

In re: Suo Motu Criminal Contempt No.791 of 2020

THE HON'BLE CHIEF JUSTICE

AND

SENTHILKUMAR RAMAMOORTHY, J.

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

These proceedings were directed to be registered to examine the necessity or otherwise of initiating criminal contempt proceedings as suggested in the letter of a learned Single Judge of this Court dated 13.9.2020, that was followed by a letter from a certain section of the bar to the same effect, and on the other hand some letters from the legal fraternity, including retired Judges of this Court and a couple of other letters from lawyers, requesting this Court to exercise restraint, and consequently not to proceed in the matter.

2. Criminal contempt as is well known, under the Contempt of Courts Act, 1971 contains several provisions for dealing with different varieties of contempts, but the statement of a cine actor in the media about the Judges in general being apprehensive of their

own lives functioning through video-conferencing, displayed a practice contrary to what they preach vis-à-vis the matter relating to students appearing for the NEET Examination has led to a serious debate. This sparked off an opinion formed by the learned Judge in his letter dated 13.9.2020 as being offensive to the judicial system in general, which undermined its majesty through a criticism which is a threat that may result in loss of public confidence in the judiciary. A lawyers forum on the next day also followed suit, and then came a spate of counter opinions that was spread over the media for a couple of days. Public opinions were sought to be sounded through print media as to what the course of action should be, and continues to opionate on the same with views on either side.

3. On the matter being brought to the notice of the Chief Justice on the administrative side, the issue on being considered doubtful, was referred to the learned Advocate General on 14.9.2020, keeping in view the provisions of Section 15 of the 1971 Act, whereupon the learned Advocate General very promptly treated

the same to be a petition that required his opinion and registered it as Contempt Petition No.5 of 2020, and rendered his opinion in the shape of an order declining to consent for any step to initiate a criminal contempt proceeding.

4. It was thought proper, therefore, that since a request had been made by a learned Judge to draw suo motu contempt proceedings, a judicial opinion should also be rendered, apart from the administrative exercise that was undertaken before the learned Advocate General, as it involved a deliberation keeping in view the fact that Section 15 of the 1971 Act gives a discretion to the Court to initiate proceedings suo motu, as the High Court is a Court of record, and the constitutional authority to embark on such issues is ordained under Article 215 of the Constitution of India. It was, therefore, directed that the present proceedings should be registered for a delivery of opinion on the judicial side as well. Consequently, these proceedings have been undertaken in open Court for orders today.

5. The background in which the statement of the cine actor has been taken to be a subject matter of undermining the authority of the Court and Judges and devotion of the Judges towards their duty, is their mode of functioning through virtual hearing during the pandemic, which may be a sneer, but before a scoff or a mocking comment is made, it should also be weighed as to whether it is fair criticism or not. This too at the instance of one who is stated to be a philanthropist and a self-righteous person dedicated to the cause of public at large. There can be a wide debate on the borderline distinction and hairsplitting opinions to find out the difference between an insult, an unfair criticism, an uninformed opinion, a casual drawing room talk, a sheer party gossip, an irresponsible statement, and that of a constructive dissent, an informed criticism, a healthy open debate that is congenial for an optimistic and positive growth of mankind as against mere accusations and empty words. The freedom of speech to call a spade a spade and to exercise free unrestrained speech are two different dimensions. The right to freedom of speech that includes fair criticism is guaranteed under the Indian Constitution, but the same Constitution also

protects and insulates judicial governance from insidious and derogatory comments under Article 215 of the Constitution and the laws made thereunder.

6. To understand the wide range of human imagination, thought and wisdom on what are the various dimensions of criticism, we would like that avid readers may benefit themselves by having a glance through "An Essay on Criticism" that was penned in a contemporary context of its times in the 18th Century by none else than one of the greatest poets of the world – Alexander Pope, in approximately 740 lines. We know that it is an arduous task not only to read, but also to understand the same, but we find it worth mentioning.

7. Questions were raised about the status of the functioning of the judiciary during the pandemic. The Subordinate Courts have performed, as would be evident from the following details that are available with the High Court:

- *In view of the announcement of Novel Corona Virus*

Pandemic (Covid-19) by WHO and Government of India in the mid of March, 2020, to preserve the Judicial functioning in the larger interest of litigants, Subordinate Courts were permitted to function by Video Conference mode and Email filing was introduced so as to avoid physical presence of Advocates and Litigants in the Courts.

- *The Hon'ble The Chief Justice periodically interacted with the Principal District Judges through Video Conferencing regarding limited functioning of Subordinate Courts on 07.04.2020, 27.05.2020, 05.06.2020, 18.06.2020, 02.07.2020, 28.07.2020 and 29.08.2020 to obtain their inputs for allowing physical hearing in the Subordinate Courts.*

- *After the Nationwide Complete Lock Down, all the Presiding Officers of the Courts in all the Districts were allowed to enter into the Court premises w.e.f. 01.06.2020 and continue their work only through Video Conferencing with limited number of cases.*

- *On considering the inputs received from the Principal District Judges and keeping in view the number of practicing lawyers being around 75-150, w.e.f.*

01.06.2020 in addition to hearing through Video Conferencing, limited physical hearing was permitted in the Subordinate Courts in 9 District Headquarters in the State of Tamil Nadu (Dharmapuri, The Nilgiris, Krishnagiri, Tiruvarur, Theni, Ramanathapuram, Nagappattinam, Karur and Sivagangai) with the presence of maximum of 5 lawyers at a time in a Court Hall, with specific instruction not to allow the litigants and others to enter into the Court premises.

- On considering the further inputs received from the Principal District Judges, physical functioning of the Taluk Courts in the above said 9 Districts in the State of Tamil Nadu was allowed w.e.f. 04.06.2020.

- On further assessment, limited physical functioning of the Courts in the District Headquarters and Taluks in 9 more Districts in the State of Tamil Nadu (Ariyalur, Perambalur, Erode, Pudukkottai, Cuddalore, Namakkal, Dindigul, Virudhunagar and Kanniyakumari) and physical functioning of Courts only in Taluks in Tiruppur District was allowed from 08.06.2020.

- On further assessment, limited physical functioning of the Courts in the District Headquarters and Taluks in 10

more Districts in the State of Tamil Nadu was allowed from 22.06.2020 (Coimbatore, Madurai, Salem, Thanjavur, Thoothukudi, Tiruchirappalli, Tirunelveli, Tiruvannamalai, Vellore and Villupuram)

- *Hearing only through Video Conferencing was allowed in remaining 3 Districts in the State of Tamil Nadu due to steady increase of Covid-19 cases (Chennai, Kancheepuram and Tiruvallur).*

- *On further assessment, physical hearing has also been extended to the Subordinate Courts in the said 3 Districts namely Chennai, Kancheepuram and Tiruvallur w.e.f. 07.09.2020. Further, w.e.f. 07.09.2020, physical filing of all nature of cases is permitted in the Subordinate Courts in all the 32 Districts in the State of Tamil Nadu through drop boxes and on a trial basis respective District Courts are permitted to proceed with physical hearing of limited number of cases per day by allowing the advocates alone, whose cases are listed for physical hearing and also the litigants who are to depose as witnesses in the cases, if listed for physical hearing. In the said Districts of Chennai, Kancheepuram and Tiruvallur, Taluk Courts are also allowed to be opened for physical hearing on the same pattern as adopted by the Taluk Courts in other*

Districts subject to limitation of containment areas or subject to any report of rise in Covid cases in the respective Taluks, at the discretion of the respective Principal District Judges.

• *As such, as on date the Subordinate Courts are functioning through physical hearing in all the 32 Districts in the state of Tamil Nadu.*

• *During the period from 24.03.2020 to 31.08.2020, the details as to the cases instituted and disposed in the Subordinate Courts throughout the State of Tamil Nadu are as follows:*

	Institution	Disposal
State of Tamil Nadu	152509	108346

• *During the period of lockdown i.e. from 24.03.2020 to 31.08.2020, the following new Courts were Constituted in the cadre of District Judge, Civil Judge (Senior Division) and Civil Judge and they have been functioning from the date of inauguration.*

Name of the District	Name of the Court	Date of Constitution
Thanjavur 1152(10)	Additional Mahila Court, Thanjavur	20.06.2020
Thanjavur 1153(11)	Additional District Munsif Court at Thanjavur	20.06.2020
Namakkal 1155(13)	2 DMC at Sendamangalam	18.07.2020

Name of the District	Name of the Court	Date of Constitution
	and Kumarapalayam	
Namakkal 1157(15)	2 JMC at Sendamangalam and Kumarapalayam	18.07.2020
Tiruvallur 1158(16)	Additional Sub Court, Ponneri	29.07.2020
Perambalur 159(17)	SC/ST Perambalur	03.08.2020
Perambalur 160(18)	Family Court, Perambalur	03.08.2020
Tiruvannamalai 1161(19)	Family Court, Tiruvannamalai	17.08.2020

• *During the period of lockdown i.e. from 24.03.2020 to 31.08.2020, the Combined Court Buildings and Judicial Officers Quarters were also inaugurated in the following places:*

S.No.	District	Name of Place	No. of Courts	No. of Quarters	Date of Inauguration
1	Thanjavur	Thanjavur	18	-	20.06.2020
2	Thanjavur	Orathanadu	1	-	20.06.2020
3	Villupuram	Tirukoilur	4	2	25.07.2020
4	Tiruvannamalai	Polur	2	2	17.08.2020

8. The High Court itself has been continuously functioning to the best of its capacity, including Judges, Judicial Officers and all subordinate staff, who have performed through virtual hearing and now through physical hearing as well. The following institution and disposal of cases during the pandemic period [26.3.2020 to

15.9.2020] would demonstrate the same.

	<i>Disposal</i>
<i>Principal Seat of Madras High Court</i>	<i>25181</i>
<i>Madurai Bench of Madras High Court</i>	<i>17052</i>
<i>Total Cases</i>	<i>42233</i>

9. Having disclosed the above data, we only wish to point out that the Judiciary was not sitting idle and was itself on trial during this pandemic, where the Judges of the High Court, of the Subordinate Judiciary, the entire staff and all stakeholders have served to the best of the capacity of the institution. This is not self-praise, but to state our humble performance of duty. We have said this, as any anxiety or sensitivity by way of a public perception should be depicted only after verifying and ascertaining facts or else a distorted version may emerge, because if you put wrong questions, you are bound to get wrong answers. This is only to inform those within the judicial fraternity, as well as the citizenry at large, that judicial governance under the Constitution has performed no less, may be not to the expectations of those who may have a different opinion about the method of dispensation of

justice during these trying times.

10. It would not be an eulogy to appreciate the article published in today's "The Hindu" daily authored by none else than one of the pioneers and leading members of the bar- Mr.Sriram Panchu, where a fairly balanced opinion has been expressed in the following words, which may be a useful guidance for all:

"A platform and guidelines

There are multiple voices in the current narrative on this subject; lawyers objecting to their criticism of judges' acts of commission and omission being proscribed, journalists' fear of chilling effect on free speech, and public bewilderment at what is going on. But there is another set of voices we need to pay close attention to — and these are of judges who have passed strong judgments in seminal cases in favour of free speech and expression, who now can be heard saying that some things have gone too far. And so there is need for introspection, communication and understanding on all sides.

We also need a forum for moderating dialogue between leaders of these three communities, where

concerns and apprehensions can be discussed between them, all of whom want the best for the country and its institutions and people. What could then emerge is a clear set of guidelines, of what is acceptable and what is not. And one can then be sure that the latter category are acts so undefendable that no supporter of free speech will support them, for rights are indeed subject to restrictions; the latter must be reasonable and minimal, but must be obeyed for the former to have full play."

11. Reliability of sources of information should always be observed when people occupying a public space speak on issues that deserve to be based on ground realities, or else any statement bereft of foundational facts may be fraught with a danger of spreading prejudices and adding to the ignorance of the public at large. Speculations and narratives with embellishments may be a form of advertisement, but it should not be an off the cuff depiction. This unnecessarily results in relentless interrogation on platforms with accusations of over-sensitiveness, even though an opinion expressed genuinely might have a grain of truth in it.

12. We had to necessarily assemble, not because we were under a compulsive obligation to do so, but on account of the fact that such issues in larger public interest are settled to satisfy inquisitive, agitating and anxious minds, and to bestow a judicial opinion in a matter which involves not only dispensation of justice, but also upholding the majesty of this great institution, the foundations whereof are not just the Constitution, but the ultimate faith of the public at large, for whom all institutions of governance exist.

13. Spoken or written words in any language are expressions used as tools of effective communication, which invokes the cognitive skill, or otherwise of exchanging information or views directly or indirectly that enables other human beings to either receive, respond or opionate according to their own understanding, or as per the common understanding of the language used. This elemental characteristic of the tools employed for oratory, or any form of expression which can qualify as a speech, enjoys a space of vast freedom that has been advocated as

the permanent wheels of an evolving human civilization.

14. The etymology of a word displays the meaning which it seeks to convey, but its usage in a particular form with a particular intent is capable of giving it a different meaning, and many of the words in all languages do convey meanings which are at times completely divergent. Nonetheless, an individual while using a particular word or a sentence may be intending to convey something that may be capable of being received by another and understood in a different form. The intention behind the oration, depiction, or diction can be fundamentally stated to be other than what has been said, but for that it has to be gauged on logic, reason and commonality of its acceptance in general. Expression, therefore, has its own vitality and its own dynamics, which plays between two ends of being expressed and being understood.

15. Historically, we would mention Socrates (470-399 B.C.), one of the greatest of Greek Philosophers, who was described by Cicero as having brought philosophy down to earth. This may be a

part of western history, but the Oriental East, whether it is the Indian Civilization or the Chinese, or any of the great civilizations in this part of the hemisphere, have witnessed no less sages and philosophers ranging from Adi Shankaracharya to Confucius of having spread wisdom through their expressions. The Socratic dialogue of expression in simple and often homely language, and the method of conducting an argument conveying information through question and answers was satisfying and illuminating about virtues, vices, good, evil and all allied imaginations of the mind. This was also the method of educative communication by appreciation and critical appreciation of views and cross views, ideas and opinions, in the Indian style of dialogues, more commonly known in the field of Sanskrit as "*Shashtrarth*", which may be akin to "*Vivadham*" in Tamil.

16. Socrates was a man of few words and his skill of oratory was known, as he maintained a lead over his opponents by pretending to be completely ignorant of the subject under discussion. This pretence was called "*Socratic Irony*". It was not

forgetfulness or being oblivious of what is happening around, but it was a silence maintained to receive what best could be said by others. He had remarkable courage and wisdom, but his irony unfortunately created many enemies for him. He had to perform an act of consumption to mix with dust, yet his calm wisdom displayed during his last hours had been vividly described by Plato and Xenophon. Thus, a state of mind in which words are spoken is also important to understand the meaning of what one is trying to convey.

17. Aristotle and Demosthenes flourished in the same age. Demosthenes excelled as an orator in spite of his drawbacks of natural timidity, nervousness and defects of speech, yet he was no less when it came to an impact of words when compared with modern day public figures ranging from Abraham Lincoln to Mahatma Gandhi; Daniel O'Connell to Leon Gambetta; John Bright to Daniel Webster; Swami Vivekananda to Henry Ward Beecher. These are just illustrations and our own country has witnessed immemorable instances of fine oratory and oral dynamism that is

writ large in our rich culture and heritage, not very hard to find.

18. A word spoken in due season, how good is it! The usage of appropriate words, which are the units of a language, requires training of the mind with the aid of grammar that should be consulted in season and out of season, not only to display sobriety of expression or whetting one's own appetite, but also an effort to convey a gesture that may be received well in understanding.

19. A linguistic training, may not be absolute perfection, should be laced with a mindset that mistakes must be recognized and corrected not only as a recognition of error, but also avoidance of any misunderstanding. It is said that a word out of season may mar the course of a whole life. This expression of language has been described by Shakespeare that "*it is a kind of good deed to say well*".

20. We all know that words spoken may be either servants or masters. "*If the former, they may safely guide us in the way of*

truth. If the latter, they intoxicate the brain and lead into swamps of thought, where there is no solid footing", as said by an author.

21. A mere knowledge of words and expressions of language cannot take us far, unless we know how to wield them correctly. Anatole France said *"the finest words in the world are only vain sounds if you cannot comprehend them"*. To avoid pitfalls and easy slips into errors, one has to learn from a sculptor to use carefully a chisel of language, as a careless hit would convert a smile into sadness. A word spoken is an arrow let fly, because the spoken word cannot be recalled. This also takes us to larger than life understandings as Descartes put it *"the philosophy of life lies in two words, what to sustain and what to abstain from"*.

22. We have also perused the contents of the statement of the cine actor disclosed in the letter of the learned Judge, his opinion, as also the other letters referred to above. A language which may, might be perfectly proper if uttered in a temperate manner, be grossly improper if uttered in a different manner. What may appear

to be disrespectful may also be short of insult, and may be touching the borders of criticism. A reasonable precaution has to be taken in matters of public affairs, particularly Courts, Judges and their functioning, where fair and temperate criticism should not be contemptuous.

23. On the law of contempt, it would be a tribute to remember Lord Denning, who had been oft-quoted whenever such situations arose. Lord Denning, on an issue of scandalizing the Court as against fair criticism, said as follows:

“It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.”

'Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done.'

and then said *"The article contains an error, no doubt, but errors do not make it a contempt of court."*

24. As a prelude to the aforesaid conclusion, Lord Denning opined as under:

"This is the first case, so far as I know, where this court has been called on to consider an allegation of contempt against itself. It is a jurisdiction which undoubtedly belongs to us but which we will most sparingly exercise: more particularly as we ourselves have an interest in the matter.

Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself."

25. A statement made in exuberance may bring about a trial and, therefore, in view of the peculiar status on which this institution is pedestalled under the Constitution, it would be prudent on the part of the individuals to carefully frame their minds and express themselves that may not cross the borders of any fair and just criticism. On the other hand, it is not the job of a constitutional Court to use a sledgehammer for avoidance of something which can be perceived to be not capable of even being propped up as a contempt, much less debated to the level of a criminal contempt.

26. Drawing support from what we have expressed herein above, we find that the utterances by the cine actor may have been absolutely unnecessary or even unwarranted, for being ignorant of the manner in which the entire judiciary of this State has served the interest of its citizens during this pandemic, and any such statement could have been avoided in a much more sober way, instead of an accusing tone, which though trivial in nature has raised a storm in a tea cup. A person in public life enjoys a position because of the responsibility with which he conducts himself and not by making

other human activities look small for perceptibly no valid reason, but we would not say anything further, as we find that the NEET Examinations and the dispute around it was not even a subject matter of the Courts in the State of Tamil Nadu. A self-righteous person should himself be humble enough to acknowledge the contribution of others.

27. There are moments in history when people are remembered of their contributions towards the human world and the present pandemic, with all its adversities, is an opportunity that may be godsent for all stakeholders in this vast civilization to perform and give to their fellow citizens that is wanting most, instead of standing against each other. It is good to form opinions and dissents to evolve a purer thought, but trivials should not be allowed to spread as if they were wild fire.

28. We would like to draw the curtain on these proceedings with a fond hope that the entire judicial system that fosters on the faith of the public at large should be the concern of everyone to

preserve it in our endeavour to deliver justice. Here again, we would like to remind ourselves of the onerous duties depicted how to dispense, what is known as justice.

29. Joseph Addison said *"Justice discards party, friendship, kindred and, therefore, always represented as blind"*.

30. Lord Denning, on the other hand, said *"It is all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies truth: and the less dust there is about the better."*

31. On the function of the Courts in dispensing justice, Lord Denning depicted as follows:

"Why does justice always carry a sword? Again, I have not discovered why. In Roman times, Juvenal (AD 60-130) thought it inappropriate. He wrote in his Satires (iv, 80):

Tractanda putabat inermi justicia (There should be no sword in the hand of justice).

The sword has always been regarded as the symbol of justice. William Dunbar, a poet, writing about 1500 in honour of the city of London, speaks of:

*Thy famous Maire, by pryncely governaunce,
With sword of justice thee ruleth prudently.*

Shakespeare too regarded a sword as an appropriate symbol of justice. He does so when telling the story about Henry Prince of Wales (who afterwards became King Henry V). He was an unruly young man who struck the Lord Chief Justice of the King's Bench and was committed to prison. After the Prince became King, it was thought that he might dispense with the services of the Chief Justice. According to Shakespeare, the Chief Justice challenged the King saying that, if he were dismissed, it would

*....trip the course of law, and blunt the sword
That guards the peace and safety of your person.*

Whereupon the King assured the Chief Justice that he would continue in office:

....You did commit me:

*For which I do commit into your hand
The stained sword that you have us'd to bear;
With this remembrance. - That you use the same
With the like bold, just, and impartial spirit,*

As you have done 'gainst me.

From this, I gather the sword was the symbol of the authority by which justice is done. No judgment of any court, no order of any judge, is of any use unless it can be enforced: and to be enforced it must needs have the authority of the state behind it. The sword of justice is the sword of state. It is the symbol of authority which must be upheld.

Why does justice carry a balance in her hand with lifted scales? This is plain. It needs no justification. The balances have always been the symbol of even-handed justice. You remember the awesome judgment in the book of Daniel:

Thou art weighed in the balances, and art found wanting.

And if I may quote again from my judgment in Jones v National Coal Board, [1957] 2 QB 55:

Let the advocates one after the other put the weights into the scales - the 'nicely calculated less or more' - but the judge at the end decides which way the balance tilts, be it ever so slightly."

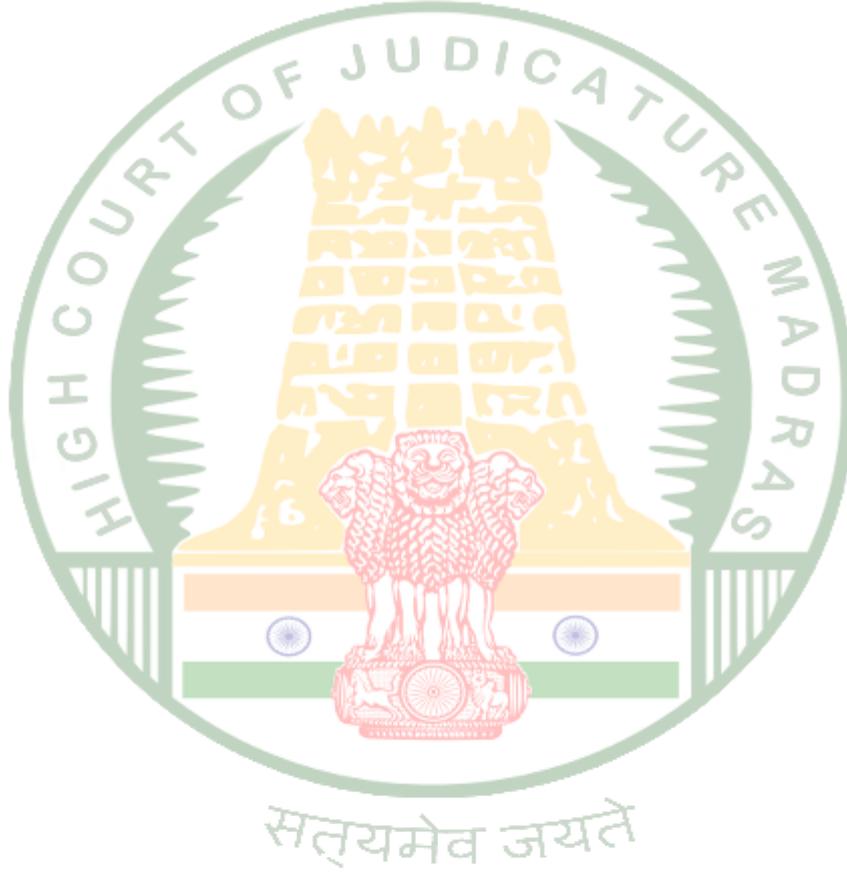
32. This matter, therefore, in our judicious discretion does not deserve to be pursued further and we entirely agree with the

opinion expressed by the learned Advocate General. We put on record our appreciation for the able guidance of the learned Advocate General in promptly assisting us to deliver our opinion so as to tide over this legal complexity.

33. We say all this only that the time has come when every citizen of this nation needs to educate himself even if curriculums do not prescribe, and the upbringing of our generations also deserves to be tutored by all those who are possessed of such gifts to leave no stone unturned to impart the best they have to infuse civility, humility, courteousness and righteous expression amongst their fellow citizens, for a better citizenry.

34. The proceedings are thus consigned. We direct the Registry to maintain the records of these proceedings along with the order of the learned Advocate General and the respective letters that have been referred to herein above, as part of the present proceedings.

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