking a different stand that the appointment of the Chief Information Commissioner was not made in accordance with the procedure laid down under Section 15(3) of the Act. It is stated that there was no consultation with the Leader of the Opposition, and hence, the appointment is wholly arbitrary.

24. It is well settled that the State or its instrumentalities cannot take a conflicting stand in a case merely because of the change of government. In the case of State of Haryana Vs. State of Punjab reported in [(2002) 2 SCC 507], their Lordships held :-

'16.The decisions taken at the governmental level should not be so easily nullified by a change of Government and by some other political party assuming power, particularly when such a decision affects some other State and the interest of the nation as a whole. It cannot be disputed that so far as the policy is concerned, a political party assuming power is entitled to engraft the political philosophy behind the party, since that must be held to be the will of the people. But in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same'."

26. The common thread that could be seen in all the above referred to judgments is that a decision taken should not be so easily nullified by the change of government and by some other political party assuming power. Unless it is found that the act done by the Authority earlier is either contrary to statutory provisions or is unreasonable or is against public interest, the State should not change its stand merely because the other political party has come into power.

27. In fact, in the case of ***Arappor Iyakkam rep.by its Managing Trustee Jayaram Venkatesan***, the Division Bench of this Court faced a similar situation where there was a preliminary inquiry, in which, a report was submitted exonerating a State Minister and subsequently, due to change of guard, there was a sudden volte-face and a first information report came to be registered against the Minister. This first information report was interfered by this Court and it was quashed. This order passed by the Division Bench of this Court was also affirmed by the Apex Court.

28. There is no doubt in the mind of this Court that the first respondent took a volte-face on account of change of government and things started moving in the year 2023. In none of the communications that was placed before this Court, there is even a reference that the earlier preliminary inquiry report is not in conformity with law or that it is unreasonable or that some new materials have cropped up to order for a fresh inquiry. Hence, this Court holds that the preliminary inquiry has been directed to be held afresh only for the reason that the other political party has come into power. The political agenda of an individual or a political party should not be subversive of the rule of law.

29. The theory of separation of powers has been an integral part of constitutional theory for over 3 centuries. This was lucidly explained by James Madison in the Federalist Paper No.47. The basic principle of separation of powers is the separation of functions. Article 50 of the Constitution of India enunciates this theory.

30. The founding fathers of the Constitution expected that the three limbs of the Constitution namely Legislature, Executive and

Judiciary will function independently in their sphere and each will act as a check and balance over the other. The question today is whether this avowed object is prevalent in the system and is the Executive really functioning independently? The Executive broadly consists of three organs namely, Administration, Police and Revenue.

31. Many a time, truth is harsh and may even sound rude. But, truth has to be said and it cannot be swept under the carpet just because it will cause embarrassment or inconvenience. It is almost 73 years since the Constitution of India started governing this country and the harsh reality is that the Executive has almost lost its independence and it has virtually turned into an organ merely executing whatever is said/dictated/ordered by the political party, which is in power during the relevant point of time. Over a period of time, the political parties have carefully manipulated the system to such an extent that they have a complete control over the Executive. Every time when there is a change in guard, the entire Executive set up also changes to ensure that organ toes the dictates of the government in power. Therefore, in reality, the separation of power that is in the hands of the Executive is almost non-existent.

32. Why is this Court lamenting on this sad state of affairs in the present case? As has been discussed supra, the first respondent conducted a detailed inquiry and found that a prima facie case has not been made out against the second respondent and therefore, a conscious decision was taken to close the complaint. The same is very apparent from the grounds that were raised by the first respondent before the Apex Court while filing an independent appeal against the earlier order passed by this Court. The question is as to what really made the first respondent to completely take a 360 degree turn and ask the Government in the year 2023 regarding the action to be taken against the second respondent on the closure report that was already submitted. Did the first respondent become wiser within a span of 5 years or did the first respondent stumble upon any other new material, which will have a bearing on the closure report? The answer is a resounding '**no**' and the only reason that can be gathered from the materials placed before this Court is that there was a change in the power dynamics and that is the only reason as to why the first respondent wants to disregard the earlier inquiry report and commences a fresh inquiry.

33. These instances keep happening as and when there is a change in guard and ultimately, the case reaches the court. In cases of this nature, the Court is like a playground where the ruling and opposition party try to score a point for their own political games. Ultimately, the order passed by the Court will only become a subject matter of a talk show in the television channels, which will be discussed with a lot of hue and cry where the participants will scream at the top of their voice supporting one party or the other and ultimately, it will all get consigned to nothing.

34. The time that is spent by the Courts on these issues virtually eats the judicial time, which has to be spent purposefully for a poor litigant, who is waiting for years together with a fond hope that his case will be taken up at the earliest and that there will be some light at the end of the tunnel. This court expressed its anguish on the complete loss of independent functioning by the Executive and this is one such appropriate case where this Court deemed it fit to put forth the naked reality that has actually set into the system contrary to what the makers of the Constitution had in their mind when they gave us this Constitution.

35. In the light of the above discussions, this Court holds that the preliminary inquiry report, which was submitted by the Additional Superintendent of Police, Special Investigation Cell, Vigilance and Anti Corruption, Chennai-16 on 28.8.2018 and which was acted upon, does not suffer from any apparent illegality or unreasonableness in reaching the conclusion regarding every allegation that was made against the second respondent. Further, there is no reason for conducting another preliminary inquiry afresh as was ordered by the Government. In the considered view of this Court, such a direction has been given only due to the change in the political party that has come into power. The only appropriate remedy in law for the petitioner will be under Section 156(3) of the Code. The law on this issue is too well settled.

36. In the result, the above criminal original petition stands dismissed.

18.7.2023

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

RS

Crl.O.P.No.20711 of 2018

N.ANAND VENKATESH,J

RS

To

- 1.The Director of Vigilance & Anti Corruption, No.293,
MKN Road, Collectors Nagar, Alandur, Chennai-16.
- 2.The Public Prosecutor, High Court, Madras

Crl.No.20711 of 2018

18.7.2023