IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.Nos.18823, 18813, 20069 and 20129 of 2023

W.P.No.18823 of 2023:

S.RAMACHANDRAN .. Petitioner

Vs

1 THE STATE OF TAMIL NADU
REP. BY ITS CHIEF SECRETARY
SECRETARIAT, FORT ST. GEORGE
CHENNAI- 600 009.

2 THE PRINCIPAL SECRETARY TO
GOVERNOR OF TAMIL NADU
RAJ BHAVAN, SARDAR PATEL ROAD
GUINDY, CHENNAI - 600 022.

3 THE MINISTRY OF LAW AND JUSTICE
REP. BY ITS SECRETARY TO GOVT
4TH FLOOR, A-WING, SHASTRI BHAWAN
NEW DELHI-110 001.

4 V.SENTHIL BALAJI .. Respondents

W.P.No.18813 of 2023:

M.L.RAVI .. Petitioner

Vs

1 THE PRINCIPAL SECRETARY TO GOVERNOR
GOVERNMENT OF TAMIL NADU
RAJ BHAVAN, GUINDY
CHENNAI - 600 032.

2 THE DIRECTOR
DEPARTMENT OF INFORMATION AND PUBLIC
RELATIONS GOVERNMENT OF TAMIL NADU
SECRETARIAT, FORT ST. GEORGE,
CHENNAI - 600 009.

3 THE PRINCIPAL SECRETARY TO GOVERNMENT
GOVERNMENT OF TAMIL NADU
(HOME SECRETARY), SECRETARIAT
FORT ST. GEORGE
CHENNAI- 600 009.

4 V.SENTHIL BALAJI .. Respondents

W.P.No.20069 of 2023:

DR.J.JAYAVARDHAN .. Petitioner

Vs

1 PRINCIPAL SECRETARY
GOVERNOR OF TAMIL NADU
RAJ BHAVAN, CHENNAI - 600 022.

2 STATE OF TAMIL NADU
CHIEF SECRETARY
GOVERNMENT OF TAMIL NADU
ST.GEORGES FORT, CHENNAI-600 009.

3 PRINCIPAL SECRETARY
TAMIL NADU LEGISLATIVE ASSEMBLY
TAMIL NADU LEGISLATURE, SECRETARIAT
ST.GEORGES FORT
CHENNAI-600 009.

4 PRINCIPAL SECRETARY
PUBLIC DEPARTMENT
GOVERNMENT OF TAMIL NADU
ST.GEORGES FORT, CHENNAI-600 009.

5 SENTHIL BALAJI .. Respondents

W.P.No.20129 of 2023:

M.L.RAVI .. Petitioner

Vs

1 PRINCIPAL SECRETARY TO GOVERNOR
GOVERNMENT OF TAMIL NADU
RAJ BHAVAN, GUINDY
CHENNAI 600 022

2 THE SECRETARY TO GOVERNMENT
PUBLIC DEPARTMENT
GOVERNMENT OF TAMILNADU
SECRETARIAT, FORT ST. GEORGE
CHENNAI 600 009

3 V.SENTHIL BALAJI .. Respondents

Prayer in W.P.No.18823 of 2023: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of quo warranto to be issued calling upon the respondents to answer under what authority the respondent No.4 is holding the post of State Minister and consequently remove the respondent No.4 from the post of State Minister.

Prayer in W.P.No.18813 of 2023: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the entire records of the 2nd Respondent in Press Release No. 1190 dated 16.06.2023 and quash the same in so far as it relates to ordering continuance of the 4th respondent as Minister without portfolio.

Prayer in W.P.No.20069 of 2023: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of quo warranto directed against the 5th respondent requiring him to show cause by what authority he retains the Constitutional post of Minister of the State of Tamil Nadu.

Prayer in W.P.No.20129 of 2023: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the entire records of the D.O. Letter No.0014/RBTN/2023, dated 29.06.2023 issued by the Governor of Tamilnadu and quash the same.

For the Petitioner in W.P.No.18823 of 2023 : Mr.S.Sheik Ismail

For the Petitioner in W.P.Nos.18813 and 20129 of 2023; : Mr.Shakthivel for Mr.T.Sivaganansambandan

For the Petitioner in W.P.No.20069 of 2023 :	Mr.V.Raghavachari Senior Counsel for Mr.I.S.Inbadurai
For the Respondents 1, 2 and 4 in W.P.No.18823 of 2023; Respondents 2 to 4 in W.P.No.18813 of 2023; Respondents 2 to 5 in W.P.No.20069 of 2023; and Respondents 2 and 3 in W.P.No. 20129 of 2023 :	Mr.R.Shunmugasundaram Advocate General assisted by Mr.P.Muthukumar State Government Pleader and Ms.A.G.Shakeenaa for respondents 1 and 2

COMMON ORDER

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

The primordial issues involved are qua the continuation of V.Senthil Balaji as a Cabinet Minister of the State of Tamil Nadu consequent to his arrest and as to whether a Minister could continue in office without being assigned any responsibilities and duties, that is without any portfolios, while in judicial custody.

2. The entire controversy triggered off as a sequel to the action taken by the Enforcement Directorate pursuant to the

direction given by the Apex Court in the judgment dated 16.5.2023 passed in SLP (Cri) No.12779 to 12781 of 2022, whereby the Enforcement Directorate was directed to proceed with the case registered against V.Senthil Balaji and conclude the investigation within two months.

3. Pursuant to the aforesaid direction given by the Apex Court, the Enforcement Directorate registered a case on 14.6.2023 under Section 4 of the Prevention of Money Laundering Act, 2002 and V.Senthil Balaji was arrested by the Enforcement Directorate on 14.6.2023.

4. Consequent thereto, the Governor of Tamil Nadu issued an order dated 17.6.2023 notifying the re-allocation of portfolio of V.Senthil Balaji upon the recommendation and advice of the Chief Minister and took serious objections to his continuance as a Minister without portfolio. On 29.6.2023, the Governor addressed a letter dismissing V.Senthil Balaji from the Council of Ministers and observed that his continuation will not only lead to obstruction of

due process of law and disrupt the course of justice, but also would lead to breakdown of the Constitutional machinery in the State. The said letter was kept in abeyance on the same day by the Governor, awaiting the opinion of the Attorney General for India.

5. It is in this aforesaid background that the petitioners have filed these writ petitions.

6.1. Mr.V.Raghavachari, learned Senior Counsel appearing on behalf of the petitioner in W.P.No.20069 of 2023, who had prayed for issuance of a quo-warranto, submits that though V.Senthil Balaji does not completely suffer a disqualification as a Member of Legislative Assembly under the Representation of People Act, 1951 (for brevity, hereinafter referred to as, "the Act of 1951"), he has virtually forfeited his office as a Minister on account of being arrested and detained in prison, or in other words by being in judicial custody. As V.Senthil Balaji is in the judicial custody, he has disabled himself from performing the duties and responsibilities of being a public servant and, as such, he ought not to continue as

a Minister, more so when the Governor has expressed his displeasure in the continuation of V.Senthil Balaji as a Minister citing moral turpitude.

6.2. It is further submitted that the Constitutional function of the Council of Ministers headed by the Chief Minister is to aid and advise the Governor in the exercise of his functions, however, if there is a Constitutional breach or deviant behaviour of those in public office, the Governor can act in his own discretion. This discretionary power of the Governor emanates from the various salutary principles laid down by the Apex Court in the case of *Manoj Narula v. Union of India*[1], wherein the very first question framed for opinion was whether a person having criminal background and/or charged with an offence involving moral turpitude be appointed as a Minister in the State or Central Government. He submitted that, while answering the issue, the Constitution Bench had made it clear that Constitutional morality, good governance and Constitutional trust are the basic norms for holding a public office.

1 *(2014) 9 SCC 1*

6.3. Emphasizing the significance of first basic norm for holding a public office, i.e., Constitutional morality, learned Senior Counsel submitted that, basically, it means to go down to the norms of the Constitution and not to act in a manner which is violative of the rule of law or arbitrary. To fortify the said submission, reliance was placed on the decisions of the Apex Court in *B.R. Kapur vs. State of T.N.*[2] and *Manoj Narula* (supra).

6.4. Apropos the second basic norm, i.e., good governance, learned Senior Counsel submitted that good governance requires the Government to rise above narrow private interests or parochial political outlook and aim at doing good for the larger public interest. The faith of the people is the root of the idea of good governance which means reverence for citizenry rights and respect for fundamental and statutory rights and deference for unwritten Constitutional values, veneration for institutional integrity and inculcation of accountability to the collective at large.

2 *(2001) 7 SCC 231*

6.5. Qua the third basic norm, i.e., Constitutional Trust, learned Senior Counsel submitted that the choice of a Minister is left to the good sense of the Prime Minister or the Chief Minister, as the case may be. Drawing our attention to the observation made by H.M.Seervai in Constitutional Law of India (Vol.24th Edn. Page No.2060), wherein it is observed that "*If the constitution is to be successfully worked, an attempt must be made to improve the political atmosphere and to lay down and enforce standards of conduct, required for the successful working of the constitution*", he submitted that a Minister, accused of a financial scandal, should not be permitted to continue in public office, as he forfeits his right to occupy a public office that demands a high degree of morality. He added that the presumption of innocence pending a criminal case has a different connotation when it comes to accusation as against a person aspiring to be a Minister and such presumption of innocence in criminal jurisprudence has no relevance in the light of the emphatic observation made by the Apex Court in the case of *Manoj Narula* (supra).

6.6. Pointing out the view expressed in the concurring judgment of Hon'ble Justice Kurian Joseph in the case of *Manoj Narula* (supra), learned Senior Counsel argued that the Courts are designated with a duty to protect and safeguard the conscience of the Constitution of India. Right or Wrong, for Court is not in the ethical sense of morality but in the Constitutional Sense of morality. It is also submitted that the Apex Court in the case of *Manoj Narula* (supra), while dealing with persons in conflict with laws has observed that there is "*No quarrel under criminal jurisprudence, a person is presumed to be innocent until he is convicted but is there not a stage where a person is presumed to be culpable and hence called upon to face trial on the court framing charges*".

6.7. He hastened to add that, in the present factual matrix, V.Senthil Balaji has suffered a legal disqualification as has been held in the aforesaid judgment of the Apex Court.

6.8. Learned Senior Counsel, relying on the case of *Manoj Narula* (supra), further submitted that the Supreme Court vests the power on the Courts to indicate the Constitutional ethos, good governance and purity in administration and constantly reminds the Constitutional functionaries to preserve, protect and promote the same.

6.9. Referring to the judgment of the Apex Court in the case of *Y.Balaji v. Karthik Dasari*[3], he submitted that the Apex Court had indicted V.Senthil Balaji and had expressed surprise as to why the Enforcement Directorate should have "*adopted an ostrich like approach, without trying to find out where and whom the huge money generated in the scam had gone is something unheard of*" (Paragraph 109 of SLP Cri 12779 & 12781 of 2022). The Apex Court had invoked the provisions of the Prevention of Corruption Act, 1988 and directed the State to complete investigation within a period of two months. Therefore, there exists sufficient material against V.Senthil Balaji to face a criminal trial. He submitted that

3 *[SLP (Cri) 12779 and 12781 of 2022]*

the observations made by the Apex Court would imply that witnesses were tampered and the prosecution had been derailed at the behest of men in power. The continuation of V.Senthil Balaji as a Minister would render the apprehension expressed by the Supreme Court to be true.

6.10. It is further submitted that V.Senthil Balaji, by his own conduct, has disabled himself from continuing as a Minister. For instance, the Minister sitting in prison cannot ask the Secretary of the State to get the files concerning any of the Departments without breaching the oath of office. To be a Minister the provisions of Articles 163 and 164 of the Constitution of India need to be adhered strictly. It is not just the provisions of the Constitution that ought to be looked into for governance, but the manner in which the Articles are interpreted by the Apex Court and various High Courts.

6.11. It is argued that the Constitution of India offers great privileges and imposes onerous duties and responsibilities on the Minister in comparison to that of an elected Legislative Member. The

Minister is a part of the executive functions of the State, apart from being a Legislator, and shares information concerning the sovereignty of the State and its administration. V.Senthil Balaji does not satisfy most of the limbs of Article 164 of the Constitution of India. V.Senthil Balaji does not satisfy the above owing to his incarceration, which disqualifies him from continuing as a Minister. It is placed on record that his role/right to continue as a MLA is not questioned. The argument of the respondents that every MLA is eligible to be a Minister is misconceived. Eligibility is different from suitability. Not all eligible men are suitable to don the Constitutional post of a Minister.

6.12. To fortify the said plea, reliance is placed on the judgment of the Apex Court in the case of *N.Kannadasan v. Ajoy Khose and another*[4]. In the said decision, the Apex Court reiterated while highlighting the importance of the independence and impartiality of Judiciary as the basic feature of the Constitution, held that a quo-warranto could be issued in cases of non-user, neglect,

4 *(2009) 7 SCC 1*

misuse or abuse of office and resultantly, the holder forfeits his right to occupy a public office.

6.13. Relying on the decision of a Constitution Bench of the Apex Court in *B.R.Kapur (supra)*, more particularly paragraph (92), learned Senior Counsel submits that the present writ petition is maintainable and it is for V.Senthil Balaji to establish on what authority he continues to hold office.

6.14. It is vehemently submitted that a Minister cannot survive without a portfolio. Pointing out Rules 4 and 5 of the Tamil Nadu Business Rules and Secretariat Instructions, which speak of the role of a Minister, he submitted that Schedule 1 specifically assigns portfolio/portfolios to Minister or Ministers. A harmonious reading of the Statutory Rules 4 and 5 with Schedule 1 would dawn to the irresistible conclusion that a Minister cannot survive without a portfolio.

6.15. Referring to the judgment of the Apex Court in the case of *M.Karunanidhi vs. Union of India*[5], he submitted that there are three facts that are of relevance in deciding whether there could be a Minister without portfolio charging the exchequer, viz., (i) that a Minister is appointed or dismissed by the Governor and is therefore, subordinate to him, whatever be the nature and status of his Constitutional function; (ii) that a Chief Minister or a Minister gets salary from the public for the public work done or the public duty performed by him; and (iii) that the said salary is paid to the Chief Minister or the Minister from the Government funds.

6.16. He further submitted that Article 164(5) of the Constitution of India clearly elucidates the salary and other allowances payable to a Minister. There would be no justification for a person to unjustly enrich himself from the State exchequer, while occupying a public office without performing any duty attached to the office he holds. Sitting in jail, he is incapable of transacting any business that the law enjoins upon him and if he is allowed to do so,

5 *(1979) 3 SCC 431*

any material, irrespective of its secretive nature, would have to be scanned thoroughly by the prison authorities before it reaches the hands of V.Senthil Balaji, and such an act would amount to direct breach of the oath of secrecy administered to V.Senthil Balaji under the Third Schedule of the Constitution of India.

6.17. It is added that Rules 31 (1), (3) and 38 of the Tamil Nadu Business Rules and Secretariat Instructions empowers a Minister to call for files from any Department of the Cabinet, irrespective of the portfolio assigned to him. V.Senthil Balaji, by virtue of being designated as a Minister, would be well within his Rights to demand for the investigation files, wherein, he has been cited as an accused by the State. Such a situation is against the ethos of criminal jurisprudence. In support of the said submission, reference is made to the decision of the Apex Court in the case of *M.P.Special Police Establishment v. State of Madhya Pradesh and others*[6].

6 *(2004) 8 SCC 788*

6.18. Learned Senior Counsel, on the basis of the aforesaid submissions, prayed for issuance of a quo-warranto, forbearing V.Senthil Balaji from being a Minister in the Cabinet in the State of Tamil Nadu.

7.1. Mr.S.Sheik Ismail, learned counsel for the petitioner in W.P.No.18823 of 2023, submitted that the appointment of V.Senthil Balaji as a Minister is under Article 164(1) of the Constitution of India. Though the appointment of a Minister is based on the aid and advice of a Chief Minister, the continuance of a Minister in office is purely based on the pleasure of the Governor and as such, V.Senthil Balaji is not entitled to remain in his office against basic Constitutional Principles. However, the State of Tamil Nadu had merely sought a change of portfolio on medical grounds and not on the ground that the concerned Minister is in judicial custody and is not in a position to carry out his official functions.

7.2. It is submitted that when the Governor of State has in express terms notified on 17.6.2023 that the Governor does not agree

with the continuance of V.Senthil Balaji as a Minister without any portfolio, V.Senthil Balaji ought to have been removed from the Council of Ministers with immediate effect, as V.Senthil Balaji has lost the pleasure of the Governor.

7.3. It is further submitted that the Governor addressed a detailed letter on 29.6.2023 to the Chief Minister, dismissing V.Senthil Balaji from the Council of Ministers, taking strong objections to the manner in which the Chief Minister had requested re-allocation of portfolios due to the ill-health of V.Senthil Balaji and had completely failed to mention about the pending criminal cases against V.Senthil Balaji. The Governor had categorically observed in his letter dated 29.06.2023 that the continuation of V.Senthil Balaji will not only lead to obstruction of due process of law and disrupt the course of justice, but also lead to breakdown of the Constitutional machinery in the State. The letter dated 29.06.2023 issued by the Governor is sufficient to establish that V.Senthil Balaji has lost the pleasure and confidence of the Governor within the meaning of Article 164 of Constitution and therefore, has no authority to continue as a Minister. The fact that the earlier letter dated 29.06.2023 has been kept in abeyance does not

change the fact that the Governor has lost confidence in V.Senthil Balaji. The order of dismissal was kept in abeyance only awaiting the opinion from the Attorney General and the same in no way changes the stand that the Governor has lost confidence in V.Senthil Balaji to continue as a Minister.

7.4. It is also contended that the continuation of V.Senthil Balaji as a Minister is against the Constitutional values and is clearly immoral. There is a strong likelihood that the entire State machinery would be utilised for the protection and service of V.Senthil Balaji, who is an accused undergoing investigation and trial relating to offences of moral turpitude.

7.5. It is submitted that, under Article 164 of the Constitution of India, appointment of a Minister is by the Governor and his continuance is also based on the pleasure of the Governor. When such is the case, V.Senthil Balaji, being a Minister, is undoubtedly subordinate to the Governor and ought to vacate the office when the Governor expresses displeasure over the continuance of

V.Senthil Balaji as a Minister. When V.Senthil Balaji has been administered the oath of office by the Governor and appointed as a Minister under Article 164, the power of a Governor under Article 164 of the Constitution includes the power to dismiss a Minister at his discretion and as such, there cannot be any restriction or fetters upon such power being exercised by the Governor. There is no limitation or condition to the pleasure of the Governor prescribed by Article 164(1) and therefore, the right of the Governor to withdraw the pleasure, during which the Ministers hold office, is absolute and unrestricted. While the appointment of a Minister is with the advice of the Chief Minister, the Governor has the authority to remove a person as a Minister. To buttress the said argument, reliance is placed on the decisions of the Apex Court in *Emperor v. Sibnath Banerji*[7], *and Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*[8].

7.6. Learned counsel placed heavy reliance on a decision of the Bombay High Court in the case of *Namdeo Kashinath Aher v.*

7 *AIR 1945 PC 156*

8 *(1953) 2 SCC 111*

H.G. Vartak[9] and a decision of the Punjab and Haryana High Court in the case of S.Tara Singh v. Director Consolidation of Holdings, Punjab[10], to contend that it is open to a Governor under the Constitution to dismiss an individual Minister at his pleasure.

7.7. The position of law adumbrated above was subsequently confirmed by the Supreme Court in the case of *M.Karunanidhi* (*supra*) to the effect that a Minister is appointed or dismissed by the Governor and is, therefore, subordinate to him whatever be the nature and status of his Constitutional functions.

7.8. It is further submitted that the inaction by the respondents in removal of V.Senthil Balaji from the post of Minister and retaining him in the Cabinet as a Minister without portfolio is a gross example of the issue of criminalization of politics; and merits interference by this Court, particularly in view of the observation of the Supreme Court in relation to the investigation in the present case. The act of V.Senthil Balaji is in breach of Clauses 1(a) and 4.1.(a) pertaining to disclosure

9 *AIR 1970 Bom 385, 388*

10 AIR 1958 Punj 302

of assets, income and acceptance of gifts/consideration from those whom he may have official dealings with.

7.9. Drawing the attention of the Court to the decision of the Apex Court in *PUCL v. Union of India*[11], wherein it was held that disclosure of antecedents makes the election a fair one and the exercise of the right of voting by the electorate also gets sanctified, it is submitted that such a right is paramount for democracy.

7.10. It is submitted that the investigation in the offences against V.Senthil Balaji, *prima facie*, discloses that V.Senthil Balaji has assets beyond his disclosed means and there has been recovery of proceeds of crime, indicating breaches of the Code of Conduct of Ministers. Therefore, V.Senthil Balaji has no authority whatsoever to remain in office as a Member of the Council of Ministers, when he has been remanded to judicial custody for the offences committed under the Prevention of Money Laundering Act, 2022 and such offences relate to "moral turpitude".

11 *(2013) 10 SCC 1*

7.11. Learned counsel for the petitioner vociferously argued that those who break the law should not make the law. Persons with criminal backgrounds should not enter the legislature, which is a powerful wing/element of governance, and pollute it. As such, as a natural consequence, they cannot be Ministers. It is undoubtedly clear that the respondents are duty-bound to ensure "purity in governance". He placed much emphasis on the judgment of the Apex Court in *Public Interest Foundation & Ors. v. Union of India*[12]. In this regard, reliance was also placed on the 246th Law Commission Report and the observations of the Apex Court in the case of *Manoj Narula* (supra), which were elaborately referred by Mr.V.Raghavachari, learned Senior Counsel, were reiterated.

7.12. Learned counsel relied on a judgment in the case of *K.Prabhakaran v. P.Jayaraman*[13], in support of his submission that those who break the law should not make the law and the purpose sought to be achieved by enacting disqualification on conviction for certain offences is to prevent persons with criminal background

12 *(2019) 3 SCC 224*

13 *(2005) 1 SCC 754*

from entering into politics and the House – a powerful wing of governance.

7.13. Concluding his arguments, learned counsel referred to a judgment of the Delhi High Court in *Dr.Nand Kishore Garg v. Government of NCT of Delhi and others [W.P.(C) No.10207 of 2022, dated 27.7.2022]*, wherein it is emphatically held that while it is not for the Court to issue directions to the Chief Minister, it is the duty of the Court to remind these key duty holders about their role to uphold the tenets of the Constitution.

8.1. Mr.K.Sakthivel, learned counsel for the petitioner in W.P.Nos.18813 and 20129 of 2023, submitted that the Governor has no power of review or modification of his orders and, therefore, the action of keeping his order in abeyance is *ultra vires* the Constitution of India. The Governor, being an independent Constitutional Authority, should not have acted at the instance of the Union Minister for Home Affairs and, therefore, his action is unconstitutional, *ultra vires* and is an arbitrary exercise of power.

8.2. It is further submitted that whenever the action of the Governor is *mala fide*, arbitrary and *ultra vires*, the immunity granted under Article 361 of the Constitution of India does not prevent the Constitutional Courts to review the action of the Governor and quash the same. The only restriction contemplated is that the Governor cannot be made as a party to any of the proceedings questioning his action and/or his inaction. To bolster his argument, he placed reliance on the judgment of the Apex Court in *Rameshwar Prasad and others v. Union of India*[14], wherein it was held that the immunity granted to the Governor does not affect the power of the Court to judicially scrutinise the actions of the Governor on the ground of *mala fides* or it being *ultra vires*. For the very same proposition, the judgments in the case of *B.P.Singhal v. Union of India and another*[15]; and *State of Rajasthan and others v. Union of India*[16] have been relied upon.

14 *(2006) 2 SCC 1*

15 *(2010) 6 SCC 331*

16 *(1997) 3 SCC 592*

8.3. It is further submitted that the Governor has got discretionary power in the matter of removal of a Minister, as the Minister holds office during the pleasure of the Governor. Though the Governor is not expected to assign any reasons, it is expected that the Governor assigns reasons for the removal or withdrawal of pleasure. In effect, it is contended that the Governor has powers to remove a Minister. In support of the said submission, reliance is placed on the decisions in *M.P.Special Police Establishment, B.P.Singhal and B.R.Kapur (supra).*

8.4. It is submitted that the Governor, by letter dated 29.6.2023, dismissed V.Senthil Balaji from the Council of Ministers with immediate effect on the apprehension that his continuation would continue to obstruct the due process of law and disturb the course of justice which might eventually lead to breakdown of the Constitutional machinery in the State. The action of the Governor has to be interpreted in the context of existence of an extraordinary situation necessitating removal of V.Senthil Balaji exercising the power under Article 164 of the Constitution of India and therefore,

the action of the Governor in removing V.Senthil Balaji is well within the Constitutional limitations.

8.5. Anent the power of the Governor to review, revisit, modify or keep his orders in abeyance, it is submitted that the Governor does not have such power, as neither the Constitution has inherently provided the same, nor the same can be inferred by necessary implication. To strengthen his argument, he placed reliance on the judgment of the Apex Court in *Dr.Kashinath G. Jalmi and another v. The Speaker and others*[17]; besides the judgment of the Bombay High Court in *Shirish Q. Kamat v. Union of India*[18].

8.6. It is further submitted that the letter of the Governor keeping the order of removal of V.Senthil Balaji in abeyance is arbitrary and *ultra vires* the Constitution and deserves to be quashed, inasmuch as having taken a decision, the Governor is not expected to revisit the same by seeking the advice from the

17 *(1993) 2 SCC 703*
18 *CDJ 2022 BHC 193*

Attorney General. If such a situation is accepted, the orders of the Governor shall not have any finality resulting in confusion and destabilisation of the Constitutional machinery. That apart, the Governor admits of discussing with the Union Home Minister subsequent to the order of removal and such an exercise is arbitrary. In this regard, reference has been made to the judgment of the Apex Court in the case of *Hargovind Pant v. Dr. Raghukul Tilak and others*[19].

9.1. Refuting the arguments advanced by learned Senior Counsel and learned counsel for the petitioners, Mr.R.Shunmugasundaram, learned Advocate General submitted that the Governor cannot dismiss a Minister using his discretion. The Draft Constitution had a provision to remove a Minister, which was omitted by the Constituent Assembly after debate. In support of the said submission, reliance is placed on the judgments of the Apex Court in *Shamsher Singh v. State of Punjab*[20] and Manoj Narula (supra).

19 *(1979) 3 SCC 458*

20 *(1974) 2 SCC 831*

9.2. It is contended that the 'pleasure' can be withdrawn by the Governor only on the aid and advice of the Chief Minister and not on the personal satisfaction of the Governor. It is added that even while exercising discretion under Article 200 of the Constitution of India, the Governor cannot exercise his executive functions personally. Referring to the judgment in the case of *Nabam Rebia and Bamang Felix v. The Deputy Speaker, Arunachal Pradesh Legislative Assembly*[21], it is contended that for 'withdrawal of pleasure' in respect of a Minister, the Governor must exercise his discretion with the knowledge of the Chief Minister and not by keeping him in the dark or unilaterally.

9.3. Referring to the judgment of the Apex Court in the case of *Nabam Rebia* (supra), it is further submitted that the argument that a Governor has the freedom to determine when and in which situation he should take a decision in his own discretion without the aid and advice of the Chief Minister and his Council of Ministers, was rejected.

21 *(2016) 8 SCC 1*

9.4. Alluding to the judgment in *Manoj Narula* (supra), it is further submitted that it is not for the Court to issue any directions to the Prime Minister or the Chief Minister, as the case may be, as to the manner in which they should exercise their power and that is the Constitutional prerogative of those functionaries who are called upon to preserve, protect and defend the Constitution. In support of his plea qua the prerogative of the Chief Minister, learned Advocate General also referred to the decision in *F.Ghouse Muhiddeen v. Government of India*[22].

9.5. In support of his submission that a duly elected representative of the people can only be removed through the process of law connected with the Constitution irrespective of the fact, howsoever, his act may be immoralistic or unethical, heavy reliance has been placed on the decision of the Andhra Pradesh High Court in *Y.S.Rajasekara Reddy and others v. Sri Nara Chandrababu Naidu and others*[23].

22 *(2002) 3 LW 136*

23 *AIR 2000 AP 142*

9.6. It is further submitted that the remuneration of a Member of Legislative Assembly is Rs.1,05,000/- per month, whereas the remuneration of a Minister is Rs.80,000/- and allowances. Therefore, a Minister does not receive any extra or more remuneration than a MLA as contended by the petitioners, as such, as an extra burden on the public exchequer.

9.7. Relying upon the decisions in (i) *F.Ghouse Muhiddeen (supra)*; (ii) *K.R.Ramaswamy alias Traffic Ramaswamy v. The State*[24]; (iii) *Ramachandran v. M.G.Ramachandran and others*[25]; and (iv) *Y.S.Rajasekara Reddy (supra)*, it is submitted that a writ of quo-warranto for removing a Minister is not maintainable. He further submitted that to issue a quo-warranto, V.Senthil Balaji must first be declared as not qualified to hold office in the light of the proposition expounded by the Apex Court in *Keisham Meghachandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly and others*[26].

24 2012 2 CTC 481

25 (1987) 100 LW 178

26 *2020 SCC OnLine SC 55*

10.1. In replication, it is submitted by Mr.K.Sakthivel, learned counsel for the petitioner that the Constitutional Courts are the ultimate interpreters of the Constitution and they are assigned the delicate task of determining what is the power conferred on each branch of Government and whether it is limited and, if so, what are the limitations. Therefore, the argument of learned Advocate General that matters under Article 164 of the Constitution of India are outside the scope of Article 226 of the Constitution of India is not justifiable in the light of the law enunciated by the Supreme Court in the *State of Rajasthan; Rameshwar Prasad;* and *B.R.Kapur* (supra).

10.2. Refuting the argument of learned Advocate General that in case the Governor chooses to 'withdraw the pleasure' in respect of a Minister, he must exercise his discretion with the knowledge of the Chief Minister, it is submitted that the Governor kept the Chief Minister informed of his 'displeasure' about V.Senthil Balaji continuing as a Minister and therefore, the Governor acted in

conformity with the proposition laid down in the case of *Nabam Rebia* (supra).

10.3. Lastly, it is submitted that though the Governor has acted within his Constitutional limitations by assigning reasons for the termination of V.Senthil Balaji from the Council of Ministers, the subsequent act of keeping the said order in abeyance deserves to be quashed as arbitrary and ultra vires the Constitution.

11. We have heard learned counsel on either side and pondered over the submissions made in the light of the facts on record and the constitutional framework.

12. In the State of Tamil Nadu, the Legislature shall consist of the Governor and the two Houses viz., the Legislative Council and the Legislative Assembly as provided under Article 168 of the Constitution of India. The composition of the Legislative Assembly is provided under Article 170 of the Constitution of India and the composition of the Legislative Counsel is provided under Article 171

of the Constitution of India. The qualification for Membership of the State Legislature is prescribed under Article 173 of the Constitution, which provides that the person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he (a) is a citizen of India and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule; (b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and in the case of a seat in the Legislative Council, not less than thirty years of age; and (c) possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

13. Section 5 r/w Section 6 of the Act of 1951 provides that "*a person shall not be qualified to be chosen to fill a seat in the Legislative Council of a State to be filled by election unless he is an elector for any Assembly Constituency in that State*". Section 8 of the Act of 1951 provides for disqualification on conviction for certain offences. Section 8(1) provides for disqualification on the ground for

corrupt practices. A person found guilty of corrupt practices by the order under Section 99 of the Act of 1951 would incur disqualification. Other grounds for disqualification are provided under Section 9 to Section 11(1) of the Act of 1951. The Constitution of India nor the Act of 1951 provides for disqualification of a Minister from the State Legislative Assembly and/or Council, than the one providing for being a Member of the Legislative Assembly and/or the Council.

14. The petitioners could not point out any provisions either in the Constitution of India nor the Act of 1951, which dis-entitles the person in custody or against whom chargesheet has been filed from being a Member of the Legislative Assembly/Council and/or a Minister of the State Legislature. The petitioners' contention is more on the morality of a person, who is under custody and against whom chargesheet has been filed, to continue as a Minister and that too, as a Minister without portfolio.

15. In the instant case, the Governor of the State of Tamil Nadu has passed an order communicating that V.Senthil Balaji is removed as a Minister, but subsequently, on the very same day, kept the same in abeyance.

16. Much emphasis was placed by Mr.S.Sheik Ismail and Mr.Shakthivel, learned counsel for the respective petitioners that the Governor does not have powers to review. It needs to be considered that the Court cannot issue notice to the Governor. The same is well settled in the case of *Rameshwar Prasad (supra).* More over, the Governor was acting in his executive capacity and not under any statutory provisions to contend that the statute should prescribe powers for review for the authority to exercise it. The argument that the power of review does not exists would be available in case the power under the statute or regulations are being exercised. The Governor was acting in his executive capacity, as such, it would be no gainsaying that he has no power of review.

17. In the case of *B.R. Kapur (supra)*, appointment of a person as a Chief Minister was a clear infringement of the Constitutional Provision and in that circumstance, the Apex Court observed that a writ of quo-warranto must be issued. However, in the present case, as observed above, no such disqualification, either in the Constitution of India or under the Act of 1951 is pointed out.

18. Reliance on the case of *N.Kannadasan (supra)* may not enure to the benefit of the petitioners. In the said case, an Additional Judge was found by the Collegium of the Supreme Court to be ineligible for appointment as a Permanent Judge or reappointment as an Additional Judge. In that premises, it is held that he is not eligible to be recommended for the appointment as the President of State Commission.

19. In the case of *M.Karunanidhi (supra)*, the Court was dealing with the aspect of repugnancy between the Tamil Nadu Public Men (Criminal Misconduct) Act, 1973, the Prevention of Corruption Act, 1988 and the Criminal Law (Amendment) Act, 1952.

In the said case, the Apex Court had observed that a Minister is appointed or dismissed by the Governor and is therefore, subordinate to him and the salary is paid to the Chief Minister or a Minister from the Government funds. The Apex Court in paragraph 49 of the said case held that, *"We are not at all concerned in the instant case as to the circumstances under which the Governor can appoint or dismiss the Chief Minister".*

20. In the case of *M.P.Special Police Establishment (supra),* the Apex Court was dealing with the grant of sanction for prosecution of Ministers. In the said case, sanction was applied for from the Ministers for prosecuting the two Ministers. The Council of Ministers held that there was no *iota* of material available against both the Ministers. The Council of Ministers refused sanction on the ground that no *prima facie* case has been made out. The Governor opined that the available documents and facts were enough to show that *prima facie* case for prosecution had been made out. The Governor, accordingly, granted sanction for prosecution under Section 197 of the Criminal Procedure Code. The Apex Court in the

facts of the case observed that, "the normal *rule is that the Governor acts on the aid and advice of the Council of Ministers and not independently or contrary to it. But, there are exceptions under which the Governor can act in his own discretion".* As discussed above, it appears that the Governor can act in his own discretion, or where bias is inherent and/or manifest in the advice of the Council of Ministers or on those rare occasions where on facts the bias become apparent and/or the decision of the Council of Ministers is shown to be irrational and based on non-consideration of relevant factors.

21. In the case of *Public Interest Foundation (supra)*, the Apex Court had observed that, *"Though criminalisation of politics is a bitter truth, Court cannot usurp power which it does not have".* The Apex Court in the said case has further held as follows:

> *"The Constitutional functionaries, who have taken the pledge to uphold the Constitutional Principles, are charged with the responsibility to ensure that the existing political framework does not get*

tainted with the evil of corruption. However, despite this heavy mandate prescribed by our Constitution, our Indian Democracy, which is the world's largest Democracy, has seen a steady increase in the level of criminalisation that has been creeping into Indian polity. This unsettlingly increasing trend of criminalisation of politics, to which our Country has been a witness, tends to disrupt the Constitutional ethos and strikes at the very root of our democratic form of Government".

The Apex Court further held that, *"Still then no disqualification for membership can be laid down by the Court beyond Articles 102(a) to (d) and the law made by Parliament under Article 102(e)".*

22. In the case of *K.Prabhakaran (supra),* the Apex Court was considering the date from which disqualification is incurred by an elected representative as per the provisions of the Representative of People Act, 1951.

23. In the case of *Dr.Nand Kishore Garg (supra)*, it was observed that, *"it is not for the Court to issue directions to the Chief Minister, it is the duty of the Court to remind these key duty holders about their role with regard to uphold the tenets of our Constitution"*.

24. In the case of *Rameshwar Prasad (supra)*, relied on by the petitioners, the Apex Court was dealing with the invocation of power under Article 356 of the Constitution, where the dissolution of the Bihar Legislative Assembly was ordered under the Presidential Proclamation dated 23.05.2005 It was observed in the facts of the said case that even if the principle of limited judicial review is applied, such proclamation cannot stand judicial scrutiny, as the satisfaction was based on only extraneous and irrelevant grounds.

25. In the case of *B.P.Singhal (supra),* the Apex Court held that, *"a Governor cannot be removed on grounds: (1) that he is out of sync with policies and ideologies of Union Government or party in power at the Centre, or (2) that Union Government or party in power at Centre has lost "confidence" in him". It further held that the scope of judicial review is very limited.*

26. Reliance on the judgment of the Apex Court in the case of *Dr.Kashinath G. Jalmi (supra)* would not be of much assistance to the petitioners. In the said case, the Apex Court observed that the Speaker shall function as a statutory authority under the Tenth Schedule of the Constitution of India. The Speaker shall be required to decide the question of disqualification of a Member of the House on the ground of conviction. In that context, the Apex Court held that the Speaker, while functioning as a statutory authority, has no power to review his decision on the question of disqualification.

27. In the absence of any statutory disqualification incurred by V.Senthil Balaji, it would not be permissible for the Court to issue certain directions to the Governor to take a decision in a particular manner. More over, it would also be a matter of debate as to whether the Governor can unilaterally disqualify a person officiating as a Minister, though he has not incurred any disqualification under the Constitution of India or under any statute.

28. In the case of *Hargovind Pant (supra)*, the Apex Court was considering the case of reversion passed against the petitioner therein by the Acting Vice Chancellor of the University of Rajastan.

29.1. In the case of *Samsher Singh* (supra), the Apex Court observed that the decision of the Minister or Officer under the Rules of Business made under Article 166(3) of the Constitution of India is the decision of the Governor. The Apex Court observed that making a report under Article 256 of the Constitution of India, the Governor will be justified in exercising his discretion even against the aid and advice of the Ministers. The reason is that the failure of the Constitutional machinery may be because of the conduct of the Council of Ministers. Thus, the discretionary power is given to the Governor to enable him to report to the President, who, however must act on the advice of the Council of Ministers in all matters. In this context, Article 163(2) is explicable that the decision of the Governor in his discretion shall be final and the validity shall not be called in question. In paragraph 57 of the said judgment, it is observed by the Apex Court that, "*the President or the Governor*

acts on the aid and advice of the Council of Ministers with the Prime Minister at the head in the case of the Union and the Chief Ministers at the head in the case of State in all matters which vests in the Executive whether those functions are executive or legislative in character. Neither the President nor the Governor is to exercise the executive functions personally".

29.2. In paragraphs 139 and 154 of the *Samsher Singh* (*supra*), the Apex Court observed thus:

> *139. Of course, there is some qualitative difference between the position of the President and the Governor. The former, under Article 74 has no discretionary powers; the latter too has none, save in the tiny. strips covered by Articles 163 (2), 371A(1)(b) and (d), and (f), VI Schedule. para 9(2) [and VI Schedule, para 18(3); until omitted recently with effect from January 21, 1972]. These discretionary powers exist only where expressly spelt out and even these are not left to the sweet will of the Governor but are remote-controlled by the Union Ministry which is answerable to Parliament for those actions. Again, a minimal area centering round reports to be despatched under Article 356 may not,*

in the nature of things, be amenable to Ministerial advice. The practice of sending periodical reports to the Union Government is a pre-constitutional one and it is doubtful if a Governor Could or should report behind the back of his Ministers. For a Centrally appointed constitutional functionary to keep a dossier on his Ministers or to report against them or to take up public stances critical of Government policy settled by the Cabinet or to interfere in the administration directly these are unconstitutional faux pas and run counter to Parliamentary system. In all his constitutional functions' it is the Ministers who act; only in the narrow area specifically marked out for discretionary exercise by the Constitution, he is untramelled by the State Ministers acts and advice. Of course, a limited free-wheeling is available regarding) choice of Chief Minister and dismissal of the Ministry, ,as in the English practice adapted to Indian conditions.

...

154. We declare the law of this branch of our Constitution to be that the President and Governor, custodians of all executive and other powers under various articles shall, by virtue of these provisions, exercise their formal constitutional powers only upon and in accordance with the advice of their Ministers

save in a few well-known exceptional situations. Without being dogmatic or exhaustive, these situations relate to (a) the choice of Prime Minister (Chief Minister), restricted though this choice is by the paramount consideration that he should command a majority in the House; (b) the dismissal of a Government which has lost its majority in the House, but refuses to quit office; (c) the dissolution of the House where an appeal to the country is necessitous, although in this area the head of State should avoid getting involved in politics and must be advised by his Prime Minister (Chief Minister) who will eventually take the responsibility for the step. We do not examine in detail the constitutional proprieties in these predicaments except to utter the caution that even here the action must be compelled by the peril to democracy and the appeal to the House or to the country must become blatantly obligatory. We have no doubt that de Smith's statement [Constitutional and Administrative Law — by S.A. De Smith — Peguin Books on Foundations of Law] regarding royal assent holds good for the President and Governor in India:

"Refusal of the royal assent on the ground that the Monarch strongly disapproved of a Bill or that it was intensely controversial would nevertheless be

unconstitutional. The only circumstances in which the withholding of the royal assent might be justifiable would be if the Government itself were to advise such a course — a highly improbable contingency — or possibly if it was notorious that a Bill had been passed in disregard to mandatory procedural requirements; but since the Government in the latter situation would be of the opinion that the deviation would not affect the validity of the measure once it had been assented to, prudence would suggest the giving of assent."

30.1. In the case of *Nabam Rebia and Bamang Felix (supra),* the Apex Court observed as follows:

"308. All the seven learned Judges constituting the Bench were explicit and unequivocal in their view that the principle of Cabinet responsibility is firmly entrenched in our constitutional democracy and that our Constitution does not accept any "parallel administration" or"dyarchy". A fortiori the discretion available to the Governor under Article 163 of the Constitution is not all-pervasive but is circumscribed by the provisions of the Constitution, with a small ventilator available, in some given exceptional situations by or under the Constitution. In this

context, it is interesting to note that this Court did not even advert to the comparatively recent decision rendered in Satya Pal Dang26 which virtually sanctified the vast exercise of power by the Governor. Therefore, it must be assumed that Satya Pal Dang2 should be confined to its unique and extraordinary facts reminiscent of the happenings in the age of the Stuarts or did not necessarily lay down the correct law given the more than blanket powers of the Governor that that decision approved or had nothing to do with Article 163 of the Constitution.

386. Article 163 of the Constitution and the discretionary exercise of functions of the Governor comes under the heading of Council of Ministers and is suggestive of executive governance or executive issues concerning the Council of Ministers. In this context, reference may also be made to Article 164 of the Constitution which provides for the appointment of the Chief Minister of the State by the Governor and the appointment of other Ministers on the advice of the Chief Minister. The appointment of the Chief Minister is based on the postulate that he commands or is expected to command the support of a majority of Members of the Legislative Assembly. Therefore, it is not as if the Governor has

untrammelled discretion to nominate anyone to be the Chief Minister of a State. Similarly, if the Governor chooses to "withdraw his pleasure" in respect of a Minister he must exercise his discretion with the knowledge of the Chief Minister and not by keeping him in the dark or unilaterally. In this context, reference may also be made to Article 165 of the Constitution which deals with the appointment of the Advocate General for the State. He is appointed by the Governor and holds office during the pleasure of the Governor and receives such remuneration as the Governor may determine. It cannot be anybody's case that the Governor, in exercise of his discretion, may appoint any eligible person as the Advocate General without any reference to the Council of Ministers and also "withdraw his pleasure" at any time in respect of the Advocate General thereby removing him from his Office. The purpose of all these provisions is to indicate that the discretion given to the Governor is not all-pervasive or all-encompassing as is suggested by the learned counsel for the respondents."

30.2. The decision of the Constitution Bench of the Apex Court in the case of *Nabam Rebia and Bamang Felix (supra)* is explicit

that if the Governor chooses to 'withdraw his pleasure' in respect of a Minister, he must exercise his discretion with the knowledge of the Chief Minister and not by keeping him in the dark or unilaterally, meaning thereby, that there should be consensus with the Chief Minister.

31. The Draft Article 143 is serial numbered as Article 163 in the Constitution of India. It was emphasized by Dr.B.R. Ambedkar that, "*the clause is a very limited clause; it says: 'except insofar as he is by or under this Constitution'. Therefore, Article 163 will have to be read in conjunction with such other Articles which specifically reserve the powers to the Governor. It is not a general clause giving the Governor power to disregard the advice of his Ministers, in any matter in which he finds he ought to disregard*".

32.1. In paragraph 4.1.03 of the Justice M.M.Punchhi Commission report, the observation of Dr.B.R.Ambedkar highlighted the Constitutional role of the Governor *vis-a-vis* Article 163 of the Constitution of India in following terms:

"The Governor under the Constitution has no functions which he can discharge by himself; no functions at all. While he has no functions, he has certain duties to perform, and I think the House will do well to bear in mind this distinction.

.....

This Article, nowhere, either in clause (a) or clause (b) or clause (c), says that the Governor in any particular circumstances may overrule the Ministry. Therefore, the criticism that has been made that this Article somehow enables the Governor to interfere or to upset the decision of the Cabinet is entirely beside the point, and completely mistaken."

32.2. The Apex Court in the case of *Nabam Rebia and Bamang Felix (supra)* further referred to Justice M.M.Punchhi Commission report with reference to Article 163(2) of the Constitution of India, as contained in paragraph 4.5. The same reads thus:

"The important observations in the Justice M.M. Punchhi Commission report, with reference to Article 163(2), are contained in paragraph 4.3.03. Relevant extract of the same is reproduced below:

"4.5. ... Article 163(2) gives an impression that the Governor has a wide, undefined area of discretionary powers even outside situations an impression needs to be dispelled. The Commission is

of the view that the scope of discretionary powers under Article 163(2) has to be narrowly construed, effectively dispelling the apprehension, if any, that the so-called discretionary powers extends to all the functions that the Governor is empowered under the Constitution. Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. In fact, the area for the exercise of discretion is limited and even in this limited area, his choice of action should not be nor appear to be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution.

The Governor's discretionary powers are the following: to give assent or withhold or refer a Bill for Presidential assent under Article 200; the appointment of the Chief Minister under Article 164; dismissal of a Government which has lost confidence but refuses to quit, since the Chief Minister holds office during the pleasure of the Governor; dissolution of the House under Article 174; Governor's report under Article 356; Governor's responsibility for certain regions under Article 371-A, 371-C, 371-E, 371-H etc. These aspects are now considered below: ..."

32.3. The Constitution Bench observed that, "*the inferences*

drawn in the Justice M.M. Punchhi Commission report extracted hereinabove, are in consonance with the scheme of the functions and powers assigned to the Governor, with reference to the executive and legislative functioning of the State, and more particularly with reference to the interpretation of Article 163". The Constitution Bench further observed that "*We endorse and adopt the same, as a correct expression of the constitutional interpretation, with reference to the issue under consideration*".

32.4. In view of the above, it will have to be held that if the Governor chooses to 'withdraw his pleasure' in respect of a Minister, he must exercise his discretion with the knowledge of the Chief Minister and not unilaterally. In the present case, the Chief Minister had never consented for the exercise of discretion by the Governor.

33. Much has been argued upon the right of the Members of the Legislative Assembly to officiate as a Minister, though under custody and charges being framed. As observed, neither the Constitution of India nor the Act of 1951 disqualifies a person to be a Member of the State Legislative Assembly after he is under custody or is undergoing

trial after framing of the charges. Similarly, no other disqualification is prescribed for a person of Legislative Assembly to be a Minister. Article 166(3) of the Constitution of India mandates that the Governor shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among the Ministers of the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion. Pursuant to this, the Business Rules are prepared. The Minister of State and the Cabinet Ministers are allocated business as per the Business Rules.

34. It is the contention of the petitioners that if the Minister is under custody, then in that case he has disabled himself from performing any work. The Minister enjoys the perks and allowances at the cost of the public exchequer and a person in custody cannot perform any work nor files can be sent to him and as such, though he is disabled from functioning as a Minister, he is burdening the public exchequer, nor he can transact any business and as such, the person cannot continue as a Minister. This argument is based more on the concern of pubic morality or Constitutional morality. Naturally, the

person in custody cannot effectively perform the work of a Minister. In the present case, V.Senthil Balaji is a Minister without Portfolio, meaning thereby, no work is allotted to him. He is a Minister for the name sake. In other words, a Minister without any work. Such a person certainly will not be entitled for any allowances because he will not be officiating any work nor any work is allotted to him. Certainly, no purpose is served by just ceremonially retaining him as a Minister.

35.1. The Apex Court in the case of *Manoj Narula (supra)* has observed as follows:

> *"149. Good governance is only in the hands of good men. No doubt, what is good or bad is not for the court to decide: but the court can always indicate the constitutional ethos on goodness, good governance and purity in administration and remind the constitutional functionaries to preserve, protect and promote the same. Those ethos are the unwritten words in our Constitution. However, as the Constitution makers stated, there is a presumption that the Prime Minister/Chief Minister would be well advised and guided by such unwritten yet constitutional principles as well.*

According to Dr. B. R. Ambedkar, as specifically referred to by my learned brother at paragraph-70 of the leading judgment, such things were only to be left to the good sense of the Prime Minister, and for that matter, the Chief Minister of State, since it was expected that the two great constitutional functionaries would not dare to do any infamous thing by inducting an otherwise unfit person to the Council of Ministers. It appears, over a period of time, at least in some cases, it was only a story of great expectations. Some of the instances pointed out in the writ petition indicate that Dr. Ambedkar and other great visionaries in the Constituent Assembly have been bailed out. Qualification has been wrongly understood as the mere absence of prescribed disqualification. Hence, it has become the bounden duty of the court to remind the Prime Minister and the Chief Minister of the State of their duty to act in accordance with the constitutional aspirations. To quote Dr. Ambedkar:

"However, good a Constitution may be, it is sure to turn out bad because those who are called to work it happen to be a bad lot. However, bad a Constitution may be, it may turn out to be good if

those who are called to work it happen to be a good lot. The working of a Constitution does not depend wholly upon the nature of the Constitution." ."

35.2. In the case of *Manoj Narula (supra),* the Apex Court observed that, "*Good governance is only in the hands of good men. No doubt, what is good or bad is not for the court to decide: but the court can always indicate the constitutional ethos on goodness, good governance and purity in administration and remind the constitutional functionaries to preserve, protect and promote the same. Those ethos are the unwritten words in our Constitution".*

35.3. The Apex Court in paragraph 152 of the said judgment has observed as thus:

"152. No doubt, it is not for the court to issue any direction to the Prime Minister or the Chief Minister, as the case may be, as to the manner in which they should exercise their power while selecting the colleagues in the Council of Ministers. That is the constitutional prerogative of

those functionaries who are called upon to preserve, protect and defend the Constitution. But it is the prophetic duty of this Court to remind the key duty holders about their role in working the Constitution. Hence, I am of the firm view, that the Prime Minister and the Chief Minister of the State, who themselves have taken oath to bear true faith and allegiance to the Constitution of India and to discharge their duties faithfully and conscientiously, will be well advised to consider avoiding any person in the Council of Ministers, against whom charges have been framed by a criminal court in respect of offences involving moral turpitude and also offences specifically referred to in Chapter III of The Representation of the People Act, 1951."

35.4. The Apex Court, in the said judgment, expected the Prime Minister or the Chief Ministers may be well advised to consider avoiding any person in the Council of Ministers, against whom charges have been framed by a Criminal Court in respect of offences involving moral turpitude and also offences specifically referred to in Chapter III of the Act of 1951. Chapter III of Part II of

the Act of 1951 includes the offences under the Prevention of Corruption Act, 1988 also.

36. In the case of *Keisham Megachandra Singh (supra),* relied on by learned Advocate General, the Apex Court did not accept the contention of the appellant therein that the Apex Court may issue a writ of quo-warranto, quashing the appointment of the Minister of the Cabinet. The Apex Court observed that declaration under the Tenth Schedule from being a MLA and consequently, Minister must first be decided by the exclusive authority in his behalf, namely, the Speaker of the Legislative Assembly.

37. A Minister is a people's representative and as a Minister is conferred with Legislative and Executive powers, the business of the Government is performed in consonance with the Business Rules by a Minister only with respect to the portfolio assigned to him. With the Cabinet System of Governance, the entire Cabinet is responsible for its collective decisions, so also for its individual Ministerial decisions. The

Ministers without portfolios do not have any specific Ministries, nor they do have carved out responsibilities. The Chief Minister is an Executive Head. It is the responsibility of an Executive Head to assign Ministerial responsibilities to an elected representative. However, if he feels that a particular elected representative cannot be assigned the responsibility of a Minister, there cannot be moral or Constitutional basis to retain such a Member of the Legislative Assembly as a Minister without portfolio, which would be opposed to the ethos, good Governance and Constitutional morality or integrity.

38. The Founding Fathers of our Constitution may not have comprehended corrosion of good and clean Governance to an extent that a person would be retained as a Minister without portfolio, that too while in custody nor did they envisaged that the Executive Head would reward an elected Member the status of a Minister, though finding him not fit to discharge the responsibilities of a Minster. A Minister without portfolio is a constitutional travesty.

39. The present petition brings to the fore the erosion of the high standards of characters and conduct demanded from the Members of the Legislature. The petitioners expect and legitimately so high standards of moral conduct by the persons in power. The Chief Minister is the repository of the people's faith. Political compulsion cannot outweigh the public morality, requirements of good/clean governance and the Constitutional morality.

40. The Chief Minister of the State of Tamil Nadu may be well advised to take a decision about the continuance of V.Senthil Balaji (who is in judicial custody) as a Minister without Portfolio, which serves no purpose and which does not augur well with the Principles of Constitutional ethos on goodness, good governance and purity in administration.

41. With the aforesaid observations, these writ petitions stand disposed of. There will be no order as to costs. Consequently, W.M.P.Nos.18042, 18054, 19417, 19419, 19474 & 19478 of 2023 are closed.

(S.V.G., CJ.) (P.D.A., J.)
05.09.2023

Index : Yes/No
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sasi/drm

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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU,J.

(sasi/drm)

W.P.Nos.18823, 18813, 20069
and 20129 of 2023

05.09.2023