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**(2000) 07 MP CK 0026**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** Writ Petition No's. 1052 and 1053 of 2000

S.P. Anand

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

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**Date of Decision:** July 4, 2000

**Citation:** (2000) 2 LJ 182 : (2000) 3 MPHT 460 : (2001) 1 MPJR 253

**Hon'ble Judges:** Jayant Govind Chitre, J; A.K. Gohil, J

**Bench:** Division Bench

**Advocate:** Party in Person, for the Appellant; D.D. Vyas, A.A.G. and Anita Sharma, Panel Lawyer, Z.A. Khan, for Respondent Nos. 2, 4, 5 and 6 and Surjit Singh, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

All of them have been heard.

In this petition the petitioner has written the name of Chief Minister of M.P. State, Shri Digvijay Singh and has impleaded him as party. So also he has written the name of Mayor Shri Kailash Vijayvargiya; as well as name of Ex-Mayor has been mentioned in this petition and these two mayors have been impleaded as parties in the present Public Interest Litigation (PIL).

Shri D.D. Vyas, A.A.G. raised objection at initial stage that the petitioner should be directed to delete the name of Chief Minister because when State of M.P. is party, it is not necessary that Chief Minister should be impleaded as party in this PIL and that too with his name. He pointed out that there are no personal allegations against the Chief Minister.

Shri Z.A. Khan, submitted that the name of present Mayor Shri Kailash Vijayvargiya also needs to be deleted from the petition. He also submitted that Mayor, Indore Municipal Corporation is not necessary party in this PIL. He advanced the same sort of arguments in respect of Ex-Mayor, Shri Madhukar Verma.

Shri S.P. Anand by quoting the observations of Supreme Court in some cases and the observations of Lord Justice Diplock submitted that in view of the recent life and the grievance echoed on behalf of the public in PILs, the Chief Minister, the Ministers, Mayors and other such dignitaries can be impleaded in the litigations in their personal capacities and by their names. He submitted that scope of PIL is wider and, therefore, he be not directed to delete the names of Chief Minister of M.P. State, present Mayor Shri Kailash Vijayvargiya and Ex-Mayor Shri Madhukar Verma.

Shri S.P. Anand has impliedly touched the doctrines of "Droit Administratif" while making submissions on this point. The same thing has been done by Shri D.D. Vyas, and Shri Z.A. Khan. "Droit Administratif had been familiar for number of centuries in France. Dicey who wrote in his "Law of Constitution", 9th Edition, page 384 that "Droit administratif" is not to be identified with any part of English Law. According to him, English Official Law is something quite different. The law which regulates the privileges of civil servants in England is merely the law of a class where as "Droit administratif is not the law of a class but a body of law which in given circumstances may affect the rights of any French citizen. Administrative Law in France comprises the whole body of law relating to public administration. The distinguishing features which Dicey noticed in this system of Droit administratif were : first, that the rights of the State are determined by special rules not applicable to private individuals; second, that the Courts of Law are without jurisdiction in matters concerning the State and Government litigation is tried by Administrative Courts; third, that a special protection is afforded to officials in respect of wrongful acts committed in the course of their official duties. The underlying principles which he observed were that the State is given exceptional and extensive privileges; and that a rigid distinction is maintained between administrative and other acts."

The doctrine of "Droit Administratif was prevalent for some years in France and it had some similarities with Common Law of England as well as dissimilarities. A protection which was available to government servants and the persons forming the government did progress as civilisation progressed even in France. In England partly in later portion of the years of 18th and 19th centuries did render that much of protection to the powers of Crown and its servants. The powers available to them were to be exercised in accordance with the ordinary common law principles, which governed the relations of one English man to another. The activities of State in England till recently has been extremely limited and that has come in the limits of Common Law. Our system of functioning of State inherited something from English legal system. However, there has been a significant difference which is according to suitability of our conditions, our civilisation and our behaviour pattern.

"Droit administratif has got long history and number of juris did speak about it and its applicability. By our constitutional protection and its wider impact, fortunately the persons forming the government, are answerable to the public and Courts. Therefore, in fit cases they can be impleaded as parties and can be made

answerable to the Courts of law even by naming them and arraying them as defendants. If there are personal allegations and the matters are necessitating their presence in personal capacities, the Courts in India are empowered to do so. By self imposed discipline and restrains the Courts are reluctant to do so. The Courts are also watchful to see that these persons are not dragged unnecessarily in the litigations and are not required to attend the Courts at the cost of duties which they do in service of public in our democratic system. The Courts are watchful to see that in rare and fit cases only they are to be summoned before the Courts in their personal capacities.

In the present matter the State of M.P. is the party and the State stands represented through the Chief Secretary. It is one of the duties of Chief Secretary of State of M.P. to represent the State and to answer allegations and queries before the Courts. It is one of the functions of the Chief Secretary to the State of M.P. in which he functions as such. When he stands in the array of the respondents, it is not necessary that the Chief Minister should be impleaded as party because no personal allegations are made against him and the Chief Secretary to the State of M.P. is capable of discharging the obligation cast on him as such.

The Mayor of Municipal Corporation acts also in accordance with advice of Mayor-in-council. He takes some decisions independently. Therefore, he is permitted to be impleaded as party. But not by mentioning name because he is not to face any personal allegations made against him in his personal capacity.

There are number of Ex-Mayors of Municipal Corporations for the purpose of identifying a particular Ex-Mayor in context with the period in question, Shri Madhukar Verma has to be a party by name. Otherwise, there would be inconvenience and hardship to other Ex-Mayors.

Therefore, we direct the petitioner to delete the name of Shri Digvijay Singh. So also we direct to delete the "Chief Minister of State of M.P." from the array of respondents. Instead of Chief Minister of M.P. State, the Chief Secretary of M.P. State would discharge obligation on behalf of State of M.P., who would be responsible to answer queries made by this Court whenever necessary. We direct the petitioner to delete name of Shri Kailash Vijayvargiya. Only Mayor, Municipal Corporation, Indore be mentioned as one of the respondents. We direct the name of Shri Madhukar Verma, Ex-Mayor of Municipal Corporation, Indore to remain in the array of respondents in petition. Thus, petitioner to amend petition as directed and that too within seven days. After such amendment is effected, notices be issued to the respondents at government cost; returnable on 21st July, 2000. C.C. free of costs.