

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2013

Coram:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P.No.22851 of 2012

1.M.Prabharan
2.C.Kumaran
3.M.Baskar
4.P.Mani
5.P.Sathasivam
6.K.Mohanraj

..Petitioners

Vs.

1.The Superintending Engineer,
General Construction Circle,
Tamil Nadu Electricity Board, (TANTRANSCO),
Udayapatti, Salem-16.

2.The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
NPKRR Maligai,
8th Floor, East Wing, 144, Anna Salai,
Chennai-600 002.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the Respondent passed in Letter No.064770/361/G.65/G.651/2012-3 dated 25.06.2012 on the file of the Second Respondent quash the same and direct the Respondents to implement the orders of the Inspector of Labour, Salem dated 22.10.2010 in Na.Ka.Aa.3665/2008 by confirming the Petitioners as regular employee of the Respondents.

For Petitioners : Mr.S.Doraisamy

For Respondents : Mr.P.R.Dhilip Kumar
Standing counsel for TNEB

O R D E R

The Petitioners have preferred the instant Writ of Certiorarified Mandamus praying for an issuance of an order by this

Court, in calling for the records relating to the proceedings of the Respondents passed in Letter No.064770/361/G.65/G.651/2012-3 dated 25.06.2012 on the file of the Second Respondent/Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai and to quash the same. Further, the Petitioners have sought for passing of an order by this Court in directing the Respondents to implement the orders of the Inspector of Labour, Salem dated 22.10.2010 in Na.Ka.Aa.3665/2008 by confirming them as regular employees of the Respondents.

2.The Writ Petition Facts:-

According to the Petitioners, they are working as Field Helpers in the Respondent/Board. They are engaged by the First Respondent/ Superintending Engineer, General Construction Circle, Tamil Nadu Electricity Board, Udayapatti, Salem-16 for executing cable laying, concrete laying, digging and erection of polls and allied works. The First Respondent is an Industrial Establishment as defined by the Tamil Nadu Establishments (Conferment of Permanent Status to Workmen) Act (46 of 1981) which is applicable to the First Respondent.

3.The Petitioners have not been made permanent and since they have been working for more than 480 days in a period of 24 calendar months they are entitled to be made permanent. By applying Section 3 of the Tamil Nadu Establishments (Conferment of Permanent Status to Workmen) Act (46 of 1981), they preferred an application to the Inspector of Labour, Salem praying for passing of an order in directing the First Respondent to absorb them as regular employees of the Respondent/Electricity Board. After contest, the Inspector of Labour, Salem by means of an order dated 22.10.2010 in Na.Ka.Aa.3665/2008 directed the First Respondent to confer the permanent status to the Petitioners, inasmuch as they have been working for more than 480 days in a period of two years.

4.It is the stand of the Petitioners that the order of the Inspector of Labour, Salem dated 22.10.2010 was communicated to the First Respondent. However, no orders were passed and the Petitioners made a request to the Second Respondent on 15.11.2010 praying for issuance of direction to the First Respondent to absorb them as regular employees on the basis of the order of the Inspector of Labour, Salem dated 22.10.2010. However, no steps were taken by the Second Respondent.

5.Consequently, the Petitioners were perforced to project the Writ Petition in W.P.No.25290 of 2011 praying for passing of an order by this Court in directing the First Respondent to implement the order of the Inspector of Labour, Salem dated 22.10.2010 in

Na.Ka.Aa.3665/2008 based on their Representations dated 15.11.2010 by confirming them as regular employees of the Board. This Court passed an order on 01.11.2011 directing the Second Respondent/Chief Engineer (Personnel), Tamil Nadu Electricity Board, Chennai to consider and pass orders on their Representation dated 15.11.2010 within a period of eight weeks.

6.Meanwhile, the First Respondent/ Superintending Engineer, General Construction Circle, Tamil Nadu Electricity Board, Udayapatti, Salem-16 challenged the order of Inspector of Labour, Salem dated 22.10.2010 in W.P.No.27785 of 2010 and this Court on 31.03.2011 dismissed the said Writ Petition.

7.The Petitioners' contentions:-

The Learned counsel for the Petitioners urges before this Court that the impugned order dated 25.06.2012 (signed on 26.06.2012) passed by the Second Respondent is illegal and arbitrary one. Moreover, it is against the spirit of the order passed by this Court in the decision reported in 2009 (4) MLJ 472 [The Superintending Engineer, Nagapattinam & Others Vs. The Inspector of Labour & Others].

8.The forceful argument of the Petitioners is that they are seeking regularisation only on the basis that they are continuously working in the Respondent/Electricity Board for more than 480 days. Added further, it is represented on behalf of the Petitioners that they do not seek their appointment under the conditions in terms of Section 12(3) settlement under the Industrial Disputes Act, 1947 which is not binding on the Petitioners.

9.Advancing his arguments, it is the submission of the Learned counsel for the Petitioners that by invoking the ingredients of Section 3(1) of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, the Respondents are bound to confer permanent status to all workmen who have completed 480 days of service in a period of 24 calendar months and any agreement contra to the above provision cannot be enforced against a workman, inasmuch as right to permanent status is a statutory right.

10.The Learned counsel for the Petitioners brings it to the notice of this Court that the Petitioners filed W.P.No.25290 of 2011 before this Court and this Court directed the Respondents to consider the Petitioners' Representation and pass orders on merits. But in the impugned communication dated 25.06.2012 (signed on 26.06.2012) the Second Respondent has rejected the Petitioners' request stating that the same cannot be considered in view of Section 12(3) settlement of the Industrial Disputes Act, 1947. At

this stage, the Learned counsel for the Petitioners seeks in aid of the decision of the Division Bench of this Court dated 03.08.2012 in W.P.No.5980 of 2004 whereby and whereunder in paragraphs 35 to 38 it is observed and laid down as under:-

"35.The words employed in Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, are not directory in nature, in our considered opinion. Per contra, they are mandatory in character. In short, the deeming clause of Section 3(1) of the Act as aforesaid is explicit and admits of no exception as opined by this Court. Furthermore, the Petitioner's husband late Raju satisfied the essential condition of, being a worker and the Tamil Nadu Electricity Board being his master, so as to claim the permanent status. Thus, the logical conclusion that can be deduced in the present case is that even if no order of regularization was passed in respect of the petitioner's husband Raju (since deceased), the statutory benefit of permanent status is to be necessarily granted to him by the Respondent/Tamil Nadu Electricity Board.

36.We also hold that even in the absence of any enquiry conducted by the Inspector under the Act, the right conferred upon the Petitioner's husband to claim the benefit of permanent status could not be denied by any means because of the simple fact that Section 3(1) of the Act imposes an obligation upon the Respondents/Electricity Board Authorities to confer permanent status of the Petitioner's husband, who had rendered 480 days of work continuously in a period of 24 calendar months and on that basis, we hold that the Petitioner's husband deceased S.Raju is entitled to be made permanent by the Respondents/Tamil Nadu Electricity Board Authorities and once, in law, he was entitled to the benefit of conferment of permanent status, the resultant benefit could not be deprived to the Petitioner (wife) notwithstanding the fact that during his lifetime no such permanency was conferred on him. Viewed in that perspective, we hold that a workman, who had completed 480 days of continuous service in a period of 24 calendar months, would become automatically a permanent employee under the employer, even if, an employer had not conferred him with the permanent status or even if, no direction was issued by the

competent authority in this regard under the Act, 1981 or the Rules framed thereunder. Accordingly, we answer the Reference.

37.Also, on the basis of Equity, Fair play, Good Conscience and even a matter of prudence, we direct the Respondents/Tamil Nadu Electricity Board Authorities to issue appropriate proceedings in making the petitioner's deceased husband Raju as a permanent employee of the Board and to pay the petitioner family pension, family benefit and other terminal benefits including Gratuity as per Rules and regulations from time to time in force. The Respondents are further directed to consider and dispose of the representations of the Petitioner dated 08.12.2003 and 08.01.2004 wherein she had prayed for Compassionate Appointment being provided to her daughter Valarmathi as per Rules and in accordance with law within a period of four weeks from the date of receipt of copy of this order, (if not already considered and disposed of).

38.The Respondents are directed to pay the Petitioner's family pension and other terminal benefits including gratuity etc., due to be paid to the petitioner's deceased husband within a period of eight weeks from the date of receipt of copy of this order. As such, the writ petition is allowed in above terms. No costs."

It is to be noted that Section 3 of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 speaks 'conferment of permanent status to workmen' in and by which every workman who is in continuous service for a period of 480 days in a period of 24 calendar months in an industrial establishment shall be made permanent etc. Section 4 of the Act deals with appointment of Inspectors and Section 5 of the Act speaks of powers and duties of Inspectors.

11.Discussions:-

There is no two opinion of the fact that this Court on 31.03.2011 in W.P.No.27785 of 2010 [The Superintending Engineer, General Construction Circle, Tamil Nadu Electricity Board, Salem Vs. The Inspector of Labour, Salem & Others] in paragraphs 2 and 3 has observed and held thus:

"2.On perusal of the order passed by the first respondent, it is seen that after the application filed by the respondents 2 to 9, notice was ordered to the petitioner Board. But they are not filed any document controverting the claim made by the contesting respondents/workmen and they did not cross examine anybody on their behalf to resist the claim made by the workmen. On the other hand, the contesting respondents filed three documents including the service certificate, educational certificate and proof affidavit. Therefore, the first respondent, on the basis of the available materials, has found that the respondents 2 to 9 were appointed some times between 1989 and 2003 and directed to confer permanent status on them.

3.It is also noted that when the similar writ petitions were filed by the Board in respect of other workmen, who got successful order from the first respondent, Inspector of Labour, the Division Bench of this Court consisting of the Hon'ble Mr.Justice P.K.Misra as he then was and the Hon'ble Mr.Justice K.Kannan by the judgment reported in 2009 (4) MLJ 472 (Superintending Engineer, Nagapattinam Electricity Distribution Circle Vs. Inspector of Labour) has rejected the present contention raised on the side of the petitioner. Apart from the same, the petitioner has not utilized the opportunity granted by the first respondent in contesting the claim made by the workmen. Hence, no case has been made out by the petitioner."

and ultimately dismissed the said Writ Petition.

12.This Court pertinently points out that the term 'employed' in Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 are mandatory in character. Per contra, they are ***not directory** in nature. As a matter of fact, the deeming clause of the Section 3(1) of the Act is explicit and leaves no room for exemption whatsoever in the considered opinion of this Court.

13.Indeed, Section 2(4) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 defines "workman" as follows:-

(4) "workman" means any person employed in any industrial establishment to do any skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied (and includes a badli workman),

but does not include any such person, ..

a. who is employed in the police service or as an officer or other employee of a prison; or

b. who is employed mainly in managerial or administrative capacity; or

c. who, being employed in a supervisory capacity, (draws wages exceeding three thousand and five hundred rupees per mensem) or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

(Explanation.-- "Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment).

14. It cannot be gainsaid that a workman, who had rendered in a continuous service of 480 days in a period of 24 calendar months, should be conferred with the permanent status in an establishment. It is to be pointed out that every employer is supposed to maintain in Tamil language or in English a register of workmen in Form 1 prescribed under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and also prepare and exhibit the list of workmen with sufficient details for perusal by the workmen. It may not be lost sight of that, such list ought to be sent to the Inspector within a fortnight from the close of each half-year with a declaration that it has been exhibited in the establishment for perusal by the workmen. The employer should send an half-yearly return in Form-2 at the end of each half-year.

15. Also that, if an employee who comes to know that his name has not been entered in the list or finds that the entries have not been made properly/correctly or if he finds that though entries regarding his service have been made correctly but he has not attested the entries in the register maintained by the employer,

may make a representation to the Inspector concerned, who after examining the representation or after making enquiries, may issue suitable directions to the employer for the rectification of the register of workman or for the issue of orders conferring permanent status to the workman concerned.

16. Section 5 of the Act specifies the Powers and Duties of Inspectors. Section 6 of the Act refers to 'Penalties'. Rule 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 deals with the powers of Inspector in addition to the powers conferred by virtue of Section 5 of the Act. Rule 4 contemplates that the employer of an industrial establishment shall furnish any information that an Inspector may require for the purpose of satisfying himself as to whether any provision of the Act or the rules made thereunder has been complied with or whether any order of Inspector has been duly carried out etc., Rule 6(1) deals with the Maintenance of Registers by Employers. As per Rule 6, every employer of an industrial establishment shall maintain a register of workman in Form-1 and shall produce the register whenever it is required by the Inspector having jurisdiction over the industrial establishment etc.

17. In the decision in S. Vijayalakshmi Vs. Tamil Nadu Water Supply and Drainage Board (represented by its Managing Director), Chennai [2005 (3) L.L.N. 706 at page 707], this Court has held thus:-

"A bare perusal of the S.3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, casts an obligation on the employer to confer permanent status on an employee who has completed 480 days work in course of two years. During the life time of the husband of the petitioner, no such permanent status was actually conferred by any order of the management. It is true that jurisdiction has been conferred on the Inspector to conduct enquiry if necessary to find out whether an employee has completed 480 days or not. However, merely because no such enquiry had been conducted by the Inspector, the petitioner's husband cannot be denied the benefits of the Act. In view of the mandatory nature of the provision, it shall be taken that an employee who had completed 480 days in a period of two years was permanent."

18. In the decision in Metal Powder Co. Ltd., Tirumangalam and another Vs. The State of Tamil Nadu and another [1985 (2) LLJ 376 at page 377] wherein the Division Bench of this Court has held as under:

"Permanent status is to be claimed only by a workman who has not only put in continuous service for a period of 480 days but also in service for 24 calendar months."

19. In the decision of Superintending Engineer, Vellore Electricity Distribution Circle, Vellore, and others Vs. Inspector of Labour, Perambalur and others [2004 (3) L.L.N. at page 598 and at special page 599 and 560], this Court has held as under:

"The fact about the engagement of the services of the concerned workmen was never disputed by the Board. The only stand was that since they were all contract workmen, they were not entitled for any benefit to be conferred under the provisions of the Act. But even in respect of the said stand except the ipsi dixit of the stand taken in the counter nothing was placed before the Inspector of Labour. Even about the non-maintenance of the required forms under the provisions of the Act, the stand of the Board was that since they were all contract labourers, the question of maintaining those records did not arise. It is pertinent to note that while it was contended that the persons were employed as contract labourers under certain guidelines, nothing was placed before the Inspector of Labour in support of the said stand.

It can be safely held that by virtue of S.5 read along with rule 6(4), the Inspector of Labour can pass positive orders conferring permanent status to the workmen concerned after examining the representation made before him and after holding an enquiry. The Division Bench of this Court has also held so in the judgment in Metal Powder Company Ltd., case [1985 (2) L.L.N. 738]. In spite of all these if it were to be held that irrespective of the said statutory stipulations the Inspector of Labour is not entitled to pass positive orders conferring permanent status, such powers vested with him under the provisions would only result in futility. It is true that under S.5 read with rule 6(4) of the Act, the Inspector of Labour can also direct in the event of any defects in the maintenance of registers to rectify such defects and give appropriate directions to that effect. But, the same did not mean that, that is the only power vested in the Inspector of Labour and nothing more. The well known canon of

construction is that no provision in a statute can be held to be redundant and therefore, when under S.5 of the Act specific powers have been provided to the effect that the Inspector of Labour can enter at all reasonable times into any industrial establishments, make necessary examinations of the records and record necessary evidence of such persons as he may deem necessary for carrying out the purposes of the Act and when the said provisions read along with rule 6 (4) which specifically provides that such exercise of powers provided under S.5 can be made while dealing with a representation and by passing a positive order conferring permanent status, it will have to be held that the Inspector of Labour would be fully competent to issue an order conferring permanent status to the workmen based on the evidence available before it based on the enquiry held by him, if it was brought out that such a benefit should necessarily be conferred on the concerned workmen. It can only be said that to hold otherwise would only defeat the whole purpose of the enactment, the object of which was that wherever workmen are being kept under temporary rolls, thereby denied of various statutory as well as non-statutory benefits, which are extended to the permanent workers and wages are paid on consolidated basis far below the occupational wages without the benefit of dearness allowance, which is paid to the permanent employees, to defeat such deprivation and ensure that their real status is affirmed.

While the exercise of powers vested with the Inspector under the provisions of the Act is summary in nature, the one under the provisions of the 1947 Act may be an elaborate one. Nevertheless the same does not mean that by exercising the power under the provisions of the Act, the Inspector of Labour would trespassing into the adjudication process contemplated under the provisions of the 1947 Act."

20.A mere running of the eye over the contents of the order dated 22.10.2010 of the Inspector of Labour, Salem latently, patently and also in lucid terms clearly indicates that the said authority has exercised his power under Section 3(1) of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 and directed the eight employees mentioned in Schedule I of his order to be made permanent. In the said order, the names of the six Writ Petitioners are seen in Schedule I. When

the competent authority/appropriate authority namely, the Inspector of Labour, Salem under Section 3(1) of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 has passed a clear-cut and categorical order dated 22.10.2010 directing the Petitioners to be made permanent since they have completed 480 days of service in a period of two years and when the said order has become final after dismissal of the Writ Petition filed by the First Respondent/ Superintending Engineer, General Construction Circle, Tamil Nadu Electricity Board, Udayapatti, Salem-16 in W.P.No.27785 of 2010 before this Court, then the Respondents are left with no other option but to follow the tenure spirit of the order passed by the Inspector of Labour, Salem. As a matter of fact, the Respondents cannot wriggle out of the situation and they are to implement the order of the Inspector of Labour, Salem dated 22.10.2010 in a scrupulous fashion.

21.However, on going through the impugned order dated 25.06.2012 (signed on 26.06.2012) passed by the Second Respondent in Lr.No.064770/361/G.65/G.651/2012-3, this Court is of the considered view that the Second Respondent has not taken into account the order of the Inspector of Labour, Salem. Indeed, the impugned Letter dated 25.06.2012 of the Second Respondent does not make any reference to the said order passed by the Inspector of Labour, Salem. Therefore, it is candidly clear that the Second Respondent has not taken into account the very vital order of the Inspector of Labour, Salem who has specifically passed the order that the Writ Petitioners herein (whose names find place in the Schedule I of the order to be made permanent since they have completed 480 days of service in the period of 24 calendar months). Significantly, the impugned order in paragraph 2 states that the First Petitioner has been informed, "contract labourers who are engaged prior to 05.01.1998 and worked continuously for 5 years and paid ex-gratia from 1997-98 till 2005-06 have been absorbed into the Board as per 12(3) settlement dated 10.08.2007 and the Petitioners and others had not fulfilled the conditions in terms of 12(3) settlement" and not acceded to the request of the Petitioner seeking regularization of his service.

22.By that as it may, in view of the fact that the Inspector of Labour, Salem has passed the order dated 22.10.2010 whereby and whereunder he has issued orders in directing the Petitioners to be made permanent employees since in a period of two years, they have completed 480 days of service and this Court is of the considered view that the Respondents 1 and 2 are bound to follow the orders passed by the said Inspector of Labour, Salem in true letter and spirit and that too without any deviation but in the instant case on hand, on going through the impugned order dated 25.06.2012 passed by the Second Respondent, it is quite evident that the

Second Respondent has not paid attention and not taken into account the order passed by the Inspector of Labour, Salem which ultimately resulted in serious miscarriage and justice. To put it succinctly, the impugned order, dated 25.06.2012 passed by the Second Respondent without making any reference to the order dated 22.10.2010 passed by the Inspector of Labour, Salem, bristles with legal infirmities. As such, this Court is left with no other option but to interfere with the said order passed by the Second Respondent. Accordingly, this Court by interfering with the impugned order dated 25.06.2012 passed by the Second Respondent sets aside the same in furtherance of substantial cause of justice. Consequently, the Writ Petition succeeds.

23. In the result, the Writ Petition is allowed. The order passed by the Second Respondent is herein set aside for the reasons assigned in this Writ Petition. The Respondents 1 and 2 are directed to take into consideration the order dated 22.10.2010 passed by the Inspector of Labour, Salem and to pass appropriate orders in terms of the said order of the Inspector of Labour, Salem dated 22.10.2010 within a period of six weeks from the date of receipt of a copy of this order. No costs.

-s/d-
Assistant Registrar
date:9/1/2014

-s/d-
Assistant Registrar (CSIII)
date:3/2/2014
*Corrected as per direction
of the PA to MVJ

True Copy

Sub Asst. Registrar.

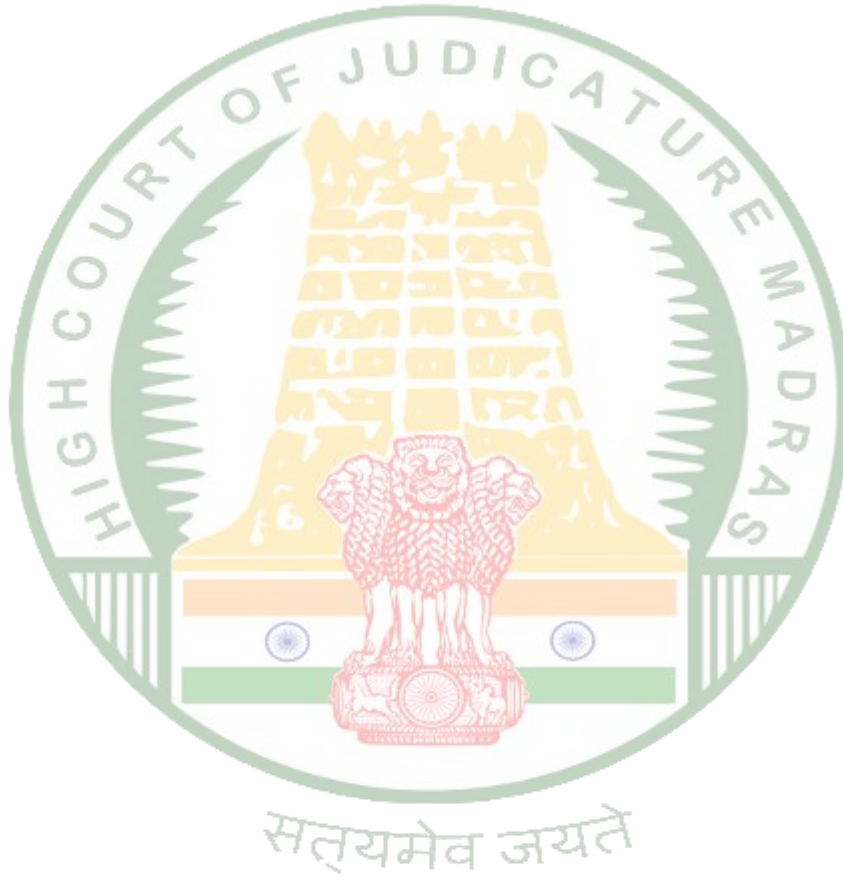
To

1. The Superintending Engineer, (To be Corrected order to be General Construction Circle, (Substituted to the Order already Tamil Nadu Electricity Board, (despatched on 23/1/2014) (TANTRANSCO), Udayapatti, Salem-16.
2. The Chief Engineer (Personnel), Tamil Nadu Electricity Board, NPKRR Maligai, 8th Floor, East Wing, 144, Anna Salai, Chennai-600 002.

+ 1 cc to Mr.S.Doraisamy, Advocate SR.NO.66486.

W.P.No.22851 of 2012

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