

(2012) 03 MAD CK 0096

In the Madras High Court

Case No : Writ Petition No. 4910 of 2012

K.R. Ramaswamy alias Traffic Ramaswamy

APPELLANT

Vs

State, Mr. K.T. Pachaiammal Hon'ble Minister for Forests,
State of Tamil Nadu, Fort St. George, Chennai-9 and The
District Collector, Chennai District, Rajaji Salai, Chennai-1

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Constitution of India, 1950 — Article 164(1)

Citation : (2012) 2 CTC 481

Hon'ble Judges : M.Y. Eqbal, C.J;T.S. Sivagnanam, J

Bench : Division Bench

Advocate : K.R. Ramaswamy Petitioner-in-person, for the Appellant; A. Navaneethakrishnan, AG asstd. by Mr. S. Venkatesh, GP, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. M.Y. Eqbal, Chief Justice and T.S. Sivagnanam, J.—In this writ petition, the petitioner who appears in person, has sought for issuance of a writ of quo warranto for the removal of the second respondent, the Forest Minister, on the ground that there is a violation of the Chennai City Municipal Corporation Act prohibiting erection of digital banners.

2. It is alleged that while he was travelling in Kamarajar Salai from Light House to Parry's Corner, he found so many digital banners fixed in the lamp posts. There is no whisper in the writ petition that those banners have been fixed by the second respondent, the Forest Minister. We, therefore, first called upon the petitioner to satisfy this Court as to how and under what law, he has prayed for issuance of a writ of quo warranto, even assuming that the second respondent has violated the Municipal Law.

3. After we posed the above question to Mr. Ramaswamy, the petitioner herein, he submits that he may be apologized and some direction could be issued.

4. We deprecate the practice of filing such petition designed as public interest litigation. The Supreme Court and other High Courts in a series of decisions, have held that a writ of quo warranto cannot be issued for the removal of the Ministers, who are the people's representatives. The Constitutional remedy is available in the Constitution and a writ court cannot issue quo warranto.

5. Reference may be made to the decisions of the Andhra Pradesh High Court, Punjab and Haryana High Court and Karnataka High Court, which are as under:

i. DR. Y.S. Rajasekara Reddy and others Vs. Nara Chandrababu Naidu and others,

ii. P. Radhakrishna Vs. Mr. Ram Naik and Others

iii. Hardwari Lal Vs. Ch. Bhajan Lal and others, and

iv. B.M. Gangadhariah Vs. H.D. Devegowda,

6. We may, at this stage, quote the observations of the Andhra Pradesh High Court in the case of DR. Y.S. Rajasekara Reddy and others Vs. Nara Chandrababu Naidu and others, wherein in paragraph 23, it has been held as under:-

23. Issuance of a writ of quo warranto against a Minister or Chief Minister for violating the Constitutional oath or non-discharge of Constitutional function is not res integra. Conspectus of law on the subject emerges from the decisions in Darley -vs- The Queen, 12, Cl & Fin.520 and R v. Speyer (supra) referred to in K.C. Chandy Vs. R. Balakrishna Pillai, that once the office is held under a valid title and the continuance of the person in the office depends upon the pleasure doctrine, quo warranto does not run; and no such writ, which can be defeated immediately by the mere exercise of an executive will, will therefore issue. The principle was followed in Capt. Rachpal Singh Vs. Union of India (UOI), . The Madras High Court in Ramachandran Vs. M.G. Ramachandran, The Chief Minister of Tamil Nadu and Others, , Andhra Pradesh High Court in Dhronamrajti Satyanarayana Vs. N.T. Rama Rao and Others, and the Punjab and Haryana High Court in Hardwari Lal v. Ch. Bhajan Lal, came to the conclusion that a writ of quo warranto against the Chief Minister of a State, who is appointed by the Governor and holds the office during his pleasure, cannot be issued as the power to terminate the tenure of the office of the Chief Minister being solely vested in the Governor under Article 164(1) of the Constitution. Emphasis may be laid on the following observations : ""Ordinarily, the Governor allows, or may have to tolerate, the continuation in the office of the Chief Minister so long as he enjoys the majority of the Members of the Legislative Assembly unless, in the meanwhile, he suffered any specific disqualification for holding that office. This is so in keeping with the well-established democratic values and conventions, inspite of the fact that Article 164(1) of the Constitution permits the Chief Minister to continue in office only during the pleasure of the Governor. The Governor might nevertheless face extraordinary situations where he would be constrained for promoting public good and safeguarding the interest of the State to invoke the pleasure doctrine and terminate the tenure of the office of the Chief

Minister, though such instances would be few and rare. There being many imponderable, the circumstances under which a Chief Minister or a Minister would render himself unfit to hold the office and is liable to be removed from the post could not be exhaustively enumerated in the Constitution, or for that matter, even in any law made by the Parliament. Presumably, it is for that reason the discretion in the matter is vested exclusively in a high dignitary like the Governor by the Constitution. No Governor could, however, afford to exercise that high prerogative in a casual manner without foreseeing the future, the political overtones of the momentous decision and the other repercussions. Often than not, it is a complex question, not merely a legal issue; and the decision should reflect the worldly wisdom and statesmanship of the person who, by the Constitution, is charged with the onerous responsibility in the matter.

So also, the Andhra Pradesh High Court, in the case of P. Radhakrishna Vs. Mr. Ram Naik and Others observed as under:-

6. In order to seek a Writ of Quo-Warranto, it must be shown by the petitioner that the office in question is a public office and is held by a usurper without legal authority. In other words, Quo-Warranto proceedings affords judicial enquiry in which any person holding independent substantive public office or franchise or liberty is called upon to show by what authority or right he holds the said office or franchise or liberty and if the enquiry leads to finding that the holder of the office has no authority to continue, a Writ of Quo-Warranto shall issue for ousting him from that office.

7. Recently, this Bench also, in W.P. Nos. 20082 and 20083 of 2011, by an order, dated 30.8.2011, dismissed the said writ petitions, wherein a writ of quo warranto was sought for to remove a particular Minister on the ground that he violated the oath of office taken by him under Form V, Schedule III of the Constitution. This Court held that the Ministers of a Legislative Assembly are appointed by the Governor albeit on the advice of the Chief Minister and they hold their office during the pleasure of the Governor. A complete machinery has been provided in the Constitution for the removal or disqualification of a Minister. The pleasure of dismissing/removing a Minister has to be that of the Governor and not that of this Court. This Court, therefore, cannot issue a writ of mandamus or quo warranto for the removal of a Minister.

8. In the aforesaid premises, the contention made in the writ petition is wholly misconceived and this writ petition is, therefore, dismissed. However, there will be no order as to costs.