

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 20.09.2019**

**DELIVERED ON : 25.09.2019**

**CORAM:**

**THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN  
AND  
THE HON'BLE MR.JUSTICE N.SESHASAYEE**

**W.P.SR.No.119657 of 2019**

M.Karpagam

..

Petitioner

Vs.

1.The Secretary to President of India,  
Rashtrapati Bhavan,  
New Delhi-110 001.

2.The Law Secretary,  
Government of India,  
Ministry of Law and Justice,  
Department of Law, Shastri Bhavan,  
New Delhi-110 001.

3.The Secretary to Governor,  
Government of Tamil Nadu,  
Raj Bhavan, Chennai-600 025.

4.The Secretary to Government,  
Law Department,  
Government of Tamil Nadu,  
Secretariat, Chennai-600 009.

.. Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Prohibition, prohibiting the first respondent from giving effect to the proposal for transfer of Hon'ble The Chief Justice, Mrs.V.K.Tahilramani from High Court of Madras to

Meghalaya High Court, passed by the Collegium of the Supreme Court of India dated 28.08.2019, and the consequential rejection order dated 03.09.2019, following Her Lordship's representation dated 02.09.2019 for reconsideration of transfer, as it is purely administrative orders passed devoid jurisdiction.

For Petitioner : Mr.R.Prabhakaran

**ORDER**

**M.SATHYANARAYANAN, J.**

This Writ Petition, styled as a Public Interest Litigation, is filed by Ms.M.Karpagam, an Advocate, who is a recent entrant to the legal profession. The petitioner prayed for issuance of a Writ of Prohibition, prohibiting the first respondent from giving effect to the proposal for transfer of Hon'ble Mrs.V.K.Tahilramani – Chief Justice of Madras High Court to Meghalaya High Court, vide proceedings dated 28.08.2019 passed by the Collegium of the Hon'ble Supreme Court of India and consequential rejection order dated 03.09.2019, in response to the representation dated 02.09.2019 submitted by the Hon'ble Judge for reconsideration of transfer.

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2. The petitioner, in the affidavit filed in support of this writ petition, would aver among other things that she had undergone Law Course at the School of Excellence in Law (SOEL), Dr.Ambedkar Law University at Chennai and secured first rank and she was conferred the Degree Certificate

by the Hon'ble Mrs.Justice V.K.Tahilramani, Chief Justice of Madras High Court and the transfer of the Hon'ble Judge from the High Court of Madras to the Meghalaya High Court had shaken dreams of budding young women lawyers like her.

3. In the grounds, it is submitted by the petitioner that Article 222 of the Constitution of India speaks about the transfer of a Judge from one High Court to another and therefore, a pertinent question arises for consideration as to “Whether the Chief Justice of the High Court include a Judge or not?” and according to the petitioner, the Chief Justice of a High Court cannot be transferred. Attention of this Court was also invited to Article 223 of the Constitution of India and it is pleaded by the petitioner that the appointment of the Chief Justice cannot be equated with other Judges of the High Court and in the absence of any specific provision in the Constitution of India as to the transfer of the Chief Justice from one High Court to another, the Hon'ble Chief Justice of Madras High Court cannot be transferred.

4. The petitioner has also placed reliance upon the Constitution Assembly Debates and Universal Charter of the Judge formed by the International Association of Judges in the year 1999 as well as the practice

prevalent in United Kingdom and submitted that transfer of judges has a direct and proximate connection with the independence of the judiciary and if the judiciary loses its independence and becomes subservient, the net result would be that the Constitution will lose its prominence. The petitioner would further state that since the transfer was passed on the administrative side of the Hon'ble Supreme Court of India, it is subject to judicial review.

5. The petitioner, on the factual aspect, would state that the Hon'ble Judge, who has been transferred from the Madras High Court, have a tenure of less than one year to attain superannuation and as such, transferring the Hon'ble Judge to Meghalaya High Court is *per se* unsustainable in law and in paragraph No.24 of the affidavit, formulated the following Questions of Law for consideration:

*(a) Whether, second transfer of Chief Justice of a High Court to another High Court is permissible ? especially in the facts and circumstances of the present case.*

*(b) Whether the proposal for transfer of Chief Justice of a High Court can only be done by the President of India or by the Collegium of the Supreme Court itself ?*

*(c) Whether non-consent of the Chief Justice of the High Court for transfer to another High Court can be over-turned or not? If so, by whom?*

*(d) Whether the Chief Justice of a High Court could be transferred at the verge of retirement, or not?*

*(e) Whether the office of the Chief Justice of a High Court is transferable, or not ?*

*(f) Whether mutual transfer of Chief Justices of High Courts can be made or not?*

6. The Registry of this Court, expressed doubt as to the maintainability of the writ petition and returned the papers. The learned counsel for the petitioner has represented the papers with the following endorsement:

“It is submitted that the order passed by the Collegium is only an Administrative Order and not a Judicial Order and also as laid down by the Hon'ble Supreme Court in Constitution based Judgment *A.K.Kripak v. Union of India [AIR 1970 SC 150]* it is maintainable. Hence, it may be posted for maintainability.”

The Registry, after going through the reasons assigned by the learned counsel for the petitioner as to the maintainability of the writ petition, still expressed doubt as to the maintainability and solicited orders for posting the writ petition under the caption “For Maintainability” and after getting appropriate orders, has listed the writ petition under the caption “For Maintainability”.

7. Mr.R.Prabhakaran, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and apart from reiterating the above cited grounds urged by the petitioner in the affidavit filed in support of this writ petition, has invited the attention of this Court to the judgment in *Special Reference No.1 of 1998, RE [(1998) 7 SCC 739]* and pointed out that the Constitution never envisage transfer of Chief Justice from one High Court to another High Court and that is why, there is no Article dealing with the said aspect and after the Collegium of the Hon'ble Supreme Court took a decision to transfer Hon'ble Mrs.Justice V.K.Tahilramani, Chief Justice of Madras High Court to Meghalaya High Court, vide proceedings dated 28.08.2019, the Hon'ble Judge, vide her representation dated 02.09.2019, requested for reconsideration of the said proposal and vide proceedings dated 03.09.2019, the Collegium of the

Hon'ble Supreme Court recorded the fact that it is not in a position to accede to the said request and reiterated it's earlier recommendation dated 28.08.2019. It is submitted by the learned counsel appearing for the petitioner that the Hon'ble Judge, being the holder of High Constitutional office, ought to have been provided with fair hearing and without assigning proper and sufficient reasons, the Collegium of the Hon'ble Supreme Court has rejected the representation submitted by her for reconsideration of the transfer and further pointed out that admittedly, the Hon'ble Judge, at the time of the order of transfer, has less than one year to attain the age of superannuation and as such, the order of transfer is wholly unjust, unreasonable and against fair play as well as independence of the judiciary.

8. The learned counsel appearing for the petitioner has further drawn the attention of this Court to the Constitution Assembly Debates and made a submission that the Constitution Assembly also expressed view that the position of the Chief Justice is very eminent and also taken note of the fact that after all the Chief Justice is a man with all feelings, all the sentiments and all the prejudices which we as common people have and therefore, to allow the Chief Justice practically a veto upon the appointment of judges is really to transfer the authority to the Chief Justice for which the Assembly is

not prepared to veto is the President or the Government of the day and it is also a dangerous proposition.

9. The learned counsel appearing for the petitioner has also placed reliance upon the judgment in *Indira Jaising v. Supreme Court of India through Secretary General and Others [(2017) 9 SCC 766]* wherein the matter in issue pertains to uniform guidelines for Supreme Court and High Courts as to the procedure for designation of Senior Advocates and made a submission that the power of designating any person as a Senior Advocate is always vested in the Full Court either of the Supreme Court or of any High Court and therefore, for the purpose of ensuring fair play, Full Court of the Supreme Court ought to have considered the issue relating to the transfer of judges and reiterated the ground urged by the petitioner that in the absence of any specific provision in the Constitution of India, the Chief Justice cannot be transferred and since the proceedings of the Collegium of the Hon'ble Supreme Court relating to transfer of the Hon'ble Judge are administrative in nature, judicial review is permissible and prays for numbering and entertainment of the writ petition.



10. This Court paid it's anxious consideration and best attention to the arguments advanced by the learned counsel appearing for the petitioner and also perused the materials placed before it.

11. The Hon'ble Mrs.Justice V.K.Tahilramani was a Judge of the Bombay High Court and was elevated to the position of the Chief Justice of Madras High Court, by His Excellency, The President of India, in exercise of powers under Clause (1) of Article 217 of the Constitution of India and the Government of India, Ministry of Law and Justice (Department of Justice) has also issued a Notification in No.K.13026/2/2018-US.I dated 03.08.2018 as to elevation and appointment as the Chief Justice of the Madras High Court. The Hon'ble Judge assumed the office of the Chief Justice of the Madras High Court.

12. The Collegium of the Hon'ble Supreme Court of India, vide proceedings dated 28.08.2019, resolved to transfer Hon'ble Mr.Justice A.K.Mittal, Chief Justice of Meghalaya High Court to the High Court of Madras and recommended the transfer of Hon'ble Mrs.Justice V.K.Tahilramani, Chief Justice of Madras High Court to the Meghalaya High Court in the interest of better administration of justice. In terms of

Memorandum of Proceedings, views of the Chief Justice of the Madras High Court was sought and the Hon'ble Judge, vide representation dated 02.09.2019, made a request to reconsider the proposal for transfer to Meghalaya High Court. The Collegium of the Hon'ble Supreme Court, vide proceedings dated 03.09.2019, has considered the said representation and taking into consideration all the relevant factors, expressed view that it is not in a position to accede to the request and accordingly, reiterated it's earlier recommendation dated 28.08.2019 for transfer of Hon'ble Mrs.Justice V.K.Tahilramani to Meghalaya High Court. The present writ petition is filed to issue a Writ of Prohibition, prohibiting the first respondent from giving effect to the said order of transfer, proposed by the Collegium of the Hon'ble Supreme Court.

13. The moot question arises for consideration is ***“Whether the petitioner is having locus standi to maintain this writ petition ?”***

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14. In ***Supreme Court Advocates-On-Record Association and Others v. Union of India & S.P.Gupta v. Union of India [(1993) 4 SCC 441]***, the norms in matters of appointment and transfer of Judges of the Hon'ble Supreme Court and High Court and the transfer of Judges and Chief

Justice of High Court came up for consideration. A Constitution Bench consisting of nine Hon'ble Judges of the Hon'ble Supreme Court, after marathon arguments, has reserved orders and pronounced its verdict on 06.10.1993. Head Note No.II of the said decision deals with Article 222(1) - Transfer of High Court Judges / Chief Justices by President and in paragraph No.473, it was observed that,

*“ Transfer is an obvious incident of a Judge's tenure. This applies equally to all Judges appointed after the adoption of the transfer policy, irrespective of whether they gave an undertaking to go on transfer or not.”*

In paragraph No.474, it was observed that,

*“There is nothing in Article 222 to require the consent of a Judge/Chief Justice for his first or even a subsequent transfer. Since his consent is not read as a requirement for the first transfer there is no reason to require his consent for any subsequent transfer, according to the same provision. The power under Article 222 is available throughout the tenure of a High Court Judge/Chief Justice, and it is not exhausted after the first transfer is made.....It is reasonable to assume that the Chief Justice of India will recommend a subsequent transfer only in public interest, for promoting better administration of justice throughout the country, or at the request of the concerned Judge.”*

Norms and conclusions on transfer of Judges have been enumerated in paragraph Nos.479 to 486 and it is relevant to extract the same the same:

*“479. (1) In the formation of his opinion, the Chief Justice of India, in the case of transfer of a Judge other than the Chief Justice, is expected to take into account the views of the Chief Justice of the High Court from which the Judge is to be transferred, any Judge of the Supreme Court whose opinion may be of significance in that case, as well as the views of at least one other senior Chief Justice of a High Court, or any other person whose views are considered relevant by the Chief Justice of India. The personal factors relating to the Judge concerned, and his response to the proposal, including his preference of places of transfer, should be taken into account by the Chief Justice of India before forming his final opinion objectively, on the available material, in the public interest for better administration of justice.*

*(2) Care must be taken to ensure that no Chief Justice is transferred without simultaneous appointment of his successor-in-office, and ordinarily the acting arrangement should not exceed one month, the maximum period needed usually for the movement of the Chief Justices to their new positions. This is essential for proper functioning of the High Courts, and to avoid rendering headless any High Court for a significant period which adversely affects the functioning of the judiciary of that State.*

(3) *The continuing practice of having Acting Chief Justices for long periods; transferring permanent Chief Justices and replacing them with out of turn Acting Chief Justices for long periods; appointing more than one Chief Justices from the same High Court resulting in frustration of the legitimate expectation of Judges of some other High Courts commensurate with their seniority to be appointed Chief Justice in their turn, except in an extraordinary situation, must be deprecated and avoided. Application of the policy has been quite often selective and it is essential to make it uniform to prevent any injustice.*

(4) *It may be desirable to transfer in advance the senior-most Judge due for appointment as Chief Justice to the High Court where he is likely to be appointed Chief Justice, to enable him to take over as Chief Justice as soon as the vacancy arises and, in the meantime, acquaint himself with the new High Court. This would ensure a smooth transition without any gap in filling the office of Chief Justice. In transfer of puisne Judges, parity in proportion of transferred Judges must be maintained between the High Courts, as far as possible.*

(5) *The recommendations in the Report of the Arrears Committee (1989-90) mention certain factors to be kept in view while making transfers to avoid any hardship to the transferred Judges. These must be taken into account.*

**486.** *A brief general summary of the conclusions stated earlier in detail is given for convenience, as under:*

(1) *The process of appointment of Judges to the Supreme Court and the High Courts is an integrated 'participatory consultative process' for selecting the best and most suitable persons available for appointment; and all the constitutional functionaries must perform this duty collectively with a view primarily to reach an agreed decision, subserving the constitutional purpose, so that the occasion of primacy does not arise.*

(2) *Initiation of the proposal for appointment in the case of the Supreme Court must be by the Chief Justice of India, and in the case of a High Court by the Chief Justice of that High Court; and for transfer of a Judge/Chief Justice of a High Court, the proposal has to be initiated by the Chief Justice of India. This is the manner in which proposals for appointments to the Supreme Court and the High Courts as well as for the transfers of Judges/Chief Justices of the High Courts must invariably be made.*

(3) *In the event of conflicting opinions by the constitutional functionaries, the opinion of the judiciary 'symbolised by the view of the Chief Justice of India', and formed in the manner indicated, has primacy.*

(4) *No appointment of any Judge to the Supreme Court or any High Court can be made, unless it is in conformity with the opinion of the Chief Justice of India.*

(5) *In exceptional cases alone, for stated strong cogent reasons, disclosed to the Chief Justice of India, indicating that the recommendee is not suitable for appointment, that*

*appointment recommended by the Chief Justice of India may not be made. However, if the stated reasons are not accepted by the Chief Justice of India and the other Judges of the Supreme Court who have been consulted in the matter, on reiteration of the recommendation by the Chief Justice of India, the appointment should be made as a healthy convention.*

*(6) Appointment to the office of the Chief Justice of India should be of the senior-most Judge of the Supreme Court considered fit to hold the office.*

*(7) The opinion of the Chief Justice of India has not mere primacy, but is determinative in the matter of transfers of High Court Judges/Chief Justices.*

*(8) Consent of the transferred Judge/Chief Justice is not required for either the first or any subsequent transfer from one High Court to another.*

*(9) Any transfer made on the recommendation of the Chief Justice of India is not to be deemed to be punitive, and such transfer is not justiciable on any ground.*

*(10) In making all appointments and transfers, the norms indicated must be followed. However, the same do not confer any justiciable right in anyone.*

*(11) Only limited judicial review on the grounds specified earlier is available in matters of appointments and transfers.* *(emphasis supplied)*

*(12) The initial appointment of a Judge can be made to a High Court other than that for which the proposal was*

*initiated.*

*(13) Fixation of Judge-strength in the High Courts is justiciable, but only to the extent and in the manner indicated.*

*(14) The majority opinion in S.P. Gupta v. Union of India [1981 Supp SCC 87 : (1982) 2 SCR 365] insofar as it takes the contrary view relating to primacy of the role of the Chief Justice of India in matters of appointments and transfers, and the justiciability of these matters as well as in relation to Judge-strength, does not commend itself to us as being the correct view. The relevant provisions of the Constitution, including the constitutional scheme must now be construed, understood and implemented in the manner indicated herein by us.”*

The above cited conclusions are made by four Hon'ble Judges. The Hon'ble Mr. Justice A.M. Ahmadi and The Hon'ble Mr. Justice Kuldip Singh also recorded their conclusions and it is relevant to extract the same:

***Per Ahmadi, J.***

*“313(v). There is nothing in the language of Article 222(1) to rule out a second transfer of a once transferred Judge without his consent but ordinarily the same must be avoided unless there exist pressing circumstances making it unavoidable. Ordinarily a transfer effected in public interest may not be punitive but all the same the Chief Justice of India must take great care to ensure that in the guise of public interest the Judge is not being penalised.”*



***Per Kuldip Singh, J.***

*“411(10) A Chief Justice / Judge may be transferred from one High Court to another – Article 222 – in public interest. A transferred Chief Justice/ Judge can be transferred again and the power is not exhausted after the first transfer. The consent of the Chief Justice / Judge concerned is not required under the Constitution. S.P. Gupta case stands overruled to the extent.*

*(11) A proposal for transfer of a Chief Justice / Judge under Article 222 has to be initiated by the Chief Justice of India and the ultimate recommendations in that respect is binding on the executive.*

*(12) The transfer of a Chief Justice / Judge is not justiciable in the court of law except on the ground that the transfer was made without the recommendation of the Chief Justice of India.”*

15. It is also to be noted at this juncture that no separate qualifications have been laid down for appointment of the Chief Justice of the Supreme Court of India under Article 124 of the Constitution of India and so also for the appointment of the Chief Justice of High Court, no separate qualification is provided under Article 216 of the Constitution of India.

16. Now coming to the maintainability of the writ petition, in

*K.Ashok Reddy v. Government of India and Others & Harikesh Singh v. Union of India and Others [(1994) 2 SCC 303]*, the appellant therein, namely Mr.K.Ashok Reddy, who is a practicing Advocate, filed a Writ Petition before the Andhra Pradesh High Court, praying for a declaration that Judges of the High Courts are not liable to be transferred from one to another High Court by contending among things that transfers were likely to be influenced by extraneous considerations leading to arbitrariness resulting in erosion of the independence of the judiciary in the absence of guidelines. The Andhra Pradesh High Court has dismissed the writ petition and aggrieved by the same, Mr.K.Ashok Reddy filed a Special Leave Petition and it was entertained and converted as Civil Appeal No.140 of 1994. Before the High Court of Allahabad, similar challenge was made and it was transferred to the file of the Hon'ble Supreme Court and heard along with C.A.No.140 of 1994 preferred by Mr.K.Ashok Reddy. The Hon'ble Supreme Court has taken into consideration the Constitution Bench judgment in *Supreme Court Advocates-on-Record Association's case (cited supra)*, *Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225]* and *Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935]* and in paragraph No.15 observed that,

***“15. In our opinion, the guideline of 'public interest',***

*i.e., “for promoting better administration of justice throughout the country” is sufficient guideline for proper exercise of the power and to ensure exclusion of the possibility of any arbitrariness in the exercise of power of transfer under Article 222 in accordance with the recommendation of the Chief Justice of India as indicated in Judges' Case-II [(1980) 4 SCC 266]....”*

The Hon'ble Apex Court has also taken note of the constitution of Peer Committee by the Hon'ble Chief Justice of India to make suggestions for transfers so as to enable the Hon'ble Chief Justice of India to make recommendation for transfer and observed in paragraph No.18 as follows:

*“18..In our view, this is sufficient safeguard against any likely arbitrariness or bias. There is no room left for any apprehension of arbitrariness or bias in the transfer of any Judge/Chief Justice of a High Court. It is time that the men at the apex level of the Indian Judiciary are permitted to manage the affairs of the judicial family and look after its welfare and interest instead of permitting repeated intrusions by some in the guise of 'public interest' thereby rendering the Judges vulnerable to avoidable controversy involving them. We are constrained to observe that the Allahabad case before us is of that kind. We have no doubt that the Chief Justice of India acting on the institutional advice available to him is the surest and safest bet for preservation of independence of judiciary.”*

The Hon'ble Apex Court has also taken into consideration judicial review of members of transferable service and in paragraph No.19 observed that,

*“19... the cry for a larger area of justiciability in the case of transfer of High Court Judges is incongruous when the power is to be exercised by the highest constitutional functionaries of the Indian Judiciary, with the case and circumspection indicated in the Judges' Case-II and herein”*

The issue relating to *locus standi* was also discussed in the said judgment and in paragraph No.20, the Hon'ble Supreme Court observed that,

*“20.... the validity of individual transfers was examined only at the instance of the transferred Judge and not at the instance of anyone else. The need for restricting the standing to sue in such a matter to the affected Judge alone has been reiterated in the Judges' Case-II. It is, therefore, made clear that the transfer of a High Court Judge is justiciable only on the ground indicated in Judges' Case-II and only at the instance of the transferred Judge himself and not anyone else. This emphasis is necessary to prevent any transferred Judge being exposed to any litigation involving him except when he chooses to resort to it himself in the available limited area of justiciability.”*

17. The decision in ***K.Ashok Reddy's case*** (cited supra) gives

complete answer to the grounds urged by the petitioner. The said decision also laid down the proposition that the transfer of a High Court Judge is justiciable only on the ground indicated in *Judges' Case-II* and challenge to the order of transfer only at the instance of the transferred Judge himself and not anyone else and as such, *the petitioner has no locus standi to maintain this writ petition.*

18. Incidentally, it is to be noted that the decision to transfer Hon'ble Mrs. Justice V.K. Tahilramani was taken by the Collegium of the Hon'ble Supreme Court, consisting of the Hon'ble Chief Justice of India and four senior-most Hon'ble Judges of the Hon'ble Supreme Court and in the light of the ratio laid down in *Supreme Court Advocates-on-Record Association's case* (cited supra), which has been explained and affirmed by the later decision of the Hon'ble Apex Court in *K. Ashok Reddy's case* (cited supra), the petitioner is not entitled to maintain this writ petition.

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19. This Court can also take judicial notice of the fact that subsequent to reiteration of the decision taken by the Collegium of the Hon'ble Supreme Court to transfer Hon'ble Mrs. Justice V.K. Tahilramani, Chief Justice of Madras High Court to Meghalaya High Court, the Hon'ble Judge has

tendered her resignation and it was also accepted by His Excellency, The President of India.

20. The Ministry of Law and Justice (Department of Justice), Government of India, has also issued a notification dated 20.09.2019, intimating the appointment of Hon'ble Dr.Justice Vineet Kothari, senior-most Judge of this Court to perform the duties of the office of the Chief Justice of the Madras High Court and on account of the said development also, nothing remains for adjudication in this writ petition.

21. In the result, **W.P.SR.No.119657 of 2019 is rejected as not maintainable.** No costs.

[M.S.N., J.] [N.S.S., J.]

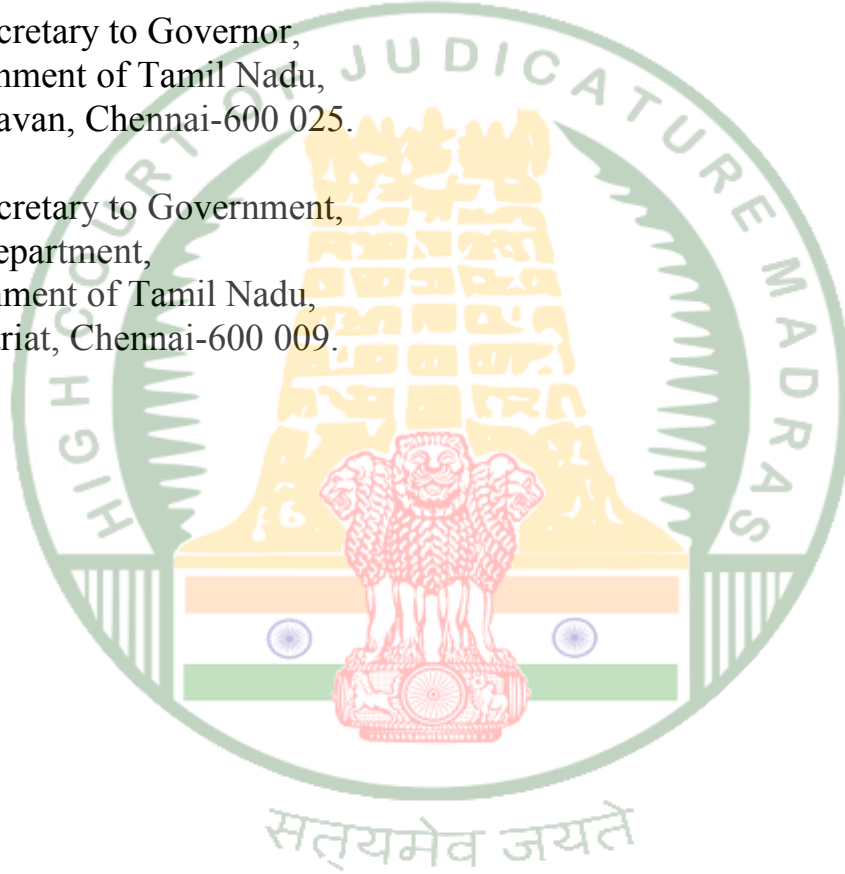
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To  
1. The Secretary to President of India,  
Rashtrapati Bhavan,  
New Delhi-110 001.

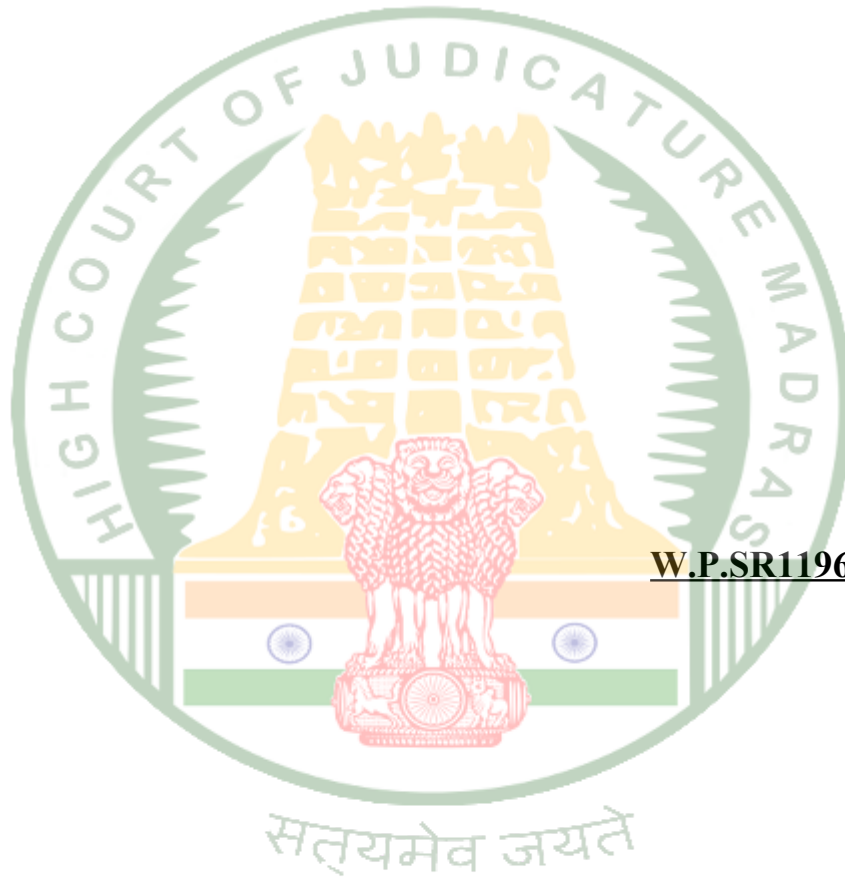
2. The Law Secretary,  
Government of India,  
Ministry of Law and Justice,  
Department of Law, Shastri Bhavan,  
New Delhi-110 001.
3. The Secretary to Governor,  
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4. The Secretary to Government,  
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Secretariat, Chennai-600 009.



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M.SATHYANARAYANAN, J.,  
and  
N.SESHASAYEE, J.

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Order in  
W.P.SR119657 of 2019

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