
Vanakkam.

I have received your letters dated 29.06.2023 one at 7.00 p.m. "said to be dismissing" Thiru V SenthilBalaji from my Cabinet and the other on the same day at 11.45 p.m. "keeping in abeyance" the said letter. Though your letters require only an outright disregard, I am writing to you to clarify both the facts and law on the issue on hand.

Firstly, let me place on record that the aid and advice of the Chief Minister and the Cabinet was neither sought nor given for both letters. Secondly, the fact that within a few hours after you issued such a strongly worded first letter, even alluding to "breakdown of constitutional machinery", a not so veiled threat, you withdrew it "to seek the opinion of the Attorney General". This shows that you had not even taken a legal opinion before such an important decision. The fact that it needed the Hon'ble Home Minister's intervention to direct you to take a legal opinion on this matter, itself shows that you have acted in haste with scant regard to the Constitution of India.

I, my Cabinet, and our MLAs enjoy the confidence of the people who are the ultimate sovereign. Our strongest asset is the trust of the people of the State, who are firmly behind us. Hence, high constitutional authorities like Governor while dealing with an elected government must act with dignity and not stoop to levelling veiled unsubstantiated threats about "breakdown of constitutional machinery".

With these in mind, let me answer your specific observations on the situation pertaining to Thiru V SenthilBalaji, Minister in the Government of Tamil Nadu.

If you had read my letter dated 01.06.2023, replying to your earlier letter dated 31.05.2023, you would have observed that I had clearly set out the difference between (i) a person facing investigation, (ii) a person against whom charges have been framed and (iii) a person convicted by a Court. It is only in the third category of cases that a person attracts disqualification from holding office as Minister or legislator as per the judgement of the Hon'ble Supreme Court of India in the case of *Lily Thomas v. Union of India*, (2013) 7 SCC 653. Since you have been relying only upon certain selective observations in the judgement in *Y. Balaji v. Karthik Desari & Anr.*, I am extracting the relevant portion of the binding precedent of the judgment in Lily Thomas case referred supra, for your kind perusal:

"38. Under sub-sections (1), (2) and (3) of Section 8 of the Act, the disqualification takes effect from the date of conviction for any of the offences mentioned in the sub-sections and remains in force for the periods mentioned in the sub-sections.

...

However, if any sitting Member of Parliament or a State Legislature is convicted of any of the offences mentioned in sub-sections (1), (2) and (3) of Section 8 of the Act and by virtue of such conviction and/or sentence suffers the disqualifications mentioned in sub-sections (1), (2) and (3) of Section 8 of the Act after the pronouncement of this judgment, his membership of Parliament or the State Legislature, as the case may be, will not be saved by sub-section (4) of Section 8 of the Act which we have by this judgment declared as ultra vires the Constitution notwithstanding that he files the appeal or revision against the conviction and/or sentence."

The above paragraph unambiguously states that disqualification is attracted only after conviction. Thiru V SenthilBalaji, as even your letter notes, has only been arrested by the Enforcement Directorate for investigation and not even a charge sheet has been filed against him till now.

Now, the question of continuance of a person facing criminal charges in the Cabinet is also no longer *res integra* in view of the pronouncement of the Hon'ble Supreme Court of India's Constitution Bench in the case of *Manoj Narula v. Union of India*, (2014) 9 SCC 1. The relevant portion of the judgement is also extracted below for your ready reference:

"100. Thus, while interpreting Article 75(1), definitely a disqualification cannot be added. However, it can always be legitimately expected, regard being had to the role of a Minister in the Council of Ministers and keeping in view the sanctity

of oath he takes, the Prime Minister, while living up to the trust reposed in him, would consider not **choosing a person with criminal antecedents against whom charges have been framed** for heinous or serious criminal offences or charges of corruption to become a Minister of the Council of Ministers. This is what the Constitution suggests and that is the constitutional expectation from the Prime Minister. **Rest has to be left to the wisdom of the Prime Minister. We say nothing more, nothing less.**

101. At this stage, we must hasten to add what we have said for the Prime Minister is wholly applicable to the Chief Minister, regard being had to the language employed in Article 164(1) of the Constitution of India” (emphasis supplied).

Thus, the Constitutional bench of Hon'ble Supreme Court of India itself has left it to the wisdom of the Prime Minister and the Chief Minister to decide whether a person should continue as a Minister or not in their Cabinet. Therefore, merely because an agency has commenced investigation against a person, he or she does not become legally incapacitated to continue as a Minister.

With regard to the observations of the Hon'ble Supreme Court of India in judgement dated 16.05.2023 in *Y. Balaji v. Karthik Desarai*, in SLP (Crl.) Nos.12779-12781 of 2022, I have already explained in detail about the probative value of observations made by Courts in a judgement directing investigation. It is not a conclusive finding on the allegations

against him and hence has no relevance to decide about the disqualification of a Minister.

With regard to the allegations of assault and other associated incidents relating to the Income Tax department officials, cases have been registered and action has been taken in accordance with law. Your allegations about the same amounts to interfering with the administration of justice since the said issue is seized of by the Court and investigating authorities. Also, your apprehension that Thiru V SenthilBalaji may interfere with the investigation in this case is unfounded and baseless.

In addition, it is our duty to point out the fact that while you have written a five-page letter on Thiru V SenthilBalaji, you continue to maintain an inexplicable silence on my Government's request for sanctions to investigate/ prosecute former Ministers and public servants for offences committed during the previous AIADMK Government, which have been languishing in your office for months together. Even the request of CBI for sanction of prosecution in the Gutka case has not been acted upon by you. In fact, these selective actions expose not only your unhealthy bias but also the real intent behind such dual standards adopted by you.

In so far as your allegations on usage of intemperate language, I wish to inform that the Government of Tamil Nadu has always been according due respect and regard to you and your office. We have always been pleasant, courteous and respectful towards you in line with our Tamil culture. However, that does not mean we have to abide by unconstitutional directives issued by you.

I once again reiterate the Constitutional provisions about removal of a Minister. Under Article 164(1), the Governor appoints and removes ministers only on the advice of the Chief Minister. The Governor has no power to decide who should or should not be part of the Cabinet. That is the sole prerogative of the Chief Minister. The Chief Minister and his Council

of Ministers are in turn answerable to the elected Legislative Assembly under Article 164(2).

Therefore, *qua* your "dismissal" of Thiru V SenthilBalaji, I reiterate that you have no power to dismiss my Ministers. That is the sole prerogative of an elected Chief Minister. Your unconstitutional communication dismissing my Minister without my advice is void *ab initio* and *non-est* in law and hence has been disregarded.

This is for your kind information and records.

With Warm Regards,