

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.3387 of 2021

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Petitioner

Vs

- 1 State of Tamil Nadu rep. By its  
Chief Secretary to Government,  
Public (Human Rights) Department  
Fort St.George Chennai 600 009
- 2 The Secretary  
Tamil Nadu State Human Rights Commission  
143 P.S.Kumarasamy Raja Salai  
Raja Annamalaipuram Chennai 28
- 3 Mr. Justice S.Baskaran (Retd.)  
Chairperson, T.N.State Human Rights Commission  
143 P.S.Kumarasamy Raja Salai,  
Raja Annamalaipuram Chennai 28
- 4 Mr. M.K.Stalin  
Dravida Munnetra Kazhagam  
Leader of Opposition Party  
Tamil Nadu Legislative Assembly  
369 Anna Salai Anna Arivalayam  
Teynampet Chennai 17

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Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring the G.O.(Ms.) No.701 dated 30.12.2020 issued by the 1st respondent appointing the 3<sup>rd</sup> respondent to the post of chairperson in the 2<sup>nd</sup> respondent commission as null and void, unconstitutional, illegal and arbitrary exercise of powers on the part of the 1st respondent and consequently direct the 1st respondent to invite all eligible and suitable persons to offer their candidature and consider their merit on a rational basis and appoint the most suitable person.

For Petitioner : Mr.A.Sirajudeen, Senior Counsel,  
for Mr.K.Jaisankar

For Respondents : Mr.Vijay Narayan,  
Advocate-General  
for respondents 1 and 2

Assisted by  
Mr.V.Jayaprakash Narayanan,  
State Government Pleader

ORDER

(made by the Hon'ble Chief Justice)

The writ petition is utterly misconceived and no further time be wasted thereon. These frivolous matters tend to take up substantial Court time and, more often than not, counsel furthering hopeless causes tend to dilate and seek to rely on judgments that may have no bearing on the issue at hand.

2. The petitioner says that the office of the Chairman of the State Human Rights Commission is an office under the State within the meaning of Article 16(1) of the Constitution. The petitioner asserts that to fill up such post, all eligible persons should have been given an opportunity to apply therefor and should have been considered on merits.

3. Under the Protection of Human Rights Act, 1993, Chairpersons of State Human Rights Commissions were usually retired Chief Justices of High Courts, but pursuant to an amendment effected on August 2, 2019, the Chairperson of a State Human Rights Commission may now be a Chief Justice or a Judge of a High Court. It is not necessary that the Chairperson of the State Human Rights Commission must have been a Chief Justice or Judge of that State itself.

4. The key provision pertaining to the appointment of the Chairperson and the Members of the State Commission is Section 22 of the Act of 1993. Section 22(1) mandates that the Selection Committee for the purpose of selecting the Chairperson and the members of the State Human Rights Commission would be the Chief Minister, Speaker of the Legislative Assembly, the Minister in-charge of the Department

of Home in that State and the Leader of the Opposition in the Legislative Assembly. However, if a State has a Legislative Council, the Chairperson of such Council and the Leader of the Opposition in the Council are also ex-officio members of the Selection Committee. The Chief Minister of the State is the Chairperson of the Selection Committee.

5. Thus, the process of appointment involves consultation between the members of the Selection Committee and the majority decision of the Selection Committee will prevail as long as the person appointed fills the eligibility criteria indicated in Section 21 read with parts of Section 22 of the Act.

6. Loosely speaking, a Chairperson maybe a Chief Justice or a Judge of any High Court and may also be appointed before he has demitted office as Judge, subject to the permission of the Chief Justice of the relevant High Court being obtained. However, such provision does not imply that a sitting Judge of a Court continues to remain a sitting Judge of such Court while taking up duties as the Chairperson or a member of a State Human Rights Commission. What the relevant provision means is that at the time of appointment, if the relevant

person is a sitting Judge, he may be appointed with the permission of his Chief Justice. The Act is silent as to the assumption of office in the Human Rights Commission by a sitting Judge; but it goes without saying that a person cannot be a High Court Judge and the Chairperson or a Member of the Human Rights Commission simultaneously.

7. The principal grievance of the petitioner appears to be that the post was not advertised. Apart from the fact that the statute does not require any advertisement, in this case, there is an exalted Selection Committee which is ordained by the statute and it is not an ordinary process of selection. The Chief Minister of a State, in consultation with the Speaker of the Legislative Assembly, the Minister of Home and the Leader of the Opposition would choose an appropriate person to be appointed as Chairperson or others as Members of the State Commission. As long as the appointee fulfils the eligibility criteria, that would suffice. This is because unlike ordinary appointments, these are crucial posts where appointments are primarily made by invitation. The Selection Committee may discuss such names as they may choose and even if there is no advertisement issued, the process cannot be flawed. From the counter-affidavit of

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the State, it appears that the selection was made from a list of two retired Chief Justices and 39 retired Judges of this Court, all of whom fulfilled the eligibility criteria.

8. Since the best arguable case of the petitioner appears to be contrary to the provisions of Section 21 and 22 of the Act of 1993, the present incumbent need not be disturbed as he has not been issued notice. The State is represented and learned Advocate-General has justified the appointment challenged by the petitioner.

9. W.P.No.3387 of 2021 is dismissed. W.M.P.Nos.3866, 3869 and 10335 of 2021 are closed. There will be no order as to costs.

(S.B., CJ.)

(S.K.R., J.)

27.04.2021

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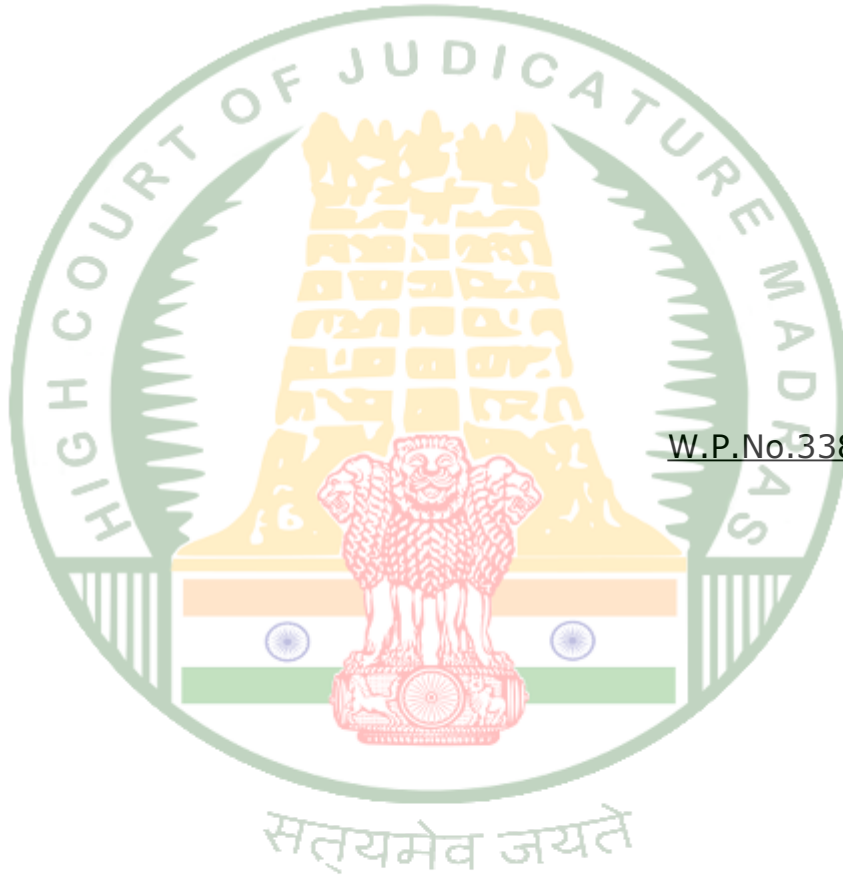
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THE HON'BLE CHIEF JUSTICE  
AND  
SENTHILKUMAR RAMAMOORTHY, J.

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