

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2015

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.18233 of 2015
and M.P.Nos.1 and 2 of 2015

Madha Medical College and Research Institute,
represented by its Chairman,
Kundrathur Main Road, Thandalam,
Kovur, Chennai - 600 122.

.... Petitioner

Vs.

1. The Union of India,
represented by its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan, New Delhi

2. The Medical Council of India,
represented by its Secretary,
Pocket - 14, Sector - 8,
Dwarka, Phase-I,
New Delhi - 110 077.

... Respondents

Petition is filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records of the 1st respondent relating to its Order No.U.12012/466/2015-ME(P-II) and letter No.MCI-34(41)(R-60)/2014-Med/100093 dated 01.04.2015 of the 2nd respondent, quash the same and consequently direct the 1st respondent to consider and grant permission for the fresh (5th) Batch of MBBS (150 Seats) for the academic year 2015-16 of the petitioner.

For Petitioner

.. Mr.N.Vijay Narayan, Sr.Counsel
for Mr.Menon Karthik Mukundan
Mr.S.Rathana Sabapathy, SCCG
for R.1
Mr.V.P.Raman for R.2

For respondents

ORDER

The question to be considered in the writ petition is on the applicability of the earlier decisions rendered by this Court, other Courts as well as the Apex Court.

2. An inspection was made by the Medical Council of India, (in short, MCI) on 31.12.2014 and 1.1.2015 for the purpose of granting of renewal for admitting the fresh 5th batch of 150 MBBS students in the petitioner for the academic year 2015-2016. The recommendations made were sent by the 2nd respondent to the 1st respondent. The 1st respondent has observed in and by the letter dated 20.2.2015 by way of a recommendation to the MCI to review its earlier inspection and it was based upon the statement made by the petitioner that the inspection of the petitioner College was carried on 31.12.2014 and 1.1.2015, being the year ending and Christmas vacation, particularly, when it is a Christian Minority Institution. Thus the letter dated 20.2.2015 was addressed by the Government of India to the Secretary, MCI to review. By the order impugned, it was replied by the MCI on 1.4.2015 stating that such a stand has not been taken by the institute in the compliance submitted by it and in view of regulation 8(3)(1) of Establishment of Medical College Regulations, 1999, it is not possible to do so. Apparently, the said decision was also based upon the opinion given by the learned Additional Solicitor General of India. Thereafter, the order impugned has been passed by the 1st respondent on 15.6.2015 by accepting the impugned letter of the MCI dated 1.4.2015 resulting in rejection of renewal for the academic year 2015-2016. Challenging the same, the present writ petition has been filed.

3. During the pendency of the writ petition, the petitioner and one more College sought for interim relief. It was rejected by the learned single Judge. The petitioner approached the Apex Court seeking appropriate order, perhaps on the misconception that a similar order would be passed on the exercise of the powers under Article 142 of the Constitution of India. By the Order dated 9.9.2015 in S.L.P.No.22430 of 2015, the petitioner was permitted to withdraw the petition with liberty to approach the High Court. Following is the order passed by the Apex Court:

'Dr.Rajeev Dhawan, learned senior counsel for the petitioners, on instructions, seeks permission of this Court to withdraw this petition with liberty to approach the High Court.

Permission sought for is granted.

The special leave petition is disposed of as withdrawn with liberty to the petitioner to approach the High Court and to take up all such contentions which are available to them including the contentions raised in this special leave petition.'

4. The other petitioner viz., the petitioner in W.P.No.17985 of 2015 filed an appeal before this Court. It is needless to state that the facts involved in this writ petition and the writ petition in W.P.No.17985 of 2015 are more or less identical. It is also not in dispute that by the very same order, the Government of India, viz., the 1st respondent has asked MCI to review its earlier recommendation

for both the present writ petitioner and the writ petitioner in W.P.No.17985 of 2014. The very same contentions raised by the parties have been raised before the Division Bench. By a detailed judgment dated 3.9.2015 made in W.A.No.1147 of 2015 (Annapoorana Medical College and Hospital Vs. The Secretary (Medical Education), Union of India, Ministry of Health and Family Welfare), the Division Bench has held as follows:

'116. As rightly pointed out by Mr.A.Ramesh, learned Senior Counsel for the appellant-College, the Central Government, which issued the letter, dated 24.03.2015, to the Medical Council of India, for review/assess, has not given any reason, as to why, the said letter has not been acted upon by the Medical Council of India and the steps taken by the Central Government in directing the Medical Council of India, to renew/assess. The Central Government, which recommended for review/assess, has remained silent, on this aspect. But The Medical Council of India has reiterated the earlier recommendations.

117. As per Section 10-A(2)(a) of the Indian Medical Council Act, 1956, whenever the Central Government receives the scheme under Sub-Section (1) of Section 10-A(1), it has a duty to refer the same to the Medical Council of India for recommendations. Section 10-A(3) states that the Council may obtain such other particulars, as the case may be considered necessary, by it, from the person or the Medical College concerned and thereafter, it may, if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or the College concerned, for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the council and consider the scheme, having regard to the factors referred to in sub-section (7), and submit the scheme together with its recommendations thereon to the Central Government.

118. Proviso to Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment) 2010, Part II, dated 16.04.2010, states that in respect of the colleges, in the stage from III renewal (ie., Admission of fourth batch) till recognition of the institute for award of MBBS degree, if it is observed, during any regular inspection of the institute that the deficiency of teaching faculty and/or residents is more than 20% and/or bed occupancy is less than 70%, such an institute will not be considered for renewal of permit in that academic year.

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120. A combined reading of Section 10-A of the Indian Medical Council Act, 1956 and Clause 8(3)(1)(b) of the Establishment of Medical College Regulations (Amendment) 2010, Part II, dated 16.04.2010, in our considered opinion, makes it clear the Central Government can consider an application, even if the Medical Council of India, in its initial report, has not recommended for issuance of letter of intent and that it should be equally applicable for renewal. The purpose of obtaining particulars, which are necessary for grant of letter of intent, would be defeated, if the Medical Council of India, maintains the earlier stand, without there being any verification of the compliance, which the Central Government, in his letter, dated 24.03.2015, has recommended the Medical Council of India, to review/assess. Even if the Medical Council of India, had desired to maintain the same stand, when the Committee of the Central Government, has decided to forward the compliance report and requested the Medical Council of India to review/assess, atleast a reply should have been given to the Central Government or the College Concerned.

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128. From the reading of the letter, dated 03.02.2015, of the Central Government, it could be deduced, the Central Government, who is the competent authority to grant renewal for permission for the subsequent batches, has specifically directed the appellant-College to represent the case vis-a-vis the letter of the Medical Council of India, along with the documents. While that be the position, it is not known, as to why, in the impugned order of rejection, dated 15.06.2015, the Central Government has not assigned any reasons, on this aspect. From the letter, dated 03.02.2015, it could be deduced that the Central Government, having acted in terms of Section 10-A(4) of the Act, made the Colleges, to legitimately expect and believe that their compliance reports would be considered and acted upon. Subsequently, they have also requested the Medical Council of India, to review/assess. At this juncture, this Court deems it fit to extract few decisions on the aspect of legitimate expectation.

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135. The appellant falls under Category 3 of the Colleges, ie., seeking renewal for admission in the next batches. Contentions of Mr. Ramesh learned Senior Counsel, deserves consideration, in that, the Medical Council of India has failed to provide a reasonable opportunity to the appellant college, and thus failed to adhere to the mandate of Section 10-A (3) of the Act. As observed, though MCI had received the Compliance report, and also the recommendations of the Committee to renew/assess, MCI has not acted upon, on the request of the Central Government, as per their letter, dated 24.03.2015. Central Government is the competent authority to decide the approval or renewal for permission to the colleges, and Medical Council of India is a body, created under the Act, to assist the Central Government. When a request has been made by the Central Government to renew/assess, MCI, seemed to have kept quiet, for nearly 50 days.

136. Contention of MCI is that there is no need to provide an opportunity to the colleges, if they fall under regulation 8 (3) of MCI Regulations, cannot be countenanced for the reason, that the Central Government has already decided to call for a compliance report, from the colleges, vis-a-vis, the earlier recommendations of MCI. When the competent authority has decided to consider the materials submitted by the colleges vis-a-vis, the recommendations of MCI, and when the Central Government, through its Committee, has recommended the case of the appellant, to review, taking note of the compliance report, MCI, being an authority to assist the Central Government, in the matter of granting permission or renewal, as the case may be, the Medical Council of India ought to have considered the compliance report, and submitted its recommendations.

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140. By referring the matter to MCI, the Central Government has requested MCI, to have an in depth examination of the facts and circumstances and record a conclusion. Inspection and recommendations are legislative functions of MCI. After sending a letter dated 24.03.2015, the Central Act, ought not to have remained silent, as if it was an empty formality. When the statute itself contemplates MCI to call for details from the colleges, inspection and recommendation of MCI, being duties to be performed by MCI enabling Central Government to grant or disapprove, it cannot be

contended that relief sought for in the Miscellaneous Petition is not incidental or ancillary to the main prayer or for that matter beyond the scope of the writ petition.

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142. When there is a fault on the part of the respondents in processing the application with enormous delay and if no reasonable opportunity is given to the college, to comply with the deficiencies, then it should be construed that it is the authorities who have failed to adhere to the time schedule and for that reason, it is the view of this Court, the authorities should not be permitted to take shelter under the judgments of the Supreme Court, which time and again, the Apex Court has reiterated that time schedule has to be followed by them.

143. Non compliance of the statutory provisions, is apparent on the face of record. The word 'recommend' suggests satisfaction by MCI, of the factors in Sub Section 7 and Section 10(A) of the Act. By incorporating sub-section (3) and (4) to Section 10 (A) of the Medical Council of Act, legislature has applied both #balancing and necessity#, tests, to be followed by all stake holders. Right to pre-decisional hearing is provided for in sub-section 10(A)(4) of the Act.

144. Though the learned single Judge, following the Mridul Dhar v. Union of India and others reported in 2005 (2) SCC 65, Priya Gupta v. State of Chhattisgarh reported in 2012 (7) SCC 433 and Manohar Lal Sharma v. Medical Council of India and Others reported in (2013) 10 SCC 60, has rejected the interim prayer, sought for, in M.P.No.2 of 2015 in W.P.No.17985 of 2015, dated 31.07.2015, in the light of the discussion and decisions, stated supra, more particularly, the recent decision in Royal Medical Trust (Regd) v. Union of India [W.P.(C)No.705 of 2014, dated 20.08.2015], We are inclined to interfere with the impugned order, made in this appeal. Accordingly, the order made in M.P.No.2 of 2015 in W.P.No.17985 of 2015, dated 31.07.2015, is set aside. The Secretary, Medical Council of India, New Delhi, 3rd respondent herein, is directed to consider the compliance report, dated 13.03.2015 and the recommendation of the Committee of the Central Government, in letter, dated 24.03.2015, to review/assess the scheme, in the light of the documents submitted by the appellant-College, in

the compliance report, dated 13.03.2015, by causing inspection of the appellant-College, within a period of one week, from tomorrow, ie., on 04.09.2015 and submit a report to the Secretary to the Government, Ministry of Health and Family Welfare, New Delhi, 1st respondent herein, within the abovesaid period, who, on receipt of the said report, shall pass orders, in accordance with Section 10-A(4) of the Indian Medical Council Act, 1956, as early as possible and not later than, one week, from the date of recommendation, after inspection by the Medical Council of India and if for any reason, the Central Government proposes to disapprove the scheme, provide an opportunity to the appellant-College, within the said period of one week, in compliance with the principles of natural justice, set out in the said provision, Section 10-A(4) of the Indian Medical Council Act, 1956.....''

5. A somewhat contra view on the scope and applicability of Regulation 8(3)(1)(a) of the Establishment of Medical College Regulation, 1999, has been taken by the Division Bench of the Delhi High Court in Shree Chhatrapati Shivaji Education Society & another Vs. Union of India and another, (W.P.(C) No.5041 of 2015 and C.M.No.9119 of 2015) dated 28.5.2015. The ratio laid down therein has been reviewed in a subsequent decision rendered by the Division Bench of Delhi High Court in Career Institute of Medical Sciences and Hospitals and another Vs. Unikon of India and another, (W.P.(C) No.6699 of 2015 and C.M.No.12205 of 2015), dated 5.8.2015. The S.L.P filed against the same has also been dismissed. As against the earlier Division Bench Judgment referred supra, S.L.P has been admitted and directions have been issued to inspect the institution in question. The Division Bench of the Madhya Pradesh High Court at Jabalpur in RKDF Medical College Hospital and Research Centre Vs. Union of India and another (W.P.No.7521 of 2015) dated 1.7.2015 has held in favour of the petitioner therein by taking into consideration of the Division Bench of the Delhi High Court and the subsequent decision of the Apex Court. On the question of outer limit prescribed by the Apex Court in the earlier decisions, it has been held in Royal Medical Trust (Regd) and another Vs. Union of India, (2015 SCC Online SC 740) as under:

''32. The cases in hand show that the Central Government did not choose to extend the time limits in the Schedule despite being empowered by Note below the Schedule. Though the Central Government apparently felt constrained by the directions in Priya Gupta Vs.State of Chhattisgarh (2012) 7 SCC 433), it did exercise that power in favour of Government Medical Colleges. The decision of this Court in Priya Gupta's case undoubtedly directed that Schedule to the Regulations must be strictly and scrupulously observed. However, subsequent to that decision, the Regulations stood amended,

incorporating a Note empowering the Central Government to modify the stages and time limits in the Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central Government has been considered by this Court in Priyadarshini Dental College and Hospital v. Union of India, ((2011) 4 SCC 623). The Central Government is thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons to be recorded in writing. Because of subsequent amendment and incorporation of the Note as aforesaid, the matter is now required to be seen in the light of and in accord with Priyadarshini's case where similar Note in pari materia Regulations was considered by this Court. We therefore hold that the directions in Priya Gupta's case must now be understood in the light of such statutory empowerment and we declare that it is open to the Central Government, in terms of the Note, to extend or modify the time limits in the Schedule to the Regulations. However the dead line namely 30th of September for making admissions to the first MBBS course as laid down by this Court in Medical Council of India v. Madhu Singh, ((2002) 7 SCC 258) and Mridul Dhar Vs. Union of India, ((2005) 2 SCC 65) must always be observed.''

6. However, a single Judge of the Delhi High Court, who also penned down the first of the two Division Bench judgments has reiterated the earlier view taken in Shree Chhatrapati Shivaji Education Society & another Vs. Union of India and another, (W.P.(C) No.5041 of 2015 and C.M.No.9119 of 2015) dated 28.5.2015. The case referred supra is on the scope and ambit of Regulation 8(3)(1). These are all the background facts governing the case.

7. Learned Senior Counsel appearing for the petitioner submitted that the issue involved in this writ petition is no longer res integra. As the Division Bench of this Court in W.A.No.1147 of 2015 (Annapoorana Medical College and Hospital Vs. The Secretary (Medical Education), Union of India, Ministry of Health and Family Welfare), though while dealing with an interlocutory application, has considered all the issues at length, the order passed therein would govern the present case. The scope and ambit of Section 10-A has also been considered by the Apex Court as well as the Division Bench of this Court in Sri Muthukumaran Educational Trust Vs. The Secretary to Government, Ministry of Health & Family Welfare Department, (W.A.Nos.1130, 1152, 1159 and 1163 of 2014, dated 11.09.2014), to which I am also a member, wherein it was held as follows:

''8. Exercise of Power under Section 10-A of the Act:-

Keeping in mind the scheme and the object enshrined under Section 10-A of the Act, let us have a look into the orders passed by the Central Government in disapproving the schemes submitted by the appellants. All the orders passed are more or less similar in nature. They have not expressly dealt with the reply given by the appellants as per the proviso to sub-section (4) to Section 10-A. On the contrary, they have been passed merely based upon the recommendations of the Council. It appears from the orders passed that the Central Government had asked for the response from the Council on the written representations made by the appellants in pursuant to the notices issued to them proposing to disapprove the scheme. However, the Council has informed the Central Government that it was unable to do so in view of the dead-line fixed by the Supreme Court having been crossed in the mean time. The Central Government has passed the impugned orders by merely accepting the recommendations of the Council. The Central Government is not mandated to hear the Council on the response given by the appellants. Therefore, we are of the considered view that the Central Government has abdicated its duty imposed under the Act, in not passing the orders on merit and on consideration of the available materials.

9. We do not find any discussion on merit in the orders impugned. No reasons have been assigned for accepting the recommendations made by the Council. It has not been indicated as to how the representations made by the appellants cannot be accepted. Admittedly, the orders impugned have got civil consequences. The mandate of Section 10-A(4) has not been followed in letter and spirit. The provision gives a power to the Central Government either to approve or disapprove the scheme on an analysis of the recommendations of the Council as against the materials produced by the appellants.

Therefore, it is submitted that the writ petition will have to be allowed.

8. Mr.V.P.Raman, learned counsel appearing for the MCI submitted that the prayer as sought for by the petitioner cannot be granted. The petitioner has not sought for any re-inspection. The fact that the Government of India has accepted the stand of the MCI would show that no re-inspection followed by the recommendation was sought for. The petitioner ought to have filed an appeal against the rejection of the interim application instead of seeking to adjudicate the issues in the main writ petition as done by the appellant in W.A.No.1147 of 2015. The proviso to Regulation 8(1)(3) is different from the main

provision. When there are deficiencies available, there is no question of re-consideration. Section 10-A has to be seen in its own context. Since the MCI cannot exercise power under Regulation 8(1)(3), no interference is required.

9. Learned counsel appearing for the 1st respondent - Government of India has submitted that MCI has been asked to give its recommendations on inspection. The Government of India is not in the practice of undertaking inspections. The power under Section 10-A would be exercised only based upon the relevant materials to be provided either by the MCI or by the institution concerned.

10. As rightly submitted by the learned Senior Counsel appearing for the petitioner, the issue involved in this writ petition is no longer res integra. The ratio as laid down by the Division Bench of this Court would a fortiori apply to the facts of the case. Merely because the petitioner has sought for larger relief it cannot be said that a lesser relief is not available. The letter of the Government of India would certainly mean a re-inspection by the MCI. There is no ambiguity of that. This can be seen by the simple fact that the Government has accepted the statement made by the petitioner before it that the inspection of the petitioner College was made on those days which are festival days for Christians. Admittedly, 31.12.2014 happened to be the last day of the year followed by the new year day. It is also not in dispute that the petitioner is a Christian minority institute. While there is nothing wrong on the inspection undertaken by the MCI, it is the specific case of the petitioner that the compliance could not be shown before it due to then prevailing situation. This statement was accepted by the Government of India. Power under Section 10-A has to be exercised by the Central Government while dealing permission, which is an independent and distinct one. While exercising the said power, it can always direct MCI to lend a helping hand by making necessary inspection. In other words, such a power has no relation to the exercise of power by the MCI under regulation 8(3)(1). Even on a perusal of Regulation 8, one can see that it deals with the power of MCI as well as the power of the Central Government. An admission shall not be made under Regulation 8(3)(1) unless the requirements of the Council are fulfilled. Fulfilment of requirements are questions of fact. The ultimate authority to satisfy the requirement is Central Government. Therefore, this Court does not find any conflict between the regulation contained in clause 8(3)(1) and Section 10-A of the Act.

11. As discussed above, when the Central Government requires certain particulars to be provided, both MCI and the Institution are duty bound to do so. In the case on hand, what is required to be done by the MCI is to make an inspection and give its recommendations. In other words, MCI cannot review a decision made by the Central Government in exercise of the power under Section 10-A of the Act. The word 'review' has to be understood on the facts and circumstances of this case. Thus, this Court is of the considered

view that the direction issued by the Division Bench of this Court would in all fours be applicable to the case on hand. Merely because the petitioner has earlier approached the Apex Court and thereafter come before this Court and sought to argue the main writ petition, the relief sought for cannot be denied as against the relief granted to the other College. After all, what the petitioner wants is another inspection and it is for the MCI to do so and file its recommendation, which has to be considered by the 1st respondent, while exercising the power under Section 10-A of the Act.

12. This Court is of the view that the 1st respondent has also mechanically accepted the impugned communication of MCI instead of performing its duty under the Act. There is neither any reason nor consideration of the material involved, more so, when it has got civil consequences.

13. For the foregoing reasons, the orders impugned are set aside and the directions issued in paragraph No.144 of the order dated 3.9.2015 made in W.A.No.1147 of 2015 will have to be carried out by the respondents in respect of the petitioner College as well. However, the 2nd respondent is directed to make inspection of the petitioner College within a period of three days from the date of receipt of a copy of the order and submit a report to the 1st respondent immediately, who in turn shall pass appropriate orders within a period of one week of its receipt.

The writ petition is ordered accordingly. No costs. Consequently, the connected miscellaneous partitions are closed.

-s/d-
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Sub-Assistant Registrar

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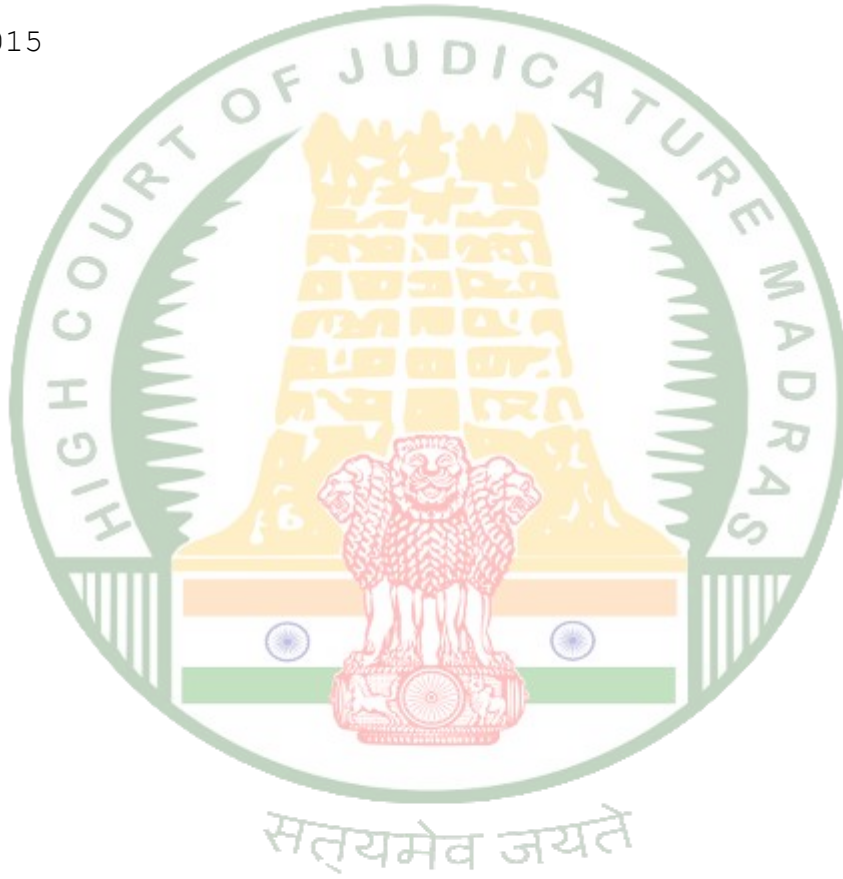
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+2 ccs to M/s.Menan Karthik Mukundan, Advocate sr.51078
+2 ccs to Mr.S.Rathnasabapathy Advocate sr.51125
+1 cc to Mr.V.P.Raman Advocate sr.51079

W.P.No.18233 of 2015

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