THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION (PIL) Nos.136, 142 AND 145 OF 2016

AND 66 AND 71 OF 2019

Dated: 29.06.2020

Between:

T. Jeevan Redy S/o. Ramachandra Reddy,
aged about 65 years, Occ: Agriculture and
MLC, Jagtial, Opp: SBH, Ashok Nagar,
Jagital District. ... Petitioner

And

1. The State of Telangana, Rep. by its Principal Secretary to Government, General Administration Department, Telangana Secretariat, Hyderabad-500022.
2. The Principal Secretary, State of Telangana, Roads and Buildings Department, Telangana Secretariat, Hyderabad-500022.
3. The Engineer-in-Chief, Roads and Buildings, Government of Telangana, Hyderabad. ... Respondents

Counsel for petitioner : Mr. S. Satyam Reddy, Senior Counsel, for Mrs. K.V. Rajasree

Counsel for respondents : The Advocate General

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COMMON ORDER: (Per Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

Two different sets of writ petitions, in the nature of Public Interest Litigation, have been filed before this Court: initially, in 2016, three writ petitions were filed, namely W.P. (PIL) Nos. 136, 142 and 145 of 2016, challenging the Cabinet decision dated 31.01.2015, whereby the Council of Ministers had resolved to construct a new Secretariat building complex in the same campus where the Secretariat buildings were existing. These writ petitions also challenged the G.O. Ms. No. 166, General Administration (SB) Department, dated 24.03.2015, whereby the State government had constituted a Committee to decide and finalize the construction of new Secretariat Building Complex. However, subsequently, the said writ petitions were amended in order to challenge the Cabinet decision dated 18.6.2019, whereby the Cabinet was contemplating either to modify the present Secretariat, or to demolish the same in order to construct a Secretariat Building complex.

The two writ petitions filed in the year 2019, namely W.P. (PIL) Nos. 66 and 71 of 2019, have also challenged the Cabinet decision dated 18.06.2019. Since all he five writ petitions are challenging the same Cabinet decision, since similar arguments have been raised by different learned counsel, all the writ petitions are being decided by this common judgment.

The extract of the Cabinet decision dated 18.06.2019 is as under:

> *Agenda Item: 36*
> *TR&B Department-(i) The Council of Ministers discussed about the need to have a befitting Secretariat Building for Telangana State and decided to construct a new Secretariat at the same site by suitable modifications of the old Secretariat. In view of disturbance caused by the construction of new Secretariat, the Council of Ministers also decided for temporary shifting of Secretariat for a few months. The direction was also given to enumerate numbers and conditions of all residential accommodation meant for Government Officials and employees.*
>
> *(ii) xxxxxxxxxx*

In unison, the learned counsels for the petitioners have raised the following contentions before this Court:-

Firstly, the impugned decision is an unreasonable one. For, prior to taking the said decision, no material was placed before the Cabinet in order for the Cabinet to conclude that there is a need for demolishing the present Secretariat, and for constructing a new one. Therefore, the decision is capricious and whimsical one. Hence, it is an arbitrary decision taken without any rhyme or reason.

Elaborating this argument, Ms. B. Rachna, the learned counsel for the petitioner in W.P. (PIL) No. 145 of 2016, has emphasized the fact that since no material was placed before the Cabinet so as to conclude that there is a necessity of constructing a new Secretariat complex, the impugned decision suffers from Wednesbury principle of unreasonable. Relying on the case of **Associated Provincial Picture Houses, Limited v.**

Wednesbury Corporation[1]**,** the learned counsel has contended that the Wednesbury principle of unreasonableness emphasizes four facets of the decision making process: firstly, material which ought not to be considered has been considered by the decision maker; secondly, material which is relevant, but has been ignored by the decision maker; thirdly, the decision is in contravention of law bestowed by Parliament; fourthly, if the decision arrived is so unreasonable that no reasonable person could have arrived at such a decision. If some of these elements exist in the decision making process, then the decision is said to suffer from Wednesbury principle of unreasonableness.

Furthermore, according to the learned counsel, the impugned decision dated 18.06.2019 had no pre-text, context, or sub-text. For, prior to taking of the said decision, no material was placed before the Cabinet to reach the said decision. There were neither any expert committee reports, nor any plans, nor any indication as to the cost of construction, nor was any environmental clearance sought. Therefore, the decision was taken in thin air. Thus, the decision clearly suffers from Wednesbury principle of unreasonableness.

Moreover, even the reports of the Technical Committee and of the Sub-Committee submitted to the State are post-decisional reports. For, while the decision was taken by the Cabinet on 18.06.2019, the Technical Committee Report is dated 27.08.2019, and the said Sub-Committee report is dated

[1] (1947) 2 All ER. 680

29.08.2019. This clearly proves that on the date when the decision was taken by the Cabinet, the Cabinet did not have any report before it. Hence, the decision is absolutely an unreasonable one.

Secondly, the learned counsel for the petitioners have pleaded that after the bifurcation of the former State of Andhra Pradesh into the States of Telangana and the State of Andhra Pradesh, both the States were sharing the Secretariat complex. Subsequently, the State of Andhra Pradesh has vacated its portion of the Secretariat complex and shifted its Secretariat to Amravati, its new capital. Hence, presently, the State of Telangana has sufficient space to run its Secretariat comfortably from the existing Secretariat complex. Therefore, to demolish the eight buildings which comprise the Secretariat complex in order to construct a new Secretariat complex is an illogical and an arbitrary decision.

Thirdly, the eight different blocks have a design life span of about seventy years. Out of these eight blocks, two blocks, namely North and South 'H' blocks, were constructed in 2012. Hence, these two blocks have a long life span. Moreover, but for Block 'G' which was constructed in 1888, and is in dilapidated condition, other five blocks still have a life span of thirty to sixty years. Thus, the decision to demolish all the blocks and to raise a new Secretariat is an unreasonable one.

Fourthly, already the State is reeling under a great debt. Therefore, the expenditure, which would be incurred for

construction of a new Secretariat, cannot be afforded by the State exchequer. Elaborating this plea, Mr. T. Rajanikanth Reddy, the learned counsel for the petitioner in Writ Petition (PIL) No. 66 of 2019, has stressed the fact that it is extremely important to safeguard the public exchequer from the sheer wastage of large amount of money, which would unnecessarily be spent on the construction of a new Secretariat complex.

Fifthly, since the raising of a new Secretariat complex would cause a heavy burden on the State exchequer, perforce the amount of money which could easily be spent on welfare schemes for the benefit of the people, the said amount would have to be diverted for the purpose of construction of a new Secretariat. Therefore, the construction of a new Secretariat complex would be against public interest.

Mr. Prabhakar Chikkudu, the learned counsel for the petitioners in W.P. (PIL) No. 71 of 2019, has further pleaded that at the time of the bifurcation of the former State of Andhra Pradesh into the twin states of Andhra Pradesh and Telangana, the Parliament had enacted the Andhra Pradesh Reorganization Act, 2014 ('the Act', for short). According to Section 2(a) of the Act, the word "*appointed day*" has been defined as the day which the Central Government may, by notification in the Official Gazette, appoint. And according to Official Gazette, the "*appointed day*" was declared to be 02.06.2014. According to Section 3 of the Act, from the "*appointed day*" i.e. from 02.06.2014, Telangana State was formed out of the former State

of Andhra Pradesh. According to Section 5 of the Act, Hyderabad was to be common capital for the State of Telangana, and Andhra Pradesh "*for such period not exceeding ten years*". According to Section 5(2) of the Act, "*after expiry of the period referred to in sub-section (1), Hyderabad shall be the capital of the State of Telangana and there shall be a new capital for the State of Andhra Pradesh*". Furthermore, according to Section 8 of the Act, "*the Governor shall have special responsibility for the security of life, liberty and property of all those who reside in such area*". According to Section 8(2) of the Act, "*In particular, the responsibility of the Governor shall extend to matters such as law and order, internal security and security of vital installations, and management and allocation of Government buildings in the common capital area*". Furthermore, "*In discharge of the functions, the Governor shall, after consulting the Council of Ministers of the State of Telangana, exercise his individual judgment as to the action to be taken*". Therefore, according to the learned counsel, the decision to demolish and reconstruct a new Secretariat building is a decision that could be taken only by the Governor in his individual capacity. Therefore, the decision being taken by the Council of Ministers is in violation of Section 8 of the Act.

Relying on the case of **Brij Mohan Lal v. Union of India**[2], the learned counsel has vehemently contended that although a policy decision cannot be challenged before the Court, but the process of taking a decision can certainly be challenged on six

[2] (2012) 6 SCC 502

different grounds: firstly, if the policy fails to satisfy the test of reasonableness; secondly, the change in policy must be made unfairly, and should give the impression that it was so done arbitrarily on any ulterior intention; thirdly, the policy can be faulted on grounds of *mala fide,* unreasonableness, arbitrariness or unfairness, etc; fourthly, if the policy is found to be against any statute, or the Constitution, or runs counter to the philosophy behind these provisions; fifthly, it is *de hors* the provisions of the Act, or legislations; and sixthly, if the delegate has acted beyond its power of delegation.

According to the learned counsel, as stated above, the decision is unreasonable, and arbitrary. Furthermore, it is contrary to Section 8 of the Act. Hence, the case clearly falls within category No. 3 and 4 as mentioned hereinabove. Thus, the impugned decision deserves to be set aside by this court.

Lastly, Mr. Satyam Reddy, the learned Senior Counsel, appearing for the petitioners in W.P. (PIL) No. 136 of 2016, submits that the Cabinet decision dated 18.06.2019 is not a 'policy decision', but an 'administrative decision'. Therefore, the power of judicial review is not limited while examining the legality of the said decision.

On the other hand, Mr. B.S. Prasad, the learned Additional General, has raised the following counter-contentions:-

Firstly, the petitioners in W.P. (PIL) No.66 of 2019, and in W.P. (PIL) No.71 of 2019, are political adversaries of the political

party in power in the State. Therefore, he has challenged their *locus standi* to file a Public Interest Litigation. According to the learned Advocate General, Public Interest Litigation has a very limited scope: it is meant for raising the violations of the human rights of the weaker sections of the society who are not in a position to defend their interests and rights against the mighty power of the State. Public Interest Litigation, according to the learned Advocate General, is not meant for settling political scores. If politicians are permitted to file Public Interest Litigation, the petition should be termed as a "Political Interest Litigation", and not as a "Public Interest Litigation". Therefore, he has challenged the very *locus standi* of the petitioners in filing the W.P. (PIL) No.66 of 2019, and W.P. (PIL) No.71 of 2019. In order to buttress this plea, the learned Advocate General has relied on the case of **Ashok Kumar Pandey v. State of West Bengal**[3].

Secondly, relying on the case of **Narmada Bacho Andolan vs. Union of India**[4], the learned Advocate General has pleaded that the construction of an infrastructure facility consists of three different stages, namely, (i) conception, or planning; (ii) a decision to undertake the project; (iii) the execution of the project. The decision dated 18.06.2019 is only at the conception and planning state. Therefore, the Cabinet decision dated 18-06-2019 is not a final decision, but an interim one. According to the learned Advocate General, a bare perusal of the decision,

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[3] (2004) 3 SCC 349
[4] (2000) 10 SCC 664

quoted hereinabove, clearly reveals that the Cabinet is mulling over the twin possibility of either modifying the existing building, or to demolish the existing structures, and to construct a new Secretariat complex.

Thirdly, it is a highly misplaced argument that the Cabinet did not have any material before it prior to taking the interim decision. For even on an earlier occasion, there were some discussions within the Cabinet for improving the Secretariat; it had called for certain reports from the experts. There were two reports, dated 16.02.2012, and 18.03.2013, which dealt with the security issues of the Secretariat complex. There was another report submitted on 11.09.2014, by the State Disastrous Response and Fire Service Department. Subsequently, on 18.10.2016, there was another report submitted by the same department. Thus, even on earlier occasions, the Cabinet had been toying with the idea of modifying, or replacing the Secretariat buildings. Even on 18.06.2019, the Cabinet is merely contemplating whether to modify, or to replace the Secretariat buildings. Hence, the decision dated 18.06.2019, is not a final one.

Fourthly, since the decision is not a final one, a Sub-Committee was constituted which called for reports from the Technical Committee and from the Indian Green Building Council ('IGBC', for short). The Technical Committee has inspected each of the eight blocks of the Secretariat; the Technical Committee has submitted its report on 27.08.2019. It

has clearly pointed out the deficiencies in each block; it has concluded that these deficiencies cannot be gotten rid of by modifying the buildings. Therefore, the existing blocks need to be demolished, and a state of the art Secretariat needs to be constructed. Furthermore, the IGBC has also pointed out the inherent defects which exist in each building. According to the said Report, the buildings conform neither to the IGBC norms, nor to the norms established by the National Building Code ('NBC', for short), or by the Pollution Control Board Norms ('PCBN', for short). Although these two Reports have been submitted, they are yet to be placed before the Cabinet. The Cabinet will take its final decision after examining the said two Reports. Thus, the impugned decision is not a final decision.

Hence, the learned counsels for the petitioners are unjustified in claiming that these reports are post-decisional reports. In fact, these Reports will be placed before the Cabinet, for the Cabinet to take the final decision. However, as the present writ petitions are pending before this court, the Cabinet has not taken a final decision. Thus, the final decision is yet to be taken after considering the reports of the Technical Committee, and the IGBC and the recommendation of the Sub-Committee of the Cabinet.

Fifthly, a bare perusal of the history of the construction raised in the Secretariat complex, which has spanned from 1888 to 2012, and the perusal of the map of the Secretariat complex would clearly reveal that the buildings are scattered

throughout the campus, they are unconnected to each other, the spaces left between the building cannot be utilized fully, the campus has a disorderly appearance. Moreover, the buildings do not incorporate the latest technology in information technology or the methods of modern construction. Although the accommodation may be sufficient, but they are inadequate as they no longer conform to the present norms.

Sixthly, the argument raised by Mr. Prabhakar Chikkudu with regard to violation of Section 8 of the Act is highly misplaced. For, the argument overlooks Section 5 of the Act which had declared Hyderabad as a common capital for a maximum period of ten years. However, as the State of Andhra Pradesh has decided to construct a new capital for itself, it has vacated the Secretariat complex, and has taken its Secretariat to Amravati. Therefore, the question of "allocation of buildings" by the Governor would not even arise. Since the Cabinet is well within its jurisdiction to decide about the modification or construction of a new Secretariat, the impugned decision does not violate Section 8 of the Act.

Seventhly, countering the arguments raised by Mr. Satyam Reddy, the learned Senior Counsel, relying on the case of **Narmada Bacho Andolan** (supra), the learned Advocate General has pleaded that undertaking of an infrastructure project is a policy decision of the government. In exercise of writ jurisdiction the Courts do not transgress into the field of policy decision. Whether an infrastructure project is required or not?

How the infrastructure project should be executed? These are policy decisions to be taken by the government. The Courts are ill-equipped to adjudicate on a policy decision.

Moreover, when two or more options or views are possible, and when the Government accepts one of them, in such a situation it is not possible for the Court to sit as a Court of Appeal over such a policy decision. Even a hard decision need not necessarily be a bad decision. Therefore, according to the learned Advocate General, the power of judicial review, while dealing with a general policy decision of the Government, is an extremely narrow one.

Eighthly, relying on the case of **Villianur Iyarkkai Padukappu Maiyam v. Union of India**[5], the learned Advocate General has further pleaded that normally there is a presumption that a Government action is a reasonable one, and is in public interest. Therefore, a heavy burden lies on the party challenging the validity of a Government policy decision. It is for the party to establish that the policy decision is either unreasonable, or is not in public interest. Such a burden has to be discharged to the satisfaction of the Court by proper and adequate material. For, the Courts cannot presume ipsi dixit that a policy decision taken by the Government is unreasonable, or against public interest.

Ninthly, relying on the case of **Rajesh Laxmichand Mota v. State of Gujarat**[6], the learned Advocate General has further

[5] (2009) 7 SCC 561
[6] (2012) SCC Online Guj 1190

pleaded that the power of expenditure is covered by Article 282 of the Constitution of India. The said power is not limited to the fields, which the Parliament, or the Legislature of the State, is empowered to make laws. As long as the expenditure is to be incurred for the general welfare of the people, a tax-payer cannot question the expenditure of the money on the ground that the expenditure will deplete the public funds. Moreover, the Court is not competent to go into the question as to whether the expenditure incurred by the Government is for public purpose, or not, or whether it is wise or not? Therefore, the contention raised by the learned counsel for the petitioners that a huge expenditure, or investment, is required for construction of a new Secretariat complex is a misplaced argument.

Tenthly , relying on the case of **Dr. G. Krishnamurthy vs. Chief Secretary to Government, Tamil Nadu**[7], the learned Advocate General submits that the issue before the Madras High Court was with regard to a PIL which had challenged the shifting of the State Secretariat from Omandurar Estate, Anna Salia, Chennai, to its previous place, viz., Fort St. George, Chennai. A learned Division Bench of the Hon'ble High Court of Madras had clearly opined that Public Interest Litigations are not meant for serving political purpose, or solving political problem. Political problem ought to be solved through political process, and not through judicial process. The concept of public interest litigation is restricted to safeguarding the interests, and welfare of the poor people, and not to decide the propriety of the

[7] (2011) 4 CTC 113

policy decision of the Government. In fact, it is for the Government to decide as to which building shall be comfortable for the purpose of establishing the State Secretariat. If the Government takes a policy decision to run the Secretariat from the old buildings, the Court cannot issue a direction to the Government to change the decision.

Lastly, relying on the case of **Janhit Manch v. State of Maharashtra**[8]**,** the learned Advocate General has emphasized the principles of separation of powers. According to the learned Advocate General, the Government is well within its power to take a decision either to modify, or to newly construct a Secretariat, either at its present site, or at any other place. Although perspective from individuals may vary, but if the elected bodies, which have policy formulation powers, are to be superseded by the ideals of each individual, the situation would be chaotic. Therefore, unless the policy decision falls foul of the Constitution of India, the Court should be reluctant to interfere with the same. According to the learned Advocate General, the decision of the Cabinet being an interim one, and as the decision does not violate any statutory or constitutional provisions, nor violates the fundamental rights of the people, the decision should be left intact by this Court.

Heard the learned counsel for the parties, examined the record, and considered the case law cited at the Bar.

[8] (2019) 2 SCC 505

The first issue before this Court is, what is the scope and ambit of the power of judicial review while examining a government policy decision?

Government policy decisions are generally divided into two categories: *(i)* economic policy decisions, and *(ii)* non-economic, or general policy decisions. The exercise of power of judicial review in the first category is an extremely limited one. For, in catena of cases, the Hon'ble Supreme Court has clearly opined that the Government has to be given freedom at the joints while dealing with economic policies. For, economic policies are decided after taking into account large number of factors. These factors may be known, or unknown to the judiciary. Moreover, such economic policies are decided after consulting experts in the fields. Therefore, the Court should be weary of interfering with economic policies. Furthermore, the courts do not sit as court of appeals over policy decisions. **[**Ref. to **BALCO EMPLOYEES' UNION (REGD.) V. UNION OF INDIA (2002) 2 SCC 333]**.

However, when it comes to the second category of policy decisions, the Courts have a slightly wider scope of interference than in interfering with an economic policy decision. In the case of **Brij Mohan Lal** (supra), the Hon'ble Supreme Court has opined as under:-

> *Cases of this nature can be classified into two main classes: one class being the matters relating to general policy decisions of the State and the second relating to fiscal policies of the State. In the former class of cases, the courts have expanded the scope of judicial review when the actions are arbitrary, mala fide or contrary to the law of the land; while in the latter class of cases, the scope of such judicial review is far narrower.*

Nevertheless, unreasonableness, arbitrariness, unfair actions or policies contrary to the letter, intent and philosophy of law and policies expanding beyond the permissible limits of delegated power will be instances where the courts will step in to interfere with government policy. The present decision is a non-economic policy decision, although the decision will have financial ramification for the State exchequer.

In the present case, although the Cabinet decision would have financial ramification, it is a general policy decision. Hence, the moot questions before this Court are whether the impugned decision is an unreasonable or arbitrary one, or not? Whether the impugned decision is in violation of a provision of a statute or not? Prior to answering this issue, it has to be kept in mind that this Court is permitted only to consider the process of decision making. Moreover, this Court does not sit as an appellate authority over the policy decision of the Government.

A bare perusal of the Cabinet decision dated 18.06.2019 clearly reveals that the Cabinet is considering two options; firstly, whether to modify the present standing structures of the Secretariat, or not? Secondly, whether to demolish the present standing structures of the Secretariat complex, and in its place, to construct a new Secretariat complex or not? Therefore, obviously, the decision is not a final one, but is an interim one. Hence, the entire premise of the arguments of the learned Counsel for the petitioners, that the impugned decision is a final one to demolish the Secretariat complex, is highly misplaced. Hence, they are unjustified in claiming that the Cabinet has taken a final decision to demolish the present Secretariat complex and to raise a new one.

In fact, a bare perusal of the chronology of events reveals that it is certainly not the first time that the Cabinet has examined the said issue. Even on 16.02.2012, and 18.03.2013, the government had received two Reports with regard to the security issues of the Secretariat. Similarly, on 11.09.2014, the State Disastrous Response and Fire Service Department had submitted its Report with regard to lack of fire safety measures and equipments in the different blocks of the Secretariat. Even in 2015, the said issue was considered by the Cabinet in its meeting dated 30.01.2015. A decision was taken to reconstruct a Secretariat at the place of the old one. It is this decision which was challenged in the three writ petitions filed in 2016. Even thereafter, in the Report dated 18.10.2016, the State Disastrous Response and Fire Service Department had pointed out a large number of deficiencies in the existing buildings. Hence, even in its meeting dated 18.06.2019, the Cabinet is again seized with the same issue, but has yet to reach a final conclusion.

In the case of **Narmada Bacho Andolan** (supra), the Hon'ble Supreme Court has pointed out that the construction of an infrastructure project entails three separate steps; (i) conception, or planning; (ii) a decision to undertake the project; (iii) the execution of the project itself.

Since the project is still at the stage of conception or planning, the Cabinet was justified in constituting a Sub-Committee, and in calling for further reports from the Technical Committee, and from the IGBC. Therefore, the learned counsel

for the petitioners are unjustified in claiming that the Reports submitted by the Technical Committee, and by the IGBC are "post-decisional reports". In fact, as pointed out by the learned Advocate General it is these Reports which would be placed before the Cabinet prior to it taking a final decision. Thus, these Reports are "pre-decisional" ones. In fact, the final decision is yet to be taken by the Cabinet. Therefore, the argument, that the Cabinet had no material before it to take a final decision to demolish the existing Secretariat buildings, is a misplaced contention. Hence, unacceptable.

Another issue, which needs to be answered by us, is whether the decision taken by the Cabinet on 18.06.2019 is a 'policy decision' or an 'administrative decision'? This issue is no longer *res integra*, as in the case of **Narmada Bacho Andolan** (supra), the Hon'ble Supreme Court has clearly opined that a decision, with regard to the construction of infrastructure, is a policy decision. Therefore, the contention raised by Mr. Satyam Reddy, the learned Senior Counsel, is clearly unacceptable.

The learned counsel for the petitioners have emphasized the adequacy of the present Secretariat complex for catering to the needs of the government. The issue whether the present buildings are adequate, or inadequate, is an issue that the Court cannot go into. For, the very words 'adequate' or 'inadequate' are relative terms. What may be sufficient and adequate for one party need not necessarily be sufficient and adequate for another party. Therefore, it is for the Government

to decide whether the present buildings are adequate, or inadequate for its needs and requirements. Hence, the petitioners are not justified in claiming that the present buildings are adequate for the needs of the Government.

In the case of the **Janhit Manch** (supra) the Hon'ble Supreme Court has already opined that it is not for the petitioners to decide about the adequacy of infrastructure, or even for the location of the infrastructure. The Hon'ble Supreme Court has held as under:-

> *We have to keep in mind the principles of separation of powers. The elected Government of the day, which has the mandate of the people, is to take care of policy matters. There is a democratic structure at different levels, starting from the level of Village Panchayats, Nagar Palikas, Municipal Authorities, Legislative Assemblies and the elected Parliament; each of them has a role to perform. In aspects, as presented in the instant case, a consultative process is always helpful, and is one which has already been undertaken. The philosophy of Appellant 2 cannot be transmitted as a mandatory policy of the Government, which is what would happen were a mandamus to be issued on the prayers made. Perspective of individuals may vary, but if the elected bodies which have policy formulation powers, is to be superseded by the ideals of each individual, the situation would be chaotic. The policies formulated and the legislations made, unless they fall foul of the Constitution of India, cannot be interfered with, at the behest of the appellants. The appellants have completely missed this point.*

The learned Advocate General further submitted that after the decision of 18.06.2019, by G.O. dated 20.06.2019, a Cabinet Sub-committee was constituted, and was asked to present their recommendations. The government also constituted a Technical Committee comprising of four Engineers-In-Chief to study the facilities available, and to submit its recommendation, keeping in mind the two options which were available before the Cabinet, namely the option of making alterations/additions to the existing facilities in order to

convert the blocks into a befitting Secretariat, or in the alternative, to recommend for construction of a new Secretariat complex. The Technical Committee met on 09.07.2019, and resolved to obtain reports from the Director General, State Disaster Response and Fire Services, and the IGBC. While the former was directed to examine the compliance of fire safety, the latter was directed to examine the adherence of different blocks to the "*Green Building Requirement Norms*". Consequently, the Technical Committee submitted its report.

The learned Advocate General has drawn the attention of this Court to the Reports submitted by the State Disaster Response and Fire Service Department, dated 18.10.2016. According to the learned Advocate General even the recent Report dated 23.07.2019 reveals the same condition of the buildings. Therefore, the finding of the Report dated 23.07.2019 is not being reproduced here. Moreover, the Report submitted by the IGBC, dated 26.07.2019 clearly proves that the buildings have inherent defects which cannot be repaired, re-modified or renovated.

According to the Report dated 18.10.2016 the Department had inspected each block and found the following deficiencies:-

The 'B' and 'C' blocks are of forty-one years old. There is a grave deficiency in the setting of the 'B' block. On the Eastern side, there is a deficiency of 3.50 mts., on the Western side, there is a deficiency of 1.00 mts. to 5.00 mts. On the Southern side, there is a deficiency of 3.80 mts. to 4.80 mts. Thus, the

required set-offs have not been left. Even in the internal staircase, a width of the internal staircase is less by 0.10 mts. Since vehicles are being parked on the Northern side, again the fire-fighting trucks would not have access to the 'B' block from the Northern side.

Even the 'C' block is not properly situated as the required setbacks are conspicuously missing. On the Northern side, there is a deficit of 3.30 mts. On the Southern side, there is a deficit of 2.70 mts. On the Western side, there is a deficit of 1.50 mts. On the Western side, even the available open space is blocked by construction of an AC plant. Thus, there is no clear passage on Western side. Since the required setbacks have not been left properly, in accordance with law, the fire-fighting trucks would not have easy access to the 'C' block. In case of a fire accident, it would jeopardize the lives of those who occupy the 'C' block.

Even the 'D' block suffers from certain inherent deficits. In this block, the exit width required on different floors, from ground floor to the third floor, have a deficit of 0.90 mts. in width of the staircase. Thus, if the occupants of the 'D' block need to be evacuated, staircase is too small for evacuating the persons out of this building. The staircase provided within the building cannot be widened.

Likewise, in 'J' block, the required setback has not been left. On the Western side, there is a deficit of 2.20 mts. Moreover, since vehicles are parked on the Northern and the

Southern side, this block cannot be approached by the fire-fighting trucks from the Northern and the Southern side. And since the Western side of the block has insufficient set offs, the fire-fighting trucks would find it difficult to approach from the Western direction. This, lack of accessibility would endanger the lives of the people working in the said block.

On the Southern side of the 'K' block, a setback of 6.00 mts. needed to be left. However, no setback has been left. Therefore, the said block does not conform to the building norms. Moreover, since vehicles are parked around this block, the fire-fighting trucks would not have free access to this block. Thus, the 'K' block also has inherent deficiencies built into it.

The report dated 18.10.2016 further reveals that all the blocks within the Secretariat complex, do not have sufficient fire-fighting equipments, and systems. Even the emergency lighting systems are inadequate. In some of the blocks, the fire lift is not even provided for, and public address system is conspicuously missing. The electrical wirings are old, and desperately in need of change. The old wiring itself may cause short-circuit, and thereby fire may erupt in any of these blocks.

Moreover, the map of the campus further reveals that buildings have mushroomed here and there, in a most unplanned, unorganized, and haphazard manner. There is no interconnection between the buildings. Each block has an independent existence, unconnected to the block nearby. Even the parking lots are scattered all over the campus catering to

different blocks. Thus, there is neither any logic, nor any systemic, nor any coherence either esthetically, or architecturally within the entire campus. The blocks in the campus range from large blocks, like the 'D' block, to a miniscule building called "the media lounge". Thus, the entire campus lacks essential uniformity, and sense of orderliness.

Moreover, since the blocks have been constructed randomly over a period of years—from 1888 to 2012—the blocks lie scattered in the campus. Hence, even the open space which is available cannot be used properly. At times, the blocks are too close to each other for safety precautions. Due to the scattered nature of the different blocks of the Secretariat, there is a haphazard movement of staff, officers, visitors, and vehicles. Even the movement of files from one block to the other creates a security risk. For, the files are likely to be either tampered with, or disappear altogether. Hence, presently the development of the entire complex is unplanned, unorganized, and unbefitting of a modern day Secretariat.

Furthermore, the designed lifespan of these blocks is about seventy years. The 'G' block, a 131 years old building, has already outlived its lifespan. It is dilapidated and outdated. The 'K' block is fifty-five years old; 'B' and 'C' blocks are forty-one years old; and 'L' block is thirty-one years old. Therefore, these buildings are not just outdated, but more so, do not conform to the *Green Building Requirement Norms* established by the Indian Green Building Council ('IGBC'). Hence, these blocks would no

longer conform to the IGBC norm, which requires rain water harvesting systems, solar lighting systems, proper ventilation and lightening, necessary wiring for installation of computers etc. Furthermore, considering the number of decades that most of the buildings have existed, their continuous repairs would be recurring expenditure for the government to bear. Even the building of the Hon'ble Chief Minister's office is forty-one years old. Therefore, the respondents are justified in claiming that it will be difficult to maintain and operate from the buildings which have lost their utility.

In the present campus, while the fire station building is situated in the Southeast corner, the fire store room is situated in the Southwest corner. Moreover, electrical sub-stations are scattered in different parts of the campus. Even the canteen for the staff is not constructed at a central location.

Furthermore, according to the Report of the IGBC, the buildings do not have sufficient ventilation and spaces as the internal spaces have been bifurcated with partitions. Even *"the air-conditioned spaces with unitary air-conditioners do not have provision of fresh air*". According to the team, "*the air-conditioned spaces should be designed with Fresh Air Ventilation system as per IGBC norms"*. However, the norms are not being adhered in some of the blocks. Moreover, 75% of the regularly occupied spaces in each building should have adequate day-lighting i.e. 110 lux to 2,200 lux at working plane level. However, many of the buildings have small windows. Since the

internal spaces have been bifurcated with partitions, the interior spaces do not have adequate daylight. The "*continuous exposure of occupants to inadequate daylight could lead to health issues in future and higher energy consumption due to artificial lighting*". Likewise, while according to the IGBC *Green Building Requirement Norms*, 75% of the regularly occupied spaces should have "*good outdoor views*, most of the blocks do not have the good outdoor views. According to the IGBC, the lack of good outdoor views "*could impact productivity and health & well-being of occupants*".

Dealing with the air-conditioning of the buildings, it was noticed by the team that "*the refrigerants used in split air-conditioners that were installed more than ten years ago is with R22 which is harmful to the environment*".

Dealing with the energy efficiency, the team noticed that according to the Energy Conservation Building Code ('ECBC'), "*the window glazing in air-conditioned spaces should have efficient solar heat gain coefficient (SHGC) of 0.25 or lesser*". However, it was observed that "*the glazing used in the buildings is single glazed which may have SHGC in the range of 0.4 – 0.6 or higher*". Therefore, the window glazing does not conform to the ECBC norms. Similarly, while the external walls should have a maximum U-value of 0.63 Watts/sq.m/K, the old and new buildings in the campus have brick walls with 150-220 mm thickness which may have U-value in the range of 2 to 3 Watts/sq.m/K or higher. Likewise, according to the norms, the

roof shall have a maximum U-value of 0.33 Watts/sq.m./K. However, as per the observations, "*the buildings do not have over-deck or under-deck insulation and hence the U-value would be in the range of 1.2 to 2 Watts/sq.m/K or higher*". Despite the fact that these ECBC norms are mandatory in nature, none of these norms are adhered to in the buildings. Therefore, the buildings are not constructed in accordance with the ECBC norms.

Dealing with the energy efficiencies of the buildings, the IGBC team pointed out that "*most of the buildings are with CFL's and T8 and T12 tube lights which are inefficient and consumes higher energy*". Therefore, the norm set for energy efficiency is not met despite the fact that the norm is a mandatory one. Even the fans installed in the buildings are outdated and consume higher energy. Despite the fact that the mandatory requirement is that "*the ceiling fans installed should be BEE 3 star rated or above*", the fans do not meet the said norm.

The IGBC norms require that there should be on-site renewable energy. According to the ECBC 2017 norms "*buildings shall be installed with on-site renewable energy systems equivalent to at least 25% of roof area or area required for generation of energy equivalent to 1% of total peak demand or connected load of the building, whichever is less. This is a mandatory requirement*". However, according to the team, "*currently, on-site renewable energy systems are not installed in*

any of the building within the campus". Therefore, again the mandatory requirement of the building norm is being flouted.

Likewise, "*energy meters shall be installed for all major energy consuming systems such as lighting, air-conditioning, ceiling fans, lifts, etc. to measure and monitor energy consumption*". But, according to the team, "*energy sub-meters are not installed for different energy consuming applications in any of the buildings within the campus*".

Similarly, considering the water efficient plumbing fixtures, the mandatory requirement is as follows:-

a. Water Closet: 6/3 LPF
b. Urinal: 4 LPF
*c. Taps: 6 LPM**
*d. Health faucet: 6 LPM**
**flow rates should be at 3 bar flowing water pressure.*
This is a mandatory requirement.

However, the team observed that "*common toilets in the building are in poor condition with leakages and inefficient plumbing fixtures (taps, urinals and water closets). Leakages and inefficient water fixtures consume more potable water resulting in higher energy and water bills".*

Likewise, there is a requirement that "*the expose roof area shall be covered by high reflective material or roof garden or both, to reduce negative impact on micro-climate*". However, according to the team, "*the buildings do not have roof area covered with high reflective material or roof garden, which leads to increased heat island effect*".

Dealing with the universal design, the NBC 2016 has provided certain norms for differently challenged people which are as follows:-

a. Preferred parking spaces closer to building entrances
b. Toilets
c. Uniformity in floor level
d. Lifts with Braille and audio assistance
e. Seating area near lift lobbies
f. Ramps with handrails at building entrance
g. Wide Pathways
h. Visual warning signage
i. Tactile flooring

But, according to the team, "*the buildings do not have proper facilities for differently abled people as per NBC 2016 norms, i.e. toilets, lift with Braille assistance & adequate opening width, seating area near lift, visual warning signage, tactile flooring, ramps with handrails (proper slope; presently steep slope ramps are provided)*".

Similarly, presently, there is a mandatory requirement on "Rainwater Harvesting, Roof and Non-roof". According to the mandatory requirement, "*the campus shall design rainwater harvesting system to capture & divert the rainwater run-off from roof and non-roof areas through an integrated storm water network to enhance ground water table and reduce municipal water demand*". But, the team observed that "*the campus has only two rainwater harvesting pits which are not maintained properly to capture the entire run-off from roof and non-roof areas. Moreover, the campus does not have an integrated storm water network to divert the rainwater from the roof and non-roof areas to the centralized/decentralized rainwater harvesting*

systems (ponds, tanks, pits). Presently, the rainwater run-off is diverted into the municipal drains".

In similar way, the waste water treatment and reuse is required to be constructed within the campus. According to the norms, "*the campus shall treat 100% waste water generated on-site as prescribed by Central (or) State Pollution Control Board to the quality standards suitable for reuse. Also, campus may use treated waste water for landscaping, flushing & cooling tower make-up water, thereby reducing dependence on potable water*". However, the team observed that "*the campus does not have a centralized/decentralized sewage treatment plant to treat the waste water generated in the buildings and service blocks. Since the waste water is not treated and reused, the demand for potable water would be very high, leading to higher energy and water bills*".

Another mandatory requirement is that there should be a "*Building management system*". According to the requirement, "*the campus shall have building management system to monitor and control mechanical, electrical and plumbing systems*". But, according to the team, "*the campus does not have building level or campus level building management system to monitor and control the mechanical, electrical and plumbing systems*". Thus, according to the report of the IGBC, the buildings are not in accordance with the requirements of the IGBC, or with the requirements of the NBC, the ECBC, and the norms of PCB.

By letter dated 27.08.2019, the reports of the Director General, Telangana State Disaster Response and Fire Services and Principal Advisor, and the IGBC were placed before the Technical Committee. The recommendations of the Technical Committee were further submitted to the Cabinet Sub-committee. According to the report, the Cabinet Sub-committee had met on 28.08.2019, had considered the recommendations of the Technical Committee in detail and has recommended to the Hon'ble Chief Minister, by letter dated 29.08.2019 that there is a need for construction of a new Secretariat complex. However, the Cabinet is yet to take a final decision with regard to the aspect whether there is a need for construction of a new Secretariat or not? Thus, obviously, the Cabinet decision dated 18.06.2019 is an interim one. Hence, the learned counsel for the petitioners are unjustified in claiming that the decision taken on 18.06.2019 is an arbitrary an unreasonable decision. Hence, the said contention is unacceptable.

But on the other hand, the learned counsel for the petitioners have also emphasized that since some of the blocks were constructed as recently as 2012, and since these blocks have a long design life span, they need not be demolished. However, the said argument is a spurious one. For, if and when a new Secretariat needs to be constructed, the complex must rise homogeneously. Simultaneously, a Secretariat complex cannot be divided into a new complex while retaining parts of the old complex. Even the location of the old complex (North

and South H blocks) may not permit a unified design for the new Secretariat, which may be required to be constructed. According to the map submitted by the respondents, North 'H' block is close to the Helipad, and the South 'H' block is right in the middle of the entire campus. Therefore, the argument that some parts of the Secretariat need not be demolished while others may be demolished, and re-constructed, is a misplaced argument; hence, unacceptable.

The learned Counsel for the petitioner have also highlighted the financial position of the State in order to plead that a new Secretariat cannot be afforded by the State. However, before this issue can be examined, the doctrine of separation of power has to be kept in mind. It is not for the judiciary to decide as to how and when expenditure is to be incurred by the Executive. The availability of the capital, the incurring of expenditure are issues which fall squarely in the arena of the Executive. The Judiciary should be weary of entering into the territory reserved for the Executive.

In the case of **Rajesh Laxmichand Mota** (supra), a learned Division Bench of the Hon'ble Gujarat High Court has opined that the expenditure to be incurred by the government cannot be the concern of a tax-payer. For, it is for the government to decide the amount to be spent on the construction of an infrastructure, and the source of such an amount is to be discovered by the government. We are in agreement with the opinion so expressed by Their Lordships of

the Hon'ble Gujarat High Court. Therefore, the petitioners are not justified in claiming that since the State exchequer is already over-burdened with debt, the government can ill afford to invest a large amount of monies on a possible construction of a new Secretariat. Hence, the said plea is unacceptable.

Mr. Prabhakar Chikkudu, the learned counsel, has, of course, stressed only on the violation of Section 8 of the Act.

Section 3 of the Act speaks about the formation of the Telangana State from the appointed day i.e. from 04.03.2014.

Section 5 of the Act creates Hyderabad as the common capital for the State of Telangana, and the State of Andhra Pradesh. According to Section 5 of the Act, the Hyderabad shall continue to be common the capital "*for such period not exceeding ten years*". According to Section 5(2) of the Act, after expiry of the period referred to in sub-section (1) i.e. ten years, "*Hyderabad shall be the capital of the State of Telangana and there shall be a new capital for the State of Andhra Pradesh*". Therefore, the maximum period for which Hyderabad would continue to be a common capital would be ten years. However, the maximum period does not preclude the State of Andhra Pradesh from having its own separate and distinct capital. In fact, the State of Andhra Pradesh has decided to establish a new capital at Amaravathi. Having taken the said decision, the Government of Andhra Pradesh has vacated its possession of the Secretariat in Hyderabad. The Government of Andhra Pradesh has not only shifted its Secretariat to Amaravathi, but

has also shifted other organs of the State, such as the High Court, to Amaravathi. Therefore, the other provisions of the Act would necessarily have to be interpreted in light of Section 5 of the Act. For, once a separate and distinct capital has been created for the State of Andhra Pradesh, some of the provisions may loose their significance. Section 8 of the Act is as under:-

> ***8. Responsibility of Governor to protect residents of common capital of Hyderabad****: (1) On and from the appointed day, for the purposes of administration of the common capital, the Governor shall have special responsibility for the security of life, liberty and property of all those who reside in such area.*
>
> *(2) In particular, the responsibility of the Governor shall extend to matters such as law and order, internal security and security of vital installations, and management and allocation of Government buildings in the common capital area.*
>
> *(3) In discharge of the functions, the Governor shall, after consulting the Council of Ministers of the State of Telangana, exercise his individual judgment as to the action to be taken:*
>
> *Provided xxx*

Obviously, the provision of Section 8 of the Act would have to be interpreted in light of Section 5 of the Act. Section 8 of the Act while dealing with "allocation of Government buildings" would be relevant as long as Hyderabad continue to be a common capital for the twin States of Andhra Pradesh and Telangana. However, as presently, Hyderabad is no longer a common capital of the twin States, the very question of "allocation of Government buildings" would no longer be alive. Therefore, Mr. Prabhakar Chikkudu, the learned counsel, is unjustified in claiming that the power to allocate a building rests only with the Governor, and could not be exercised by the

Cabinet. Since the buildings of the Secretariat no longer need to be allocated between the State of Telangana, and the State of Andhra Pradesh, the question of His Excellency, The Governor invoking his power under Section 8 of the Act would not even arise. Therefore, the contention raised by the learned counsel is highly misplaced.

In conclusion, this Court does not find the impugned Cabinet decision either unreasonable, or arbitrary, or contrary to any provision of law. Therefore, this Court does not find any merit in the writ petitions. Hence, they are, hereby, dismissed. No order as to costs.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

29th June, 2020.

Tsr

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION (PIL) Nos.136, 142 AND 145 OF 2016

AND 66 AND 71 OF 2019

COMMON ORDER:

(Per Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

Dated: 29-06-2020