

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 17TH DAY OF JULY, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO. 7222 OF 2020 (S-RES)

BETWEEN:

DR M SUDHEENDRA RAO
CHAIRMAN
KARNATAKA STATE POLLUTION CONTROL BOARD
49, PARISARA BHAVANA
CHURCH STREET
BANGALORE-560003
RESIDING AT NO.251/14
7TH A MAIN, 7TH CROSS
R P C LAYOUT,
VIJAYANAGAR, 2ND STAGE
BENGALURU-560040

... PETITIONER

(BY SRI. P S RAJAGOPAL, SENIOR COUNSEL A/W
SRI. JAYANTH DEV KUMAR, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS ADDITIONAL
CHIEF SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF ECOLOGY AND ENVIRONMENT,
GOVERNMENT OF KARNATAKA,
MULTI STOREYED BUILDING,
DR AMBEDKAR VEEDHI
BENGALURU-560001
2. KARNATAKA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY MEMBER SECRETARY,
NO.49, PARISARA BHAVANA,
CHURCH STREET,
BANGALORE-560003.

... RESPONDENTS

(BY SRI. DHYAN CHINNAPPA, AAG A/W
SRI. KIRAN KUMAR, HCGP FOR R1;
SRI. ASHOK HARANAHALLI, SENIOR COUNSEL A/W
SRI. B VINAYAKA, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE ENTIRE RECORDS LEADING TO THE NOTIFICATION DATED 02.05.2020 AND QUASH NOTIFICATION DATED 02.05.2020 (UNDER ANNEX-B TO THE W.P) PASSED BY THE R-1.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Petitioner who was appointed as the Chairman of second respondent-Karnataka State Pollution Control Board [hereafter "KSPCB"] vide Notification dated **30.12.2019** at Annexure-**A**, is knocking at the doors of writ court for calling in question the Notification dated **02.05.2020** at Annexure-**B**, issued by the first respondent-State (hereafter "Government") whereby, his Chairmanship has been determined by virtue of resignation allegedly given by him.

2. After service of notice, Government is represented by the learned AAG Sri.Dhyan Chinnappa and it has filed the Statement of Objections resisting the Writ Petition; the KSPCB is represented by the learned Senior Advocate Mr.Ashok Haranahalli; there are Advocates on record for the respective parties.

3. Learned Senior Advocate Mr.P.S. Rajagopal appearing for the petitioner strenuously argues that: (i) some loose sheets of papers containing petitioner's signatures having been misused by the quarters that be, a resignation letter dated **02.05.2020** is fabricated vide Annexure-**E**; (ii) the Government having wrongly treated it to be the resignation, has accepted the same vide impugned Notification; and (iii) the resignation letter could not have been acted upon by the Government since it was not addressed to it as required u/s 5(4) of the Water (Prevention and Control of Pollution) Act, 1974 [hereafter "1974 Act"]; however, the first contention as to authorship of the alleged resignation letter has been given up, regard being had to the nature & scope of writ jurisdiction, although not conceding it; he has relied upon a set of Rulings in support of his case.

4. Learned Addl. Advocate General Sri.Dhyan Chinnappa appearing for the Government in substance passionately contends that: (i) in petitioner's First Information Report concerning alleged forgery & fabrication, the jurisdictional police after investigation, have filed a 'B' Report; (ii) a litigant cannot approbate & reprobate in the sense that at one breath, disputing the

authorship of resignation letter and at the other, asserting that the same does not constitute resignation in the eye of law; and it is not open to the petitioner to take up mutually destructive averments; (iii) the resignation letter is addressed to the Chief Minister of the Govt. of Karnataka and therefore, it is addressed to the State Government; banking upon certain Rulings of the Apex Court in support of these contentions, he seeks dismissal of the Writ Petition with costs.

5. Learned Senior Advocate Mr. Ashok Haranahalli appearing for the KSPCB vehemently opposes the Writ Petition contending that: (i) there is no dispute as to the authenticity of petitioner's signature on the resignation letter; petitioner as an after-thought, cannot now turn around and dispute the authenticity of the letter as if he is an illiterate; (ii) the subject letter is addressed to the "Hon'ble Chief Minister, Government of Karnataka" and therefore, the requirement of Section 5(4) of the 1974 Act is perfectly satisfied; and (iii) under the constitutional scheme, the Chief Minister is the chief executive of the State Government, the resignation made to him is a resignation made to the State Government itself; he cites a

few decisions of the Apex Court to substantiate his contentions.

6. Having extensively heard all the learned Counsel appearing for the parties and having perused the Petition Papers and also after adverting to the relevant Rulings cited at the Bar, this Court declines to grant indulgence in the matter in view of the following discussion:

7. As to forgery & fabrication of Resignation Letter:

(a) The first contention of the petitioner that he had never authored the resignation letter in question and that the blank papers containing his signatures have been misused for fabricating the one has been given up, regard being had to the nature and scope of writ jurisdiction that ill-suits adjudication of disputed facts; however, the issue as to fraud, forgery & fabrication is kept open for being agitated before the criminal law court in which the police have now submitted the 'B' Report; consequently, the contentions of the learned AAG built up on the basis of 'B' Report do pale into insignificance, as rightly submitted by Mr.Rajagopal; for the same reason, the Rulings dealing

with the status of 'B' Report filed in criminal proceedings and the power of the criminal law court to accept or reject the same, or to direct further investigation, do not merit much consideration.

8. As to approbation & reprobation and of mutually destructive pleas:

(a) The proposition canvassed by learned AAG that a litigant and more particularly the one invoking extraordinary jurisdiction under Articles 226 & 227 of the Constitution of India, cannot be permitted to approbate & reprobate, or that he cannot be allowed to take mutually destructive pleas, does not need substantiation; the Apex Court in **Suzuki Parasrampuriah Suitings Private Limited Vs. Official Liquidator of Mahendra Petrochemicals Limited, (2018) 10 SCC 707** at paras 12 & 13 observed as under:

"12. A litigant can take different stands at different times but cannot take contradictory stands in the same case. A party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands. The untenability of an inconsistent stand in the same case was considered in Amar Singh Vs. Union of India (2011)7 SCC 69, observing as follows:

*"50. This Court wants to make it clear that an action that at law is not a **game of chess**. A litigant*

who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions.”

13.A similar view was taken in *Joint Action Committee of Air Line Pilots’ Assn. of India Vs. DG of Civil Aviation (2011) 5 SCC 435*, observing:

“12. The doctrine of election is based on the rule of estoppel the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity.....Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.”

(b) The above having been said, now what needs to be examined is the invocability of the said proposition in the fact matrix of the case; true it is that the petitioner disputed the authenticity of the resignation letter, despite admitting the genuineness of signature appearing therein; Mr.Rajagopal submits and this court thinks right that even if the genuineness of the Resignation Letter is assumed against the petitioner, still the substantial question namely, whether the said letter constitutes "resignation" in the eye of law remains writ large for consideration and therefore, there is no approbation or reprobation; standard

books on law of conveyances are replete with cases wherein despite admitting the genuineness of signatures, the execution of documents is held not proved; this could be true of documents like resignation letters too; it hardly needs not be stated that though a Resignation Letter is not a conveyance, the difference between them *per se* is immaterial; therefore, the proposition canvassed by the learned AAG cannot be pressed into service.

9. As to whether there is a Resignation Letter in fact:

(a) The petitioner has produced a copy of Resignation Letter dated 02.05.2020 at Annexure-**E** which is in Kannada language, the same is reproduced verbatim below, for the ease of understanding:

“ರಾಜೀನಾಮೆ ಪತ್ರ

ಇಂದ
ಡಾ. ಎಂ. ಸುಧೀಂದ್ರರಾವ್,
ನಂಬರ್:251/14, 7 – A ಮೇನ್,
7ನೇ ಕ್ರಾಸ್, ಆರ್.ಪಿ.ಸಿ ಲೇಔಟ್,
ವಿಜಯನಗರ, 2ನೇ ಹಂತ, ಬೆಂಗಳೂರು.

ಗೆ,
ಸನ್ಮಾನ್ಯ ಮುಖ್ಯಮಂತ್ರಿಗಳು,
ಕರ್ನಾಟಕ ಸರ್ಕಾರ,
ವಿಧಾನ ಸೌಧ ಬೆಂಗಳೂರು,
ಇವರ ಸನ್ನಿಧಿಗೆ,

ವಿಷಯ: ನನ್ನ ರಾಜೀನಾಮೆಯ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: ಅಧಿಸೂಚನೆ ನಂ. ಆಪಜೀ, 223-ಇಪಿಸಿ, 2018
ದಿನಾಂಕ 30.12.2019

ಮಾನ್ಯರೇ,

ನಾನು ಡಾ. ಎಂ. ಸುಧೀಂದ್ರರಾವ್, ಈ ಮೂಲಕ ನನ್ನ ರಾಜೀನಾಮೆ ಪತ್ರವನ್ನು ವೈಯುಕ್ತಿಕ ಕಾರಣಗಳಿಂದ ಕರ್ನಾಟಕ ರಾಜ್ಯ ಪರಿಸರ ಮಾಲಿನ್ಯ ನಿಯಂತ್ರಣ ಮಂಡಳಿಯ ಅಧ್ಯಕ್ಷ ಸ್ಥಾನಕ್ಕೆ ತಕ್ಷಣದಿಂದ ನನ್ನ ರಾಜೀನಾಮೆ ಸಲ್ಲಿಸುತ್ತಿದ್ದೇನೆ.

ನನ್ನ ರಾಜೀನಾಮೆಯನ್ನು ಅಂಗೀಕರಿಸಿ ನನ್ನನ್ನು ಅಧ್ಯಕ್ಷ ಹುದ್ದೆಯಿಂದ ಬಿಡುಗಡೆಗೊಳಿಸಬೇಕೆಂದು ಈ ಮೂಲಕ ಕೋರಿಕೊಳ್ಳುತ್ತೇನೆ.

ಧನ್ಯವಾದಗಳೊಂದಿಗೆ,

ತಮ್ಮ ವಿಶ್ವಾಸಿ,

Sd/-

(ಡಾ. ಎಂ. ಸುಧೀಂದ್ರರಾವ್)

A bare look of the letter shows that: it's title is "RESIGNATION LETTER"; it bears name, address & signature of the petitioner; it is dated 02.05.2020; it refers to the Notification dated 30.12.2019 whereby, petitioner was appointed as the Chairman of KSPCB; it is addressed to "Hon'ble Chief Minister, Govt. of Karnataka"; it speaks of resignation to the office of Chairman with immediate effect, and, it mentions "personal reasons" as the cause of resignation. Going by the intent & content of this letter, no prudent person would deny that it is a Resignation Letter.

10. As to whether the subject "Resignation Letter" is valid & effective in the eye of law:

(a) The argument of Mr.Rajagopal that the letter in question does not qualify to be a “resignation” in terms of section 5(4) of 1974 Act since it is not addressed to the "State Government", but was made to the "Chief Minister", is bit difficult to countenance; **Justice Rama Jois** in his magnum opus "**Services Under the State**", 2007 Publication, Indian Law Institute, at Page 705, concisely states "*Resignation is a voluntary act on the part of a civil servant by which he wishes to leave the government service to which he is appointed...*" In Service Jurisprudence, normally, a resignation by an employee needs acceptance by the employer or by the competent authority, in order to be effective from the intended date, of course, subject to a contra legal position vide **Inland Water Transport Corporation Ltd Vs. Brojo Nath Ganguly (1986) 3 SCC 156** cited by Mr.Rajagopal; it is profitable to see the following text of section 5(4) for ascertaining if there is a norm-variant:

"A member of a Board, other than the member-secretary, may at any time resign his office by writing under his hand addressed—

*(a) in the case of the **chairman**, to the Central Government or, as the case may be, **the State Government**; and*

(b) in any other case, to the chairman of the Board, and the seat of the chairman or

*such other member **shall thereupon become vacant.***"

(b) In the course of their submission, learned counsel appearing on both the sides, were broadly in consensus that the act of resignation contemplated u/s 5(4) apparently being unilateral, does not require acceptance by the Government as a *sine qua non* for its efficacy; to that extent, it partakes the character of resignation of a High Court Judge u/a 217 (1) of the Constitution of India, a relevant part of which runs: "*.....a Judge may, by writing under his hand addressed to the President, resign his office*"; this aspect of the matter has been discussed by the Apex Court in **Union of India Vs. Gopal Chandra Misra, (1978) 2 SCC 301**, as pointed out by Mr.Rajagopal; it is not impertinent to advert to the following observations in **Moti Ram Vs. Param Dev, (1993) 2 SCC 725** at para 22 (which again is cited by him):

"..... A Chairman of the Board may resign his office as Chairman but may continue as member of the Board. If he resigns only from the office of Chairman of the Board, there is no requirement that such resignation should be accepted by any authority or that any other action is required to be taken for the said resignation to be effective. It would, therefore, appear that the act of relinquishment of the

office of Chairman of the Board is unilateral in character and the resignation from the said office takes effect when it is communicated without any further action being required to be taken on the same... "

In view of the above legal position which both the sides fairly conceded to, this court is of a considered opinion that what the Government does after the resignation was tendered by the petitioner, would not be much relevant for consideration; thus, the endorsement of the Chief Minister made on the subject Resignation Letter “ಅಂಗೀಕರಿಸಿದೆ” (Accepted) advances nobody’s case; consequently, the only substantial question that merits examination in this case is: **whether the subject Resignation Letter can be treated as having been addressed to the State Government...?;**

(c) Mr.Rajagopal, strenuously argued that since the subject Letter is addressed to the **Chief Minister** and not to the **State Government**, the same does not fit into the mandatory text of Section 5(4) and therefore, the Government is not justified in treating the petitioner as having resigned from the office of the Chairman of KSPCB; this argument is structured on the premise that the Chief Minister does not represent the State Government, but

only the Governor does; for this, he seeks to draw succor from the provisions of the General Clauses Act, 1897 which arguably equates the "State Government" to the "Governor"; he heavily banks upon the Five Judge Bench decision in **Gullapalli Nageswara Rao Vs. APSRTC, AIR 1959 SC 308** in which at para 26, the Apex Court has observed as under:

"26 ... the business rules of the Andhra state continue to govern the Secretariat of the Andhra Pradesh Government. The effect of the aforesaid provisions may be stated thus: A State Government means the Governor; the executive power of the State vests in the Governor; it is exercised by him directly or by officers subordinate to him in accordance with the provisions of the Constitution; the Ministers headed by the Chief Minister advise him in the exercise of his functions; the Governor made rules enabling the Minister in charge of particular department to dispose of cases before him and also authorizing him, by means of standing orders, to give such directions as he thinks fit for the disposal of the cases in the department. Pursuant to the rule, the record discloses, the Chief Minister, who was in charge of Transport, had made an order directing the Secretary to Government, Home Department, to hear the objections filed against the scheme proposed by the State Transport Authority.

27. The aforesaid machinery evolved by the rules for the disposal of cases by the State Government has been followed in this case. The petitioners and others filed objections to the proposed scheme before the Secretary to the Government Transport Department. He gave a personal hearing to the parties-some of them appeared in person and others by representatives; the entire material recorded by him was placed before the Chief Minister in charge of Transport, who

made his order approving the scheme; and the order was issued in the name of the Governor, authenticated by the Secretary in charge of the Transport Department. It may therefore be said that the State Government gave the hearing to the petitioners in the manner prescribed by the rules made by the Governor..."

These observations far from aiding the petitioner's case support the contention of the respondent side; true it is, there are some observations that tend to give an impression that there is difference between a Minister and the department; however, that was only in the context of invocation of the principles of natural justice which required that the hearer should decide and that the division between the two has the mischief potential; the subsequent decision in **Gullapalli Nageswara Rao Vs.State of A.P, AIR 1959 SC 1376** again does not come to the aid of the petitioner since the question that has arisen in the present Writ Petition did not crop up directly & substantially.

(d) After the enactment of our Constitution, it has been a well settled legal position that the word "President" is a **shorthand** for the Central Government and the word "Governor" correspondingly is a **shorthand** for the State Government vide **Maru Ram Vs. Union of India, (1981) 1**

SCC 107, subject to all just exceptions; succinctly put, the State Government means the authority or the person authorized who exercises its executive powers, since the Government is only a juristic person, with no organs to move, nor the arms to act; someone authorized by law needs to act on its behalf either as its limb or as its agency, as forcefully contended by the opposing counsel.

(e) Section 5(4) as rightly pointed out by Mr. Dhyan Chinnappa, does not designate any particular authority unlike the ones in **New India Assurance Company Ltd Vs. Raghuvir Singh Narang, (2010) 5 SCC 335** and in **Municipal Corporation, Bhopal Vs. State of M.P, (1998) 2 MPLJ 512**; both these decisions are cited by Mr. Rajagopal; in the former, Section 41(2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 had designated "**the Collector**" to and before whom the resignation needed to be applied; in the later, Section 18 of M.P. Municipal Corporation Act, 1956 had specified **the Mayor** to whom notice of resignation was to be addressed; thus, there being a marked difference between the text of section 5(4) of the 1974 Act and the language of the provisions of the

Acts involved in the above two rulings, there is no *pari materia* legal regimes and consequently, the ratio laid down therein cannot be pressed into service; after all, a case is an authority for the proposition that it actually articulates in a given lego-factual matrix, and not for all that which logically follows therefrom, as **Lord Halsbury** more than a century ago had put it in **Quinn Vs. Leathem, [1901] UKHL 2.**

(f) Mr.Ashok Haranahalli is more than justified in contending that, to understand the meaning of "State Government" employed in Section 5(4) of the 1974 Act and its functional aspects, one has to advert to the constitutional scheme arising *inter alia* from Articles 53, 74, 154, 163 & 361 of the Constitution; our Constitution although deals with the Union and the State Executive separately, the provisions relating thereto follow a common pattern; the Constitution divides the subject under four sub-heads viz., the Chief Executive, the Council of Ministers, the Law Officers and the Conduct of Business; the President is the chief executive of the Union of India and in him vests the executive power of the Union vide Articles 52 & 53; similarly, at the Provincial level, the Governor is the chief executive of the State and it's

executive power is vested in him vide Articles 153 & 154; Article 361 provides absolute immunity to both these high constitutional functionaries, for the exercise and performance of the powers & duties of their offices because neither the President nor the Governor exercises the executive functions individually or personally; the exercise of the executive power is a formally function of the President or the Governor as the case may be; in order to **aid & advise** the President in the exercise of his function, Article 74(1) provides for a Council of Ministers with the Prime Minister at the head; similarly, at the State level Article 163 provides for a Council of Ministers with the Chief Minister at the head; both these Articles relate to the conduct of business of the Government;

(g) It is pertinent to mention that the Executive power of the Union or the State is described by the Apex Court in **Ram Jawaya Kapur Vs. State of Punjab, AIR 1955 SC 549**, ordinarily as being "*the residue of Governmental functions that remain after legislative & judicial functions are taken away*" and that they necessarily include the execution of the laws; **Mr.H.M. Seervai** in his "Constitutional Law of India", 4th Edition, Volume 2 (Tripathi Publication) at Page 2042 states

"...according to **Dr.Ambedkar**, the President of India was bound to accept the advice of his Ministers..." At pages 2034 & 2036 of the same Volume, Mr.Seervai has churned out the ratio decidendi of Apex Court decisions (a set of two) in **Samsher Singh Vs. State of Punjab, (1974) 2 SCC 831** vociferously pressed into service by Mr.Haranahalli; only the relevant ones to the case in hand are reproduced below:

"(a) Our Constitution generally embodies the Parliamentary or the Cabinet form of Govt. on the British model, both for the Union and the States.

*(b) It is a fundamental principle of English constitutional law that **the Sovereign does not act on his own responsibility but on the advice of his Ministers** who accept responsibility and who command the confidence of the House of Commons. This principle of English constitutional law is embodied in our Constitution.*

(c) It follows from the British form of Parliamentary or Cabinet Govt. that the President and the Governors are the formal or Constitutional heads of the Union and the States and they must act with the aid and advice of the Council of Ministers except where a contrary provision is made by the Constitution."

(h) Mr.Haranahalli heavily banks upon another recent decision in **A.A. Padmanabhan Vs. State of Kerala, (2018) 4 SCC 537** wherein, the highest Court of the country having surveyed the growth of this branch of law has thus observed at para 16: "...Except the discretionary

functions of the Governor, he does not exercise any executive functions individually or personally. When a Minister takes an action according to the Rules of Business, it is both in substance and in form the action of the Governor..." Both Mr.Dhyan Chinnappa and Mr.Ashok Haranahalli take the court through the provisions of Karnataka Government (Transaction of Business) Rules, 1977 in support of their contention that the subject matter in question falls within the domain of the Chief Minister; item 15 in **II Schedule** to these Rules puts into the hands of the Chief Minister, the matters relating to appointment *inter alia* to the post of "**Chairman and Members of any other Commission, Authority, Tribunal or Committees created by Statute**"; the text & context of this provision which is generic in nature, the word "appointment" employed therein needs to be understood to include *inter alia* resignation of the appointee, as well; this apart, Rule 15(1) of 1977 Rules vests prerogative powers in the Chief Minister to take decisions even in respect of matters of business that normally belong to the domain of other Ministers as per the 1977 Rules; the said Rule reads:

"15. (1) The Chief Minister may call for papers from any Department and express his views and also tender advise on any matter

coming within the purview of the business allocated to any Minister."

(i) The text & context of the relevant constitutional provisions as interpreted in *Samsher Singh supra*, coupled with the provisions of the 1977 Rules show the prominent position assigned to the Chief Minister of the State; true it is, that the Chief Minister is not the manifestation of the State unlike the King in England; but he acts as a limb of the Government, is not legally disputable; therefore, the letter of resignation addressed to the "Hon'ble Chief Minister, Government of Karnataka" can be safely construed as the one addressed to the "State Government" in terms of section 5(4) of the 1974 Act; an argument to the contrary falls foul of the constitutional scheme as consistently articulated by the Apex Court in a catena of decisions including *Samsher Singh* and *A.A. Padmanabhan, supra*.

11. As to other incidental submissions at the Bar:

(a) Mr.Rajagopal referred to the text of Article 300 of the Constitution to buttress his argument that the letter of resignation made to the Chief Minister cannot be

construed as the one made to the State Government; he submitted that it is only the Secretary of the department concerned who can be termed as State Government going by the text of section 5(4) r/w relevant provisions of the 1977 Rules; Article 300 speaks of suits and proceedings to be instituted by or against the Govt. of India or the Govt. of a State, as a juristic person; the Apex Court has construed this Article keeping in view the Transaction of Business Rules concerned vide **Secretary Vs. Mohinder Singh Jagden, (1996) 6 SCC 229**; this court is at loss to know as to how this Article is relevant to the case at hands, especially when what Secretary does needs to be construed as what the Minister of the department concerned does vide Padmanabhan Case supra; this view is supported by the text of Section 19(1) of the GC Act, 1897 which is as under:

“In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.”

It hardly needs to be stated that the Minister is the head of the department concerned by virtue of Transaction/Allocation of Business Rules and that the

Secretaries regardless of their varying nomenclatures act as his deputies, although in the formal paper works, the names of these deputies are reflected; a contra argument would render the Minister subservient to other public servants, if not redundant, and this would demean the very Cabinet Form of Government which is enacted in our Constitution.

(b) Mr.Rajagopal's submission that the text of Section 5(4) of the 1974 Act being mandatory in nature, the Chief Minister cannot be equated to the State Government, does not appear to be sound for the discussion, supra; whether the provision is mandatory or directory, in the facts of the case, may not be relevant, either; in fact, the opposing counsel did not dispute the nature of the said provision nor did they resist the Writ Petition on the ground of "substantial compliance of the provision"; the short and long of their case was that *the Chief Minister acts as the limb of the State Government and therefore, what is immediately addressed to the Chief Minister is mediately addressed to the State Government and further that any argument in variance thereof would upset the constitutional principles by which the Government of the day is run*; in view of this, there is no need to discuss

the Rulings cited by Mr.Rajagopal for the proposition that when law imposes a duty on the citizen, it is arguably mandatory whereas the statutory duty imposed on the shoulder of the Caesar, is directory.

In the above circumstances, this Writ Petition being devoid of merits, is liable to be dismissed and accordingly, it is, the cost thereof having been made easy.

The observations made herein above being confined to disposal of the writ petition shall not otherwise influence or affect the consideration of the subject 'B' report by the Criminal Law Court or the pendency of proceedings assertedly instituted by the petitioner against some member of the Bar, now pending before the Karnataka State Bar Council.

**Sd/-
JUDGE**

Snb/