

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2015

CORAM

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

W.P.Nos.23198, 23199, 24615, 24616 of 2015
& M.P.Nos.1, 1, 1, 1, 2, 2, 2, 2, 3 & 3 of 2015

W.P.Nos.23198 & 23199 of 2015

Dr.M.Narendran (Exam No.31106),
S/o M.S.Mani, Assistant Professor,
Kilpauk Medical College,
Kilpauk, Chennai-600 010.

.. Petitioner in
W.P.23198/2015

Dr.K.Satheshkumar (Exam No.31154),
S/o N.Kanagasabapathy, Assistant Surgeon,
Annur Government Hospital,
Coimbatore.

.. Petitioner in
W.P.23199/2015

Vs.

1.The Director of Medical Education,
Kilpauk, Chennai-600 010.

2.The Selection Committee,
Director of Medical Education,
Kilpauk, Chennai-600 010.

3.Dr.B.Sridhar (Exam No.31144),
C/o. Director of Medical Education,
Kilpauk, Chennai-600 010.

4.Dr.Baranivelan (Exam No.30010),
C/o. Director of Medical Education,
Kilpauk, Chennai-600 010.

... Respondents
in both W.Ps.

W.P.Nos. 24615 and 24616 of 2015

Dr.K.Dinesh Kumar (Exam No.41172),
S/o Dr.N.Kathiresa Pandian (Late),
D-Block, Flat No.302, D.No.127,
Panjali Amman Kovil Street,
Arumbakkam, Chennai-600 106.

.. Petitioner in
W.P.24615/2015

Dr.R.V.Sugi Subramaniam(Exam No.41065),
S/o R.Velayudham,
No.13/35C, Kalaingnar Karunanidhi Street,
Chinna Natham, Chengalpattu-603 002,
Kancheepuram District.

.. Petitioner in
W.P.24616/2015

Vs.

1.The Director of Medical Education,
Kilpauk, Chennai-600 010.

2.The Selection Committee,
Director of Medical Education,
Kilpauk, Chennai-600 010.

3.Dr.K.Satheesh Kumar(Exam No.41146),
C/o. Director of Medical Education,
Kilpauk, Chennai-600 010.

4.Dr.M.Srinivasan,
C/o. Director of Medical Education,
Kilpauk, Chennai-600 010.

... Respondents
in both W.Ps.

Petitions in W.P.No.23198 and 23199 of 2015 are filed under Article 226 of The Constitution of India praying to issue a writ of mandamus to forbear the respondents 1 and 2 from selecting respondents 3 and 4 for admission to Higher Speciality Course of D.M., (Cardiology) without insisting certificate for completion of two years mandatory Bond service as per Clause 4(b) of the Prospectus for 2015-16 session issued by the second respondent and consequently, select the petitioners for admission to the Higher Speciality Course of D.M., (Cardiology) based on merit and ranking in the selection list published on 16.04.2015 in accordance with Prospectus.

Petitions in 24615 and 24616 of 2015 are filed under Article 226 of The Constitution of India praying to issue a writ of mandamus to direct the respondents 1 and 2 to make selection for admission to Higher Speciality Course of M.Ch., (Surgical Gastroenterology) in compliance to Clause 5(b) of Prospectus for admission to three years Higher Speciality Course in Tamil Nadu 2015-16 session and consequently, direct the respondents 1 and 2 to cancel the selection of respondents 3 and 4 for admission to Higher Speciality Course in Surgical Gastroenterology with further direction to direct the respondents 1 and 2 to select the petitioners for admission to the Higher Speciality Course of M.Ch., (Surgical Gastroenterology) based on merit and ranking in the selection list published on 16.07.2015 in accordance with Prospectus.

For Petitioner
in all W.Ps.

.. Mr.G.Sankaran

For Respondents
in all W.Ps.

.. Mr.P.H.Aravindpandian,
Additional Advocate General (V),
Assisted by Mrs.P.Rajalakshmi,
Government Advocate for R1 & R2

Mr.G.T.Subramaniam for R3 & R4

COMMON ORDER

As the issues involved in all the writ petitions are one and the same, though for different Higher speciality courses, they have been taken up together and disposed of by way of a common order.

2. The Writ petitions in W.P.No.23198 and 23199 of 2015 have been filed to forbear the respondents 1 and 2 from selecting respondents 3 and 4 for admission to Higher Speciality Course of D.M., (Cardiology) without insisting certificate for completion of two years mandatory Bond service as per Clause 4(b) of the Prospectus for 2015-16 session issued by the second respondent and consequently, select the petitioners for admission to the Higher Speciality Course of D.M., (Cardiology) based on merit and ranking in the selection list published on 16.07.2015 in accordance with Prospectus.

3. The Writ Petitions in W.P.Nos.24615 and 24616 of 2015 have been filed by the petitioners seeking admission to Higher Speciality Course of M.Ch., (Surgical Gastroenterology), being non service candidates. The petitioners in W.P.No.23198 and 23199 of 2015 are coming under service category seeking the relief for Higher Speciality Course of D.M., (Cardiology).

4. When a dispute arose at the instance of the students admitted to the P.G. Course under the All India Quota and the Government order imposed conditions not to return the original certificates belonging to them till the completion of two years in the Government Institution as per the bond, writ petitions have been filed before this Court.

5. In Dr.S.Rajesh V. State of Tamil Nadu, rep., by its Secretary, Health and Family Welfare Department, Chennai and Others ((2009) I MLJ 1103) this Court has held as follows:

"13. Issue No.1: The petitioners, who are admitted on All India Quota, never applied before the respondents for admission to PG Degree/Diploma course. They have applied pursuant to the prospectus issued for admission to the said category and therefore the respondents cannot enforce the prospectus conditions,

particularly clause 68(d) and direct the said candidates to execute the bonds at the time of joining in the course and such execution of the bonds will not in any way bind the All India Quota candidates. The learned Additional Advocate General also admitted the said issue and fairly submitted that the conditions of the bond and the Government Order cannot be applied to the candidates selected under the All India Quota. Hence it is held that the respondents are not entitled to enforce the bond or the Government order or the circular of the second respondent against the PG Degree/Diploma Holders, who are admitted under the All India Quota.

Issue No.4: Insofar as the denial of permission to apply for super speciality course or higher studies by the petitioners before completion of the bond period, the petitioners are justified in contending that their right to pursue higher studies cannot be denied by the respondents merely because they have executed bonds. Right to pursue higher studies is to be treated as a human right and the same cannot be denied merely because the petitioners have executed a bond to serve for three years after completing their PG Degree/Diploma.

30.(4) No PG Degree/Diploma Holder, who completed their course or joined in Government Service temporarily as per the bond, shall be denied of opportunity of applying for super speciality course and if they are selected, they should be permitted to undergo the course subject to the condition that remaining period of service shall be served in the Government Institutions by the concerned person after the completion of their respective super speciality course. If not, it is open to the respondents to recover the bond amount with proportionate interest."

6. The issue involved in the above said decision, as discussed above, was with respect to the Government Order imposing condition - completion of two years in the Government Institution as per the bond. The judgment has been rendered by this Court by holding that the petitioners therein, having selected under the All India Quota, the condition in the prospectus meant for said quota would not be binding. Incidentally in issue No.4, the issue with respect to the entitlement of the candidate to apply for the super speciality course before completion of the bond period was also discussed. Suffice it is to state that we are not concerned with the said fact situation in the case on hand.

7. Taking note of the above said judgment, in Dr.Rajinikanth Vs, and Others v. The Director of Medical Education and The Director of

Public Health and Preventive Medicine, the Directorate of Public Health and Preventive Medicine (W.P. Nos.16854 of 2011, dated 25.07.2011), this Court has held after taking note of the conditions stipulated in paragraph 11(h) of the prospectus for All India Entrance Examination in the following manner.

"11. But, this order fails to take note of the condition stipulated in the prospectus for All India Entrance Examination in paragraph 11(h) wherein all candidates are bound to abide by the conditions imposed by the respective States and students were asked to go through it carefully before opting for seat in a particular medical college. Therefore, there is no escape for the petitioners to comply with the conditions of bond. In the very same judgment, the court had also held that those who were coming under the State quota were bound by the bond. If that is true, the same condition would apply even to candidates who came through the All India quota as the prospectus of the All India quota contemplated bond conditions imposed by respective State Governments. The petitioners having fully understood the condition and have signed, it will not be open to them to escape from such a condition. The reason prompted the Government to impose the condition cannot be said to be either unreasonable or arbitrary having regard to the circumstances set out in paragraph 64 of the prospectus.

19. It must be held that the conditions of the bond executed by them neither suffers from any arbitrariness nor it was done due to any unequal bargaining power. On the contrary, the petitioners are qualified and trained medical doctors and have undergone P.G. Medical courses. Therefore, it cannot be said that they have signed it with an unequal bargaining power. This is especially so when there are thousands of candidates standing in queue for direct selection to PG courses and the petitioners had the advantage of being selected. If they had to resile from the terms of the bond relating to compulsory service, there is no other option except to pay the quantified damages as agreed to by them in the bond."

8. Accordingly, the conditions of bond executed by the students were found neither arbitrary nor in exercise of unequal bargaining power, but the matter did not end there. The condition No.5(b) of super speciality course was put into challenge in W.P.Nos.14724 and 14725 of 2012. This was with respect to the academic year 2012-2013, wherein the rigour was much harsh non suiting the candidates from participating in the selection process to the super speciality course without bond service. The relevant clause and the issues

dealt with in the said decision are reproduced hereunder.

"2.The two clauses, i.e. 5(b) and 17 as referred to in the prospectus reads as follows :

"5(b)Non Service candidates who have completed their qualifying Post Graduate Degrees in Tamil Nadu Government Medical Colleges under the State Quota / All India Quota with satisfactory completion of TWO year bond period and enclosure of necessary certificates from the concerned authorities are only eligible to apply.

17.Candidates must enclose only Photocopies of the following documents duly attested by a Gazetted Officer in the order indicated below along with the application form failing which the application is liable to be rejected.

(a)The Postgraduate course completion certificate from the parent college where the candidate had undergone the post-graduate degree course.

(b)Postgraduate degree certificate / provisional certificate awarded by the university concerned to which the Institution is affiliated.

(c)Permanent Medical Registration Certificates of the MBBS Degree and additional qualification registration certificate for Post Graduate degree issued by the All India Medical Council or any State Medical Council.

(d)Postgraduate Degree attempt certificate obtained from the institution where the candidate completed his/her PG Degree.

(e)Eligibility certificate from Tamil Nadu Dr.MGR Medical University for candidates who have qualified from other Universities. This shall be produced at the time of Counselling when called for.

(f)Certificate of satisfactory completion of two year bond period.

(g)TNPSC Selection & Posting Order (For Service Candidates)

(h)Nativity certificate (if applicable) with supportive documents."

5.However, this court is not inclined to admit the writ petitions. The citizens of India are entitled to have their health taken care of by the State by virtue of [Article 21](#) of the Constitution. Unless the rural areas are served with specialized Doctors, the people will be denied of their right of public health care. It is in that view of the matter that persons who are instead of serving

public institutions, after obtaining their P.G. Degree courses are running away to some private institutions, the State Government has imposed a condition of bond as a mandatory service to serve in the Government service. If the petitioners are allowed to breach the bond condition, it will only destroy the public health system. It is always open to the State to impose such condition which is reasonable for admission to the Government institution. The petitioners' right is not unlimited and it is subject to reasonable restriction. If the petitioners do not want to abide by the bond condition, then the mere offer of payment of damages specified in the bond is not a consolation.

6. The condition which is now stipulated clearly states that persons who have acquired P.G. Degree are bound to serve the Government health institutions for a period of two years. During the bond period, they cannot be allowed to escape the rigor of the bond. The mere offer of payment of damages is not a consolation. If it is allowed, then everybody may make the payment and get out of their legal obligation to serve the government. Having acquired medical education in the Government institutions at the subsidy rate and after getting stipend and payment during the course period, the petitioners cannot be allowed to contend that the conditions imposed in the prospectus are either arbitrary or invalid. Further having known the conditions in the bond and executed the bond, they cannot resile from the same. This court do not think any case is made out to interfere with the impugned notification. Hence both writ petitions will stand dismissed. No costs. Consequently connected miscellaneous petitions stand closed."

9. From the academic year 2013-2014, Clause 5(b), as found in the decision referred to supra, has been diluted by permitting the fresh candidates also to take part subject to the fulfilment of the bond service later. Similarly, the on going students were also permitted. The said clause 5(b) of the prospectus continues even now. It is apposite to place on record the said condition.

"5(b) Non-Service candidates who have completed their qualifying Post Graduate Degree in Tamil Nadu Government Medical Colleges under the State Quota/ All India Quota, who are bound by the two years government service bond:

I. Non Service candidates who have completed their Post Graduate degree in Tamil Nadu Government Medical Colleges under state quota and All India Quota will be allowed to appear for Higher Speciality entrance examination 2015-16 session, for two attempts only. The first attempt will be taken as immediately after passing the post

graduate course (eg. April 2015) and for the next year, i.e April 2016, it will be taken as second attempt This will be irrespective of whether the candidate takes/writes the higher speciality entrance examination or not.

II. Being eligible and allowed for two attempts as above, if a candidate does not take or get admission to a higher speciality course, he or she will have to complete the bond service (2 years of Government Service) before taking subsequent attempts of Higher Speciality entrance examination.

III. There is no limit of attempts for appearing to higher speciality entrance examination once the mandatory two year bond service is completed after taking two attempts.

IV. A candidate who is the process (middle) of completing the mandatory 2 year bond service, he/she will be allowed to take the higher speciality entrance examination. If selected for higher speciality course, he/she on completion of the higher speciality course, will have to complete the remaining period of 2 year bond service, in addition to the bond service executed for the higher speciality course.

V. A candidate who has not got any appointment in government service in order to fulfil the 2 year bond service, after passing the post-graduate (MD/MS) course in 2014, will be permitted to take the higher speciality entrance examination of this year i.e 2015. If the candidate does not take or get selected for the higher speciality course, he/she will be allowed to appear for the next attempt only after completing the mandatory bond service."

10. The private respondents in all these cases have got admission under the All India Quota to the post graduate courses. There is no All India Quota for the super speciality courses. In other words, there is only one mode of selection without any dichotomy between the State and All India Quota. Thus, the prospectus above would govern everybody. Unfortunately, the private respondents, though admittedly did not qualify the clause 5(b) of the prospectus, they were allowed to participate with the mistaken understanding of the judgment rendered by this Court in Dr.S.Rajesh case ((2009) I MLJ 1103) and the matter did not end there. The private respondents were also selected. The selection was challenged before this Court. Even before selection, the selection was permitted subject to result of the writ petition. These are the background facts governing the present writ petitions.

11. The learned counsel appearing for the petitioners submitted that the respondents, both official and private, and the petitioners are bound by the prospectus. Nobody can be permitted to go beyond it. The Rules of the game cannot be changed after starting of the play. The situation as prevailed in 2008 for the post graduate students was totally different. It was for a different purpose and different courses. Much water has flown under the bridge. Thereafter, the stringent clause 5(b) for the academic year 2012-2013 has been upheld. For the reasons known, the official respondents have taken note of a wrong decision and applied it to the cases on hand notwithstanding the prospectus. Reliance has been made on the judgment of the Division Bench of this Court in Dr.M.Vennila V. Tamil Nadu Public Service Commission, Rep., by Deputy Secretary, Government Estate, Anna Salai, Chennai-600 002 (2006 (3) CTC 449) on the binding nature of the prospectus. A further reliance has been made to the Full Bench decision of this Court in Dr.R.Murali V. Dr.R.Kamalakaran and three others (1999 (3) CTC 675) on the legal proposition that the relief can be considered by taking into consideration the prospectus of the current year alone and an interpretation cannot be given based upon last year's guideline.

12. The learned counsel appearing for the private respondents submitted that as the qualification of some of the petitioners is in doubt, the private respondents, having been allowed, cannot be made to suffer. They would have joined some other institute by this time. Thus, even assuming that there is a mistake on the part of the official respondents, the private respondents cannot be made to suffer.

13. The learned Additional Advocate General appearing for the official respondents, viz., respondents 1 and 2 in all the writ petitions, submitted that the decision was taken on the subject matter based upon the decision of this Court in Dr.S.Rajesh case ((2009) I MLJ 1103). Therefore, there is no malafides involved therein.

14. The facts narrated above speak for themselves. As rightly submitted by the learned counsel for the petitioners, the judgment of Division Bench of this Court in Dr.M.Vennila V. Tamil Nadu Public Service Commission, Rep., by Deputy Secretary, Government Estate, Anna Salai, Chennai-600 002 (2006 (3) CTC 449) would govern the case on hand. In the said judgment, it has been held as follows:

"19. The principle that the prospectus is binding on all persons concerned has been laid by the Supreme Court in Punjab Engineering College, Chandigarh vs. Sanjay Gulati (AIR 1983 SC 580 = 1983 (96) LW 172 S.N.). Following the same, a Division Bench of this Court has also observed in Rathnaswamy, Dr. A. Vs. Director of Medical Education (1986 WLR 207) that the rules and norms of the prospectus are to be strictly and solemnly adhered to. The same view

is also taken by another Division Bench of this Court in Nithiyan P. and S.P. Prasanna vs. State of Tamil Nadu (1994 WLR 624). The same principle is reiterated in the case of Dr. M. Ashiq Nihmathullah vs. The Government of Tamil Nadu and others reported in 2005 WLR 697. It is clear that the prospectus is a piece of information and it is binding on the candidates as well as on the State including the machinery appointed by it for identifying the candidates for selection and admission.

.....

25. In the earlier part of our order, we have extracted relevant provision, viz., Instructions, etc. to Candidates as well as the Information Brochure of the Tamil Nadu Public Service Commission, we hold that the terms and conditions of Instructions, etc. to Candidates and Information Brochure have the force of law and have to be strictly complied with. We are also of the view that no modification / relaxation can be made by the Court in exercise of powers under Article 226 of the Constitution of India and application filed in violation of the Instructions, etc. to Candidates and the terms of the Information Brochure is liable to be rejected. We are also of the view that strict adherence to the terms and conditions is paramount consideration and the same cannot be relaxed unless such power is specifically provided to a named authority by the use of clear language. As said at the beginning of our order, since similar violations are happening in the cases relating to admission of students to various courses, we have dealt with the issue exhaustively. We make it clear that the above principles are applicable not only to applications calling for employment, but also to the cases relating to the admission of students to various courses. We are constrained to make this observation to prevent avoidable prejudice to other applicants at large."

Thus, applying the said ratio, the prospectus would govern the parties before this Court.

15. Similarly, in Dr.R.Murali V. Dr.R.Kamalakannan and three others (1999 (3) CTC 675), the Full Bench of this Court has held that the relief should be granted based on prospectus relating to current year alone and another interpretation given based upon last year's guidelines was not correct. The following paragraphs are apposite.

"33. From these decisions it is clear that the Government who runs the medical colleges got the right to decide from what sources admissions will have to be made. Government thought that equal opportunity must be

given to service and non-service candidates to get admitted in higher speciality courses. The earlier experience shows that non-service candidates are not getting that much opportunity even though they are equally meritorious. By change in policy a quota has been fixed as 50:50 for both these group of candidates and merits are being assessed from these two sources. For both these quota, merit alone was considered for admission. It must also be taken note of for both these groups, common entrance examination was conducted and it is thereafter merit is assessed for candidates. The selection process is not in any way affected by the decision in Dr. Preeti Srivatsava's case, 1999 (4) Scale 579 on which much reliance was placed by learned counsel for writ petitioners. None of the petitioners has established that by earmarking 50% to non-service candidates, merit is in any way affected.

34. While extracting the portions of prospectus, we have said that para (8) of Clause X, the Medical Officers coming under the paragraph are being treated as service candidates. Once they are treated as service candidates, under normal circumstances, they cannot be considered as non-service candidates or under the group of other Medical Officers. But there is enabling provision, which provided that they are eligible to be considered among the Medical Officers under para (9) of Clause X. The same was also provided under G.O.Ms.No. 186. In fact, in the earlier years, service candidates were enjoying larger concession and to certain extent the concession is now reduced."

16. A Judgment cannot be read like a statute. As discussed above, the decision rendered in Dr. Ramesh's case is to be applied to the facts involved therein. Nothing more is needed to be stated, particularly, in the light of the subsequent decisions. In Dr. Puvanalingam Vs. The State of Tamil Nadu, rep., by the Secretary to Government, Department of Higher Education, Fort St. George, Chennai-9., and others (W.P.Nos.14724 and 14725 of 2012 dated 12.06.2012), the condition No.5(b) of the prospectus of the super speciality course for the academic year 2012-2013 has been upheld. What has been done subsequently is only dilution. One thing is clear that from the academic year 2012-2013 onwards, the private respondents, in law and as per the prospectus, do not have any role to play until and unless they complied with the prospectus contained in Clause 5(b). Thus, legally, the petitioners are entitled to succeed. It is not in dispute that but for the private respondents, the petitioners would be eligible to be considered for the respective courses. The submissions made by the learned counsel appearing for the private respondents on the disqualification

against one of the petitioners also cannot be accepted since he admittedly belongs to Tamil Nadu and completed his M.B.B.S., Course here. The service candidates as per the prospectus can also be considered in the merit list. Thus, on merits, the petitioners in W.P.Nos.23198 & 23199 of 2015 viz., Dr.M.Narendran and Dr.K.Satheshkumar, though service candidates, are entitled to get the posts.

17. The only other question for consideration is the position of the private respondents. Though law is settled that the petitioners having complied with the conditions mentioned in clause 5(b) cannot be made to suffer and law has to prevail over the equity. However, it is a case of mistake committed by the official respondents, for which the private respondents cannot be made to suffer. Now, they have been admitted. Not only they have been permitted to write the examination, but the official respondents did not reject their candidature at the earliest point of time in which case they could have pursued their studies in some other institution. Therefore, considering the peculiar facts of the case, this Court is inclined to direct the official respondents to permit the private respondents also to continue. However, they cannot claim any vested right since the said continuation is subject to the approval by the competent authority viz., Medical Council of India. The official respondents are hereby directed to take appropriate steps seeking approval for the admission of the private candidates. It is made clear that in the event of no such approval having been obtained, the private respondents cannot seek any equity. The official respondents are directed to give admission to the petitioners based upon the merit list in the light of the discussion made above.

The writ petitions are ordered accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Director of Medical Education,
Kilpauk, Chennai-600 010.

2.The Selection Committee,
Director of Medical Education,
Kilpauk, Chennai-600 010.

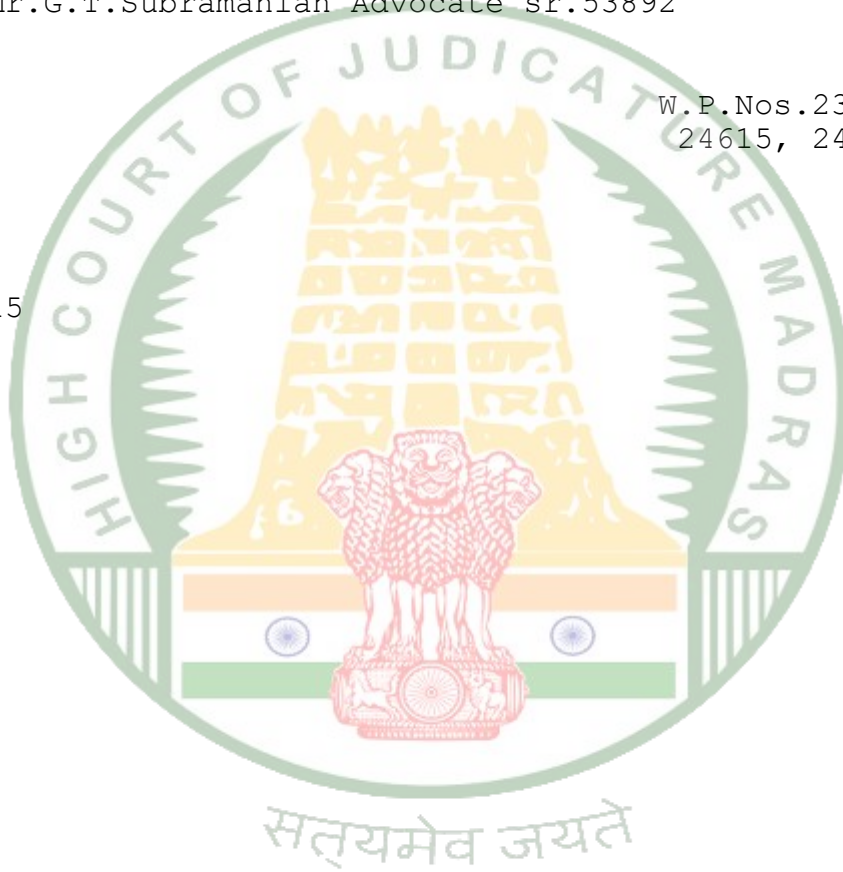
+1 cc to Government Pleader sr.53378

+4 cc to Mr.G.Sankaran Advocate sr.53500 & 53501

+4 cc to Mr.G.T.Subramanian Advocate sr.53892

W.P.Nos.23198, 23199,
24615, 24616 of 2015

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