

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.10.2015

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

W.P.Nos.31390 and 31391 of 2015
and
M.P.Nos. 1 and 2 of 2015

W.P.No.31390 of 2015:

V.Shrivika

...Petitioner

Vs.

1. The Secretary,
Selection Committee,
Directorate of Medical Education,
Chennai - 600 010,
2. The Director of Medical Education,
Directorate of Medical Education,
162, EVR Periyar Salai, Kilpauk,
Chennai - 600 010,
3. The Tamil Nadu Dr.M.G.R.Medical University,
69, Anna Salai, Guindy,
Chennai - 600 032.
4. The Medical Council of India,
rep.by its Secretary,
Pocket 14, Sector - 18,
Dwaraka, Phase-I,
New Delhi.

...Respondents

W.P.No.31391 of 2015:

R.Santhosh

...Petitioner

Vs.

1. Union of India,

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represented by its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi,

2. The Medical counselling Committee,
represented by its Director General,
Ministry of Health and Family Welfare
Nirman Bhavan,
New Delhi.
3. The Medical Council of India,
represented by its Secretary,
Pocket:14, Sector: 18,
Dwaraka, Phase-I,
New Delhi.
4. The Central Board of Secondary Education,
represented by its Secretary,
Shiksha Kendra 2, Community Centre,
Preet Vihar, Delhi,
5. The State of Tamil Nadu,
represented by its Secretary
Ministry of Health and Family Welfare,
Secretariat, Chennai - 09,
6. The Selection Committee,
represented by
The Director of Medical Education,
Kilpauk, Chennai - 10.

...Respondents

Writ Petition in W.P.No.31390 of 2015 is filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus to direct the first respondent to allow the petitioner to participate in the Counselling scheduled to be held on 4th October 2015 and direct the first respondent to accommodate the petitioner with a seat for MBBS Course in the All India Quota in any of the medical colleges in the State of Tamil Nadu.

Writ Petition in W.P.No.31391 of 2015 is filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus to direct the 5th and 6th respondents herein to give priority to the candidates of All India Merit List - 2015, in the extended Third Phase counselling scheduled to be held on 4th and 5th

of the October, 2015 for admission under All India Quota.

For Petitioner : Mr.V.T.Gopalan,Sr.Counsel
for Mrs.Subhashini
for Chennai law Associates in
W.P.No. 31390 of 2015

Mr.V.T.Gopalan, Sr. Counsel for
M/s. S.V. Karthikeyan in
W.P.No. 31391 of 2015

For Respondents : Mr.A.L.Somayaji,Advocate General
assisted by Mr.D.Krishnakumar,
Special Government Pleader
(Education) for RR.1 and2 in
W.P.No.31390 of 2015
and R.5 and R.6 in W.P.No.31391
of 2015

Mr.Su.Srinivasan,Asst.Solicitor
General for RR.1 and 2 in
W.P.No.31391 of 2015

Mr.Anand David for R.3 in
W.P.No.31390 of 2015

Mr.V.P.Raman for R.4 in
W.P.No.31390 of 2015
and for R.3 in W.P.No.31391
of 2015

COMMON ORDER

As the issue involved in both the writ petitions is one and the same, they have been taken up together and disposed of by a common order.

2. These two writ petitions have been moved by getting appropriate permission on 3.10.2015. After hearing the learned counsels appearing for the petitioners as well as the Special Government Pleader appearing for the State of Tamil Nadu, this Court permitted the counselling to go on, however, the State of Tamil Nadu was directed not to complete the process of selection by issuing orders of admission. The State of Tamil Nadu was also directed to

inform the said position to the candidates. The said Order was passed since they have already been called for to attend the counselling, which was conducted on 4.10.2015 and thereafter going on even today. The said order was also passed by taking note of the submission made by the learned Special Government Pleader that in the event of writ petitions being dismissed, the candidates, who have been asked to attend the counselling, will have to be called once again.

Merits of the case:

2. Contending that the 15% of seats fixed for the All India Quota has not been complied with, a writ petition was filed before the Apex Court in W.P.(C) No.659 of 2015 inter alia seeking the following relief:

- "i. Issue a writ, order or direction, in the nature of mandamus directing the respondents to fill up the seats of 15% quota strictly in accordance with the provisions of the All India Pre-Medical/Pre-Dental Entrance Test Rules;
- ii. Issue a writ, order or direction in the nature of mandamus directing modification of the time schedule to accommodate the increased number of counselling on 15% all India Quota seats, or/and
- iii. Alternatively, direct the respondents to pass an instruction for States to consider the name of all the qualified candidates belonging to the State and grant them admission before taking any action towards admitting the candidates from State as per any other Criteria being adopted by the State, and/or
- iv. Pass any other orders or directions which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. One of the grievance in the writ petition is qua the schedule fixed for online counselling (allotment process) for All India Quota U.G. (MBBS/BDS) Seats - 2015 by which 15.9.2015 has been fixed for transfer of vacant seats to State quota. Considering the same, an order was passed by the Apex Court on 15.9.2015 in the following manner:

"Issue notice.

Dasti, in addition, is permitted.

Till the next date, the surplus seats shall not be filled up by the States.

The matter be tagged along with Writ Petition (Civil) No.629 of 2015.

4. Thereafter, a further order was passed by the Apex Court on

28.9.2015 in W.P.(C) No.659 of 2015 etc., batch, which is furnished hereunder:

"In all these petitions we have heard the learned counsel appearing for the parties at length.

Three issues are raised by the learned counsel for the petitioners which are:

1) All India Quota Seats for admission to MBBS/BDS courses are 15% while admitting the students the said quota should not be reduced.

2. The information bulletin for All India Pre-Medical/Pre-Dental Entrance Test, 2015 prescribes the procedure for admission of the students in the aforesaid courses which inter alia lays down that admission has to be strictly in accordance with merit based on the score obtained in the examination. Our attention is drawn to para 15 in this behalf.

3. It is also pointed out that the manner and procedure which is to be followed for making these admissions is stipulated in para 19 of the judgment of this Court in Mridul Dhar (Minor) & Anr. Vs. Union of India & Ors. [(2005) 2 SCC 65].

It is submitted on behalf of the learned counsel appearing on behalf of the Medical Council of India as well as Medical Counselling Committee, on the other hand, that the last date for admission is 30th September, 2015 and further that many students have already undergone the counselling which is maximum in number. Subject to the aforesaid, learned counsel for the respondents also have no objection in accepting the aforesaid three submissions of the petitioner(s)

Thus, making it clear that the last date for admission shall remain 30th September, 2015, we dispose of these petitions with the following directions:

1. All India Quota shall remain 15%.

2. The admissions shall be strictly in accordance with merit

as stipulated in para 15 of the Information Bulletin/Rules.

3. While making the admissions the directions contained in para 19 of Mridul Dhar (Minor) & Anr. Vs. Union of India & Ors. [(2005) 2 SCC 65] shall be borne in mind.

The Medical counselling Committee shall ensure the compliance of the aforestated directions.

The Writ Petitions are disposed of in view of the

terms stated above."

5. The learned Senior Counsel appearing for the petitioners submitted that the State of Tamil Nadu is a party to the above said writ proceedings. However, the learned Advocate General appearing for the State submitted that the State of Tamil Nadu has not been heard. Suffice it is to state that there is no indication in the order passed about the State of Tamil Nadu having been heard.

6. The said Order makes it clear that the All India quota shall remain at 15% and the admission for it shall be strictly in accordance with the merit as stipulated in paragraph No.15 of the Information Bulletin/Rules. However, it was made clear that the direction issued in paragraph No.19 of Mridul Dhar (Minor) and another Vs. Union of India and others ((2005) 2 SCC 65) will have to be borne in mind and in compliance with the said order, the Assistant Director General (ME), Ministry of Health and Family Welfare, Office of the Director General of Health Services has issued direction to the Director of Medical Education of participating States and Deans/Directors/ Principals of participating Medical/Dental Colleges on 29.9.2015, which is apposite to extract hereunder:

"I am directed to refer the above mentioned subject and attach copy of order dated 28/09/2015 (received on 29/09/2015 at 05.30 PM) in above mentioned case passed by the Hon'ble Supreme Court for your information with request to comply with directions of the Hon'ble Supreme Court. You may recall that the vacant seats due to non-joining/resignation, of the 15% All India Quota (MBBS/BDS) were surrender /received to respective State/Universities on 17/09/2015."

7. Thereafter, the State of Tamil Nadu filed interlocutory application in W.P.(C) No.629 of 2015 with the following prayer:

'a. Clarify the Order dated 28.09.2015 in W.P. (Civil) No.629 of 2015 and permit the Applicant State to fill up the surrendered seats beyond the cut off date 30.09.2015;

b. Extend the time limit of 15 days for conducting counselling to fill up the surrendered seats to the State Government; and

c. Pass such other and further order/orders as are deemed fit and proper in the facts and circumstances of the case.''

8. After hearing the parties concerned, orders have been passed on 1.10.2015, which are reproduced hereunder:

''..... Having regard to the peculiar facts of this case wherein initially the States were restrained from giving any admissions from All India Quota seats and thereafter, final orders were passed only on 28th September, 2015, the prayer made in these applications is allowed and we permit the State Governments to complete the admission process with the extension of period by one week from today, i.e., by 07th October, 2015, by filling up the vacant/left over All India Quota seats which have been surrendered to the respective States.

Needless to mention this process shall be undertaken in accordance with the directions issued by this Court vide orders dated 28th September, 2015 in Writ Petition No. 629 of 2015.

We also direct the Director General of Health Services to inform all the States about this order today itself to avoid any such applications from other States for further extension of time. We also make it clear that no further extension shall be granted.''

9. In the said order, it has been made clear that the respective States are at liberty to fill up the vacant/left over All India Government seats within a period of one week from today i.e., 7.10.2015. The exercise will have to be carried out in tune with the direction issued by the Order dated 28.9.2015, which in turn has taken note of the earlier Order passed on 15.9.2015. Incidentally, the Director General of Health Services was directed to inform all the States about the order passed forthwith. Accordingly, a communication was sent on the very same day, which is furnished hereunder:

''To,

1. Director Medical Education of participating States
2. Dean/Director/Principal - Participating Medical/Dental Colleges

Sub:- W.P.(C) No.629 of 2015 - Kritika Nigam (Minor) though legal guardian Vs. Union of India & ANR.

Sir/Madam,

I am directed to refer the above mentioned subject and attach copy of order dated 01/10/2015 in above mentioned case passed by the Hon'ble Supreme Court for your information with request to comply with directions of the Hon'ble Supreme Court. You may recall that the vacant seats due to non-joining/

resignation, of the 15% All India Quota (MBBS/BDS) were surrendered/reverted to respective State/Universities on 17/09/2015.

This matter may be treated as urgent.'

10. It was followed by a notice issued in the Website of Medical Counselling Committee., Ministry of Health and Family Welfare posted on 3.10.2015 enclosing the list of eligible candidates for admission to 15% All India Quota services for the academic year 2015 as provided by CBSE on the basis of the examination conducted. The respective States and the other authorities concerned are requested to comply with the directions of the Apex Court within the time schedule given hereunder. For the better appreciation, the said notice is recorded hereunder:

'Notice

Compliance of Hon'ble Supreme Court Direction in W.P.(C)
No.629 of 2015

Please find attached list of eligible candidates for admission to 15% All India Quota Seats in academic session 2015. This list has been provided by CBSE on the basis of AIPMT 2015 examination.

It is important to mention that the matter of utilization of 15% All India Quota UG seats after reverted/surrendered back to States was heard by the Hon'ble Supreme Court on 28/09/2015 in the case of Kritika Nigam (I.A.Nos.2-5 of 2015 with W.P.(C) No.629 of 2015)

On 28/09/2015, the Hon'ble Supreme Court passed the following order:

1. 'All India Quota shall remain 15%.'
2. 'The admission shall be strictly in accordance with merit as stipulated in para 15 of the Information Bulletin/Rules'.
3. 'While making the admissions the directions contained in para 19 of Mridul Dhar (Minor) & Anr. Vs. Union of India & Ors. [(2005) 2 SCC 65] shall be borne in mind'.

The above said order was sent to all concerned State/College through email on 29/09/2015 by Answering Respondent for the strict implementation. The matter was heard again on 01/10/2015 by the Hon'ble supreme Court in I.A.No.2,3,4 and 5/2015 with W.P.(C) No.629/2015 (Kritika Nigam's case) for further extension of joining by All India Quota Candidates in participating Medical/Dental College located in different states of Country.

The relevant portion of order dated 01/10/2015 is reproduced:

'We permit the State Governments to complete the admission process with the extension of period by one week from today, i.e., by 07th October, 2015, by filling up the vacant/ left over All India Quota seats which have been surrendered to the respective states.

Needless to mention this process shall be undertaken in accordance with the direction issued by this court vide order dated 28/09/2015 in Writ Petition (C) No.629 of 2015''.

Keeping the above directions in view:

State admission authorities / DME / Deans / Directors / Principal / Registrar of Government Medical / Dental Colleges (except States of Andhra Pradesh, Telangana and Jammu & Kashmir) are requested to comply with the directions of Hon'ble Supreme Court in the timeline as framed by the Hon'ble Court.'

These are all the background facts.

11. Learned Senior Counsel appearing for the petitioners submitted that the decision of the Apex Court dated 1.10.2015 has to be read in the context of the earlier orders passed. The directions have been issued to the States all over the country. Therefore, the 15% reserved seats will have to be filled up only from the All India Quota. When once the time limit is extended, the same has to be applied to the merit list under the All India Quota. The list has been published, as seen from the Website of the Medical Counselling Committee. What is to be done by the State Government is to fill up the seats by providing admission as done by the other States. In any case, it cannot be said that the State Government can fill up the seats by treating them under the State Quota. The decision of the Apex Court cannot be read in isolation.

12. The learned Assistant Solicitor General, while endorsing the views of the petitioners on the interpretation of the Orders passed by the Apex Court, submitted that it is for the State Government to fill up the vacancies from the merit list of 15% under the All India Quota by following the procedure as done by the States of Orissa, Haryana and other States.

13. The learned Advocate General appearing for the State of Tamil Nadu submitted that the Order dated 1.10.2015 passed by the Apex Court has to be understood in the context of the applications filed by the State of Tamil Nadu. It has to be seen on a construction of the order passed by the Apex Court in Mridul Dhar case, ((2005) 2 SCC 65). When once seats have been surrendered, they partake the

character of the seats available under the State List. In fact, States like Maharashtra, Karnataka and Kerala have understood the same. Learned Advocate General made reliance upon a judgment of the Division Bench of the High Court of Kerala in Govind Jayan Vs. Arya Sanjeev & Others, (2007(1) KLJ 633) on the effect of seats having been surrendered from the All India Quota. Further submission has been made that there is no mechanism to fill up All India Quota by the State. Thus, it is prayed that the writ petitions will have to be dismissed, more so, when the counselling is likely to be concluded today by treating the seats under the State quota.

Discussion:-

14. Challenge has been made in W.P.(C) No.659 of 2015 before the Supreme Court by a student seeking admission under the All India Quota 15% on merit. In that writ petition, orders referred supra have been passed on different dates. There is no conflict among all the three orders passed. In other words, all the three Orders have to be read in unison. In the second order passed, it has been clearly held that All India Quota shall remain at 15% and the admission shall be strictly in accordance with the merit as stipulated in paragraph No.15 of the Information Bulletin/ Rules. In the subsequent Order dated 1.10.2015, it has been made clear in specific terms that the process of admission by the respective States shall be undertaken in accordance with the directions issued vide Order dated 28.9.2015. Thus, the said order has to be seen and understood on its own context. It is not only the petitioners but the Government of India, which has clearly understood the said Order. In fact, Government of India did not have any difficulty in the order passed on 28.9.2015. The communications following the said Order dated 28.9.2015 and the subsequent order dated 1.10.2015 make the position very clear. That is the reason why the list of eligible candidates for admission to 15% All India quota seats have been published in the Website by the Medical Counselling Committee to all the authorities concerned. It is not in dispute that 15% seats have been earmarked based upon a process of selection on merit. Therefore, the endeavour is to make sure that the meritorious candidates get admission. A surrender of seat would come only when there is no availability of seats under the merit list. That has to be the object and rationale behind the principle in surrendering the seats. In other words, the object is to see to it that merely because there are no takers under the merit list in All India quota, such seats shall not go waste when there is a possibility of filling them under the State Quota. After all, a procedural mechanism is meant to help a meritorious candidate and not to destroy his rights. If the said principle is understood then there is no difficulty in understanding the orders passed by the Apex Court.

15. The cut-off date of 30th September has relevancy qua admission to a College rather than the selection either under State or All India quota. The observations of the Apex Court in the Order dated 1.10.2015 can at best be construed to mean that the States can fill up the remaining vacant/unfilled seats when no one is staking any claim under the All India Quota.

16. The learned Advocate General has made reliance upon the judgment of the Apex Court in Mridul Dhar (Minor) and another Vs. Union of India and others, ((2005) 2 SCC 65), particularly with reference to paragraph No.19 of the said decision. It is apposite to place on record the relevant portion in the said passage, which reads as under:

'19. The object of the admission and last date of joining college in State Quota before the start of second round of counselling or allotment of seat from waiting list in All India Quota clearly is that the correct factual position as to the availability of the seats ought to be known to the DGHS before start of second round of counselling. If it is not done, number of seats would be lost to the merit ranking candidates from All India Entrance Examination. They, though otherwise entitled, would be deprived of those seats and to that extent All India 15 per cent quota would stand reduced. Such seats get reverted to State quota for no fault of the candidates on All India Quota, thus, reducing the All India Quota and increasing the State Quota.'

17. A reading of the said paragraph would make it clear that what weighed in the mind of the Apex Court is given the credit and weightage to merit. The Apex Court was anxious that meritorious students should not be denied the respectable placement. That is the reason why it has been observed that though otherwise entitled, students would be deprived of those seats by virtue of time lapse. The scheme of the fulfilment of seats both under the State list and the All India quota is to start from the State List and followed from the subsequent list. Therefore, there has to be a level playing field by not having a hyper-technical view of the matter. A student standing on merit has to be considered for Medical/B.D.S seat and cannot be allowed to get his dream destroyed.

18. Reliance now has been made on the prospectus of the State Government as well as the Division Bench judgement of the Kerala High Court. In the light of the discussion made above, the prospectus as relied upon would come into play only when there is no dispute on

the surrendered seats, meaning thereby when there are no takers for the All India Quota. In the case on hand, the time limit extended has to be applied to the candidates, who are otherwise entitled to be considered in general. In other words, such time limit cannot be restricted to the All India quota alone. Thus, when once the time limit is extended, then it has to be applied to the All India Quota also. In that case, the earlier surrendering of the seats would lose its significance automatically. Thus, the judgment of the Division Bench of the Kerala High Court has to be seen in its own contest and therefore not applicable to the facts of the case.

19. The other submission made by the learned Advocate General that there is no data available to fill the seats under the All India Quota also cannot be accepted. By the notice issued by the Medical Counselling Committee, the list of eligible candidates has been attached. The States like Orissa and Harayana have understood it correctly. Merely because some other States have not understood the Order passed by the Apex Court, the same cannot be a ground to accept the submissions made by the State of Tamil Nadu in this regard. Therefore, the said contention also cannot be accepted.

20. The other contention made by the learned Advocate General that as the prayer of the State of Tamil Nadu before the Apex Court having been allowed, the writ petitions are liable to be dismissed also cannot be countenanced in view of the discussion made above since the order passed by the Apex Court has to be read as a whole by taking into consideration of the earlier orders passed as discussed above. The said order is not specific to the State of Tamil Nadu alone, but applicable to all the States.

21. Coming to the relief to be granted, this Court is unable to grant the relief as sought for by the petitioners, as the counselling is nearing completion. Similarly, the relief cannot be restricted to the petitioners alone, as against the other meritorious candidates. One thing is clear that everything has happened in a short span of time. What is applicable to the petitioners will have to be made applicable to the other candidates who are similarly placed as well, provided they are otherwise eligible on merit. It is a question of implementing the orders of Apex Court as understood by the Union of India. Otherwise, this will also would lead to selective discrimination. Even in the orders passed by the Apex Court referred supra, the directions are general in nature and they are not specific to the petitioners therein. Accordingly, these writ petitions stand disposed of by directing the State of Tamil Nadu to strictly comply with the orders passed by the Apex Court as understood by the Medical Counselling Committee of Union of India by doing the needful

forthwith in the light of the discussions made. It is made clear that if there are vacancies still remained under the 15% of All India quota, then the State of Tamil Nadu can fill those vacancies from the merit list under the State quota as per the counselling done on 4.10.2015 and which is also going on today. No costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Ministry of Health and Family Welfare,
Union of India,
Nirman Bhavan,
New Delhi,
2. The Director General,
Medical counselling Committee,
Ministry of Health and Family Welfare
Nirman Bhavan,
New Delhi.
3. The Secretary,
Medical Council of India,
Pocket:14, Sector: 18,
Dwaraka, Phase-I,
New Delhi.
4. The Secretary,
The Central Board of Secondary Education,
Shiksha Kendra 2, Community Centre,
Preet Vihar, Delhi,
5. The Secretary
Ministry of Health and Family Welfare,
State of Tamil Nadu,

Secretariat, Chennai - 09,

6. The Director of Medical Education,
Selection Committee,
Kilpauk, Chennai - 10.

7. The Secretary,
Selection Committee,
Directorate of Medical Education,
Chennai - 600 010,

8. The Tamil Nadu Dr.M.G.R.Medical University,
69, Anna Salai, Guindy,
Chennai - 600 032.

2 CCs to M/s. Chennai law Associates, Advocate, SR 53918

1 CC to Mr.M/s. S.V. Karthikeyan, Advocate, SR 53774

1 CC to Mr.SU. Srinivasan, Asst. Solicitor General of India, SR 53886

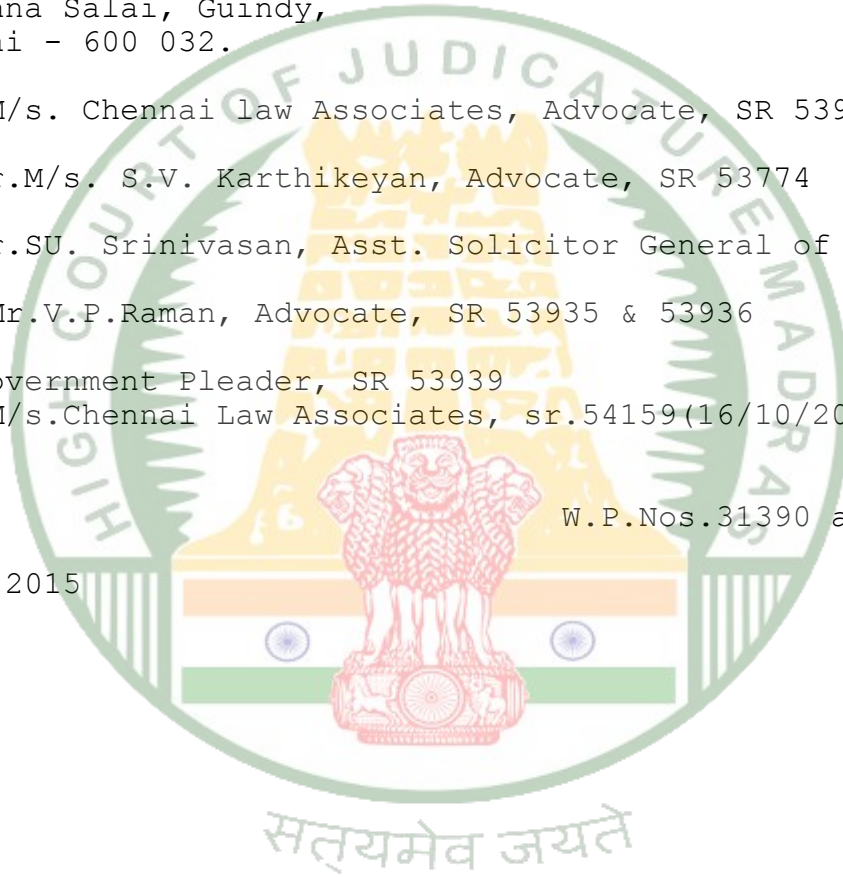
2 CCs to Mr.V.P.Raman, Advocate, SR 53935 & 53936

1 CC to Government Pleader, SR 53939

+1 cc to M/s.Chennai Law Associates, sr.54159(16/10/2015)

GJ [CO]
PSI 05.10.2015

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