

W.P.(MD)Nos.14403 and 14405 of 2020 W.P.(MD)Nos.14403 and 14405 of 2020

N.KIRUBAKARAN, J. AND B.PUGALENDHI, J.

(Order of the Court was made by **N.KIRUBAKARAN, J.**)

When the matter is taken up today, the learned Advocate General, on instructions, would submit that the Constitutional Authority is in need of three to four weeks time to take a decision with regard to the Bill, namely, The Tamil Nadu Admission to Under Graduate Courses in Medicines, Dentistry, Indian Medicine and Homeopathy on preferential basis to the Students of the

Government Schools Bill, 2020.

2.The above said Bill has been passed by Tamil Nadu State Legislative Assembly unanimously on 15.09.2020 and the same was sent for Assent to the Constitutional Authority on the very same day. However, the Bill is pending almost for two months without any decision being taken.

3.While so, on 16.10.2020 the results for the NEET Examination were

also published. Though it is claimed that around 400 to 500 students from the

Government schools got qualified in the said NEET Examination, the reality is

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that only single digit number of students will be qualified for admission to the Medical Courses as per the committee report. Moreover, from the introduction of NEET Examination in the year 2017, so far only 14 students from the Government Schools got admission to the Medical Courses.

4.When this Court posed a question with regard to the non taking of decision by the Constitutional Authority, the learned Advocate

General referred Article 361 – Protection of President and Governors, of the Constitution of India and submitted that in the said Article, a protection has been given that the Governor is not answerable to any Court for exercise and performance of the powers and duties or any act done or purporting to be done and Article 361, reads as follows:

361. Protection of President and Governors and Rajpramukhs

(1) The President, or the Governor or Rajpramukh of a

State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties: Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under Article 61: Provided further that nothing in this clause shall be construed as restricting the right of any person to bring

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appropriate proceedings against the Governor of India or the Government of a State.

2.No criminal proceedings whatsoever shall be instituted or continued against the President, or the Governor of a State, in any court during his term of office.

3.No process for the arrest or imprisonment of the President, or the Governor of a State, shall issue from any court during his term of office .

4.any civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two

months next after notice in writing has been delivered to the President or Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

5.No doubt Article 361 of the Constitution of India gives protection to the Constitutional Authority. However, in the given circumstances, a decision has be taken, taking into consideration the future of the Government School students, who are invariably from marginalized and poor sections, as soon as

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possible as provided under Article 200 of the Constitution of India, which reads as follows:

“ 200. Assent to Bills- When a Bill has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President: Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom: Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to

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endanger the position which that Court is by this Constitution designed to fill.”

A perusal of Article 200 – Assent to Bills, would reveal that the Constitutional Authority has to take a decision, if a Bill is presented for Assent, as soon as possible. The protection has been given by the Framers of the Constitution, with hope and trust in the Appointees that they would perform their constitutional functioning promptly and there would not be any situation, wherein they would be called for to give explanation or they will be questioned by the Court of law.

6. When situation changes and present kind of situation arises, a different approach has to be taken by the Courts in the interest of the Public. It is well settled law that “Extraordinary situation requires extraordinary remedies”. When public interest requires, this Court has to do its constitutional duties and to address the situation. However, this Court is of the opinion that such a situation would not arise to pass any order in this matter.

[N.K.K.J.,] 29.10.2020

[B.P.J.,]

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