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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 22.06.2016

ORDERS DELIVERED ON : 24.06.2016

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.(MD) No.10681 of 2016

and

WMP(MD) Nos.8283 to 8285 of 2016

M/s.Dhaya College of Engineering
Rep. By its Authorised Signatory
G.Jayakaran Grubb
Sivarakkottai Village,
Thirumangalam, Madurai-625 706.

.. Petitioner

vs.

1.The Anna University,
Chennai 600 025,
Rep. by its Registrar.

2.Centre for Affiliation of Institutions,
The Anna University,
Chennai - 600 025.

3.Deputy Director,
Town & Country Planning,
Directorate of Town and Country Planning,
Madurai.

4.Superintending Engineer, PWD,
(I/C) Building (C&M) Circle,
Madurai.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent culminating in the impugned order Lr.No.227/CAI/AU/2016, dated 08.06.2016, quash the same in so far as the same directs the Petitioner to produce a Structural Stability Certificate from the 4th Respondent for grant of Provisional Affiliation for the academic year 2016-2017 and direct the Respondent 1 & 2 to forthwith grant the Petitioner college affiliation to the Anna University.

For Petitioner : Mr.C.A.Diwarhar
for

Mr.S.Sivaraman

For R3

: Mr.K.Guru

Additional Government Pleader

For R1, R2 and R4:

Mr.K.Chellapandian

Additional Advocate General
assisted by



Mr.R.Muthukaruppan, AGP
and
Mr.M.Rajarajan, G.A.

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Heard the Learned Counsel for the Petitioner; the Learned Additional Government Pleader for the third Respondent and the Learned Additional Advocate General for the Respondent Nos.1, 2 and 4.

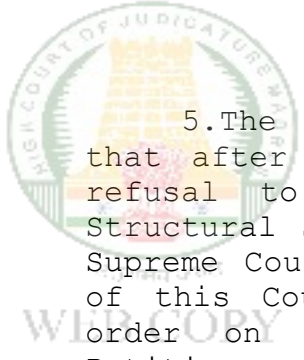
2.The Petitioner has preferred the present writ petition praying for passing of an order by this Court in calling for the records of the First Respondent culminating in the impugned order in Lr.No.227/CAI/AU/2016, dated 08.06.2016 and to quash the same in so far as it directs the Petitioner to produce a Structural Stability Certificate from the Fourth Respondent for the grant of provisional affiliation for the academic year 2016-2017 and further directing the Respondents 1 and 2 forthwith to grant the Petitioner/college affiliation to Anna University. The First Respondent/Registrar, Anna University, on 08.06.2016 in his communication, in Lr.No.227/CAI/AU/2016, addressed to the Principal of the College, had inter alia observed the following:-

"In response, you have submitted the first three documents mentioned above to the University through a letter dated 27.05.2016. It is seen that your college has not obtained Certificate from the PWD Superintending Engineer for the Structural Stability of the Buildings constructed in the college.

This is to inform you that the necessary Structural Stability Certificate issued by the PWD Superintending Engineer for all the buildings / structures constructed in the College, has to submit immediately to the University before the start of Counselling process towards grant of provisional affiliation for the academic year 2016-2017. This is mandatory and statutory requirement as per the Regulation R 6.2 vide Section 5.5. of the Statutes for Affiliation (2004) of Anna University to ensure safety for the students."

3. Assailing the validity, legality of the communication of the First Respondent, dated 08.06.2016, the Learned counsel for the Petitioner submits that on obtaining the approval from AICTE, the Petitioner applied to the First Respondent for affiliation in respect of the academic year 2011-2012 and although the First Respondent has accepted the Structural Stability Certificate issued by the Chartered Engineer from its approved panel for granting affiliation to other Engineering Colleges, it declined to grant affiliation to the Petitioner on the ground that affiliation could be granted only on production of a Structural Stability Certificate issued by the Fourth Respondent.

4. The Learned counsel for the Petitioner contends that the insistence on a Structural Stability Certificate from the Fourth Respondent for grant of affiliation is causing grave injustice and loss to the Petitioner and it is a matter of record that the Structural Stability Certificate issued by the Government approved Chartered Engineer was accepted for the grant of affiliation till the year 2012.



5. The Learned counsel for the Petitioner proceeds to take a plea that after several writ petitions and writ appeals arisen due to the refusal to grant affiliation on the ground of non production of Structural Stability Certificate from the Fourth Respondent. The Hon'ble Supreme Court in S.L.P.(C) No.21901 of 2014 (filed against the Judgment of this Court, dated 21.07.2014 in W.A.(MD)No.873 of 2014) passed an order on 13.08.2014 directing the First Respondent to allow the Petitioner to commence the academic session 2014-2015. It is also represented on behalf of the Petitioner that pursuant to the orders of the Hon'ble Supreme Court dated 13.08.2014 in S.L.P.(C)No.21901 of 2014, the Petitioner was granted provisional affiliation and a special counselling was held for students and the students were admitted in the 5 streams and college commenced function.

6. The stand of the Petitioner is that it applied for renewal of Provisional Affiliation for the academic session of 2015-2016 and that the First Respondent once again deliberately failed to renew the affiliation and returned the application. In I.A.No.3 of 2015, in S.L.P (C)No.21901 of 2014, the Hon'ble Supreme Court by an order, dated 15.05.2015 over ruled the objections of the First Respondent and observed that the Petitioner may be deemed to have provisional affiliation from the First Respondent for the academic session 2015-2016 and listed the SLP for further consideration in the first week of July, 2015. Following the said order, the Petitioner participated in the counselling and admitted the students for the academic year 2015-2016.

7. Continuing further, the Learned counsel for the Petitioner submits that the Hon'ble Supreme Court in the order, dated 28.07.2015 in S.L.P.(C)No.21901 of 2014, recorded the fact that the affiliation of the Petitioner was granted for the academic years 2014-2015 and 2015-2016 and while noting that Section 7 of the Anna University Act, required affiliation to be obtained for each and every academic year, directed the Petitioner to apply to the Anna University for such affiliation and held that in the event of an adverse order being passed, it would be open to the Petitioner to initiate appropriate proceedings.

8. The Learned counsel for the Petitioner urges before this Court that the issue whether non production of Structural Stability Certificate from the Fourth Respondent could be a reason to decline provisional affiliation by the First Respondent, came to be settled in favour of the Petitioner and in fact, the Hon'ble Supreme Court by granting provisional affiliation for the academic sessions 2014-2015 and 2015-2016, held that the essential norms having been satisfied, the Petitioner would be put to financial loss and it was no longer open to the First Respondent to contend that non production of the Structural Stability Certificate from the Fourth Respondent could be a reason to decline continuation of provisional affiliation.

9. The Learned counsel for the Petitioner emphatically projects an argument that the Petitioner on 28.01.2016 applied for renewal of the provisional affiliation for the academic session 2016-2017 and the AICTE by an order dated 05.04.2016, posted on the AICTE website granted approval for the academic session 2016-2017 and included the Petitioner in the list of AICTE approved colleges and therefore, the AICTE considered the Petitioner's building structurally stable and safe to



grant approval. Moreover, the copy of the AICTE approval was directly communicated to the First Respondent as an affiliating body and the Petitioner following the exclusion of its name submitted a representation, dated 20.04.2016 to the First Respondent seeking inclusion in the list of affiliated colleges and in this regard there is no response from the First Respondent.

10. The Learned counsel for the Petitioner takes a stand that as the academic year 2016-2017 was past approaching, the Petitioner filed W.P.No.8697 of 2014 to consider the representation dated 20.04.2014 and to include the Petitioner's name in the list of affiliated colleges and this Court by an order, dated 28.04.2016 directed the Petitioner, to submit a fresh representation along with necessary documents including a print out of the down loaded version of the AICTE approval certificate and directed the Respondents therein to consider the approval granted by AICTE and complete the formalities by 10.05.2016.

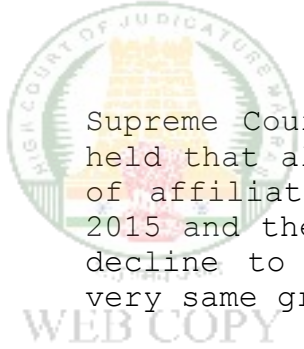
11. Besides the above, it is the case of the Petitioner that it submitted all necessary documents for continuation of affiliation having been enclosed along with the application dated 28.01.2016, he submitted a letter dated 28.04.2016 (enclosing the down loaded version of the AICTE approval) and called upon the First Respondent to grant renewal of affiliation for the academic year 2016-2017. In this regard, it is represented on behalf of the Petitioner that the First Respondent in its letter dated 02.05.2016 while acknowledging the receipt of the Petitioner's letter dated 28.04.2016, denied the receiving of the copy of the AICTE approval and called upon the Petitioner to submit a copy of the AICTE approval so that an inspection team could be sent for verification of documents and facilities.

12. The Learned counsel for the Petitioner contends that the Petitioner by a letter, dated 12.05.2016, clarified all the queries raised earlier and requested for issuance of Structural Stability Certificate, without any further delay. In this connection, it is brought to the notice of this Court on behalf of the Petitioner that the Fourth Respondent inspected the college on 17.05.2016 and it cited a letter dated 23.05.2016 of the third Respondent to claim that the Petitioner has not obtained approval from Local Planning Authority and that the Structural Stability Certificate may be issued only on production of such approval from the Local Planning Authority for deviations from the approved plan. The clear cut case of the Petitioner is that the Petitioner submitted a revised plan as early as on 18.08.2014 and the same is pending with the third Respondent and the third Respondent is deliberately holding back the approval of the revised plan knowing very well that the deviations are very minor (about 8.8% from the approved plan) and well within the permissible limit of 50% in Non planning areas.

13. The Learned counsel for the Petitioner invites the attention of this Court that the Petitioner filed W.P.No.9769 of 2016 seeking to consider its representation, dated 27.05.2016 and prayed for passing appropriate orders to include its name in the list of provisionally affiliated colleges for the year 2016-2017 and since the Respondents passed an order on 08.06.2016, the Petitioner withdrew the writ petition.

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14. The forceful contention of the Petitioner is that the Hon'ble



Supreme Court in its order dated 13.08.2014 in S.L.P.(C)No.21901 of 2014 held that all the essential norms have been fulfilled, directed the grant of affiliation and permitted commencement of the academic session 2014-2015 and therefore, it is no longer open to the Respondent Nos.1 and 2 to decline to grant renewal of affiliation for the year 2016-2017 on the very same ground.

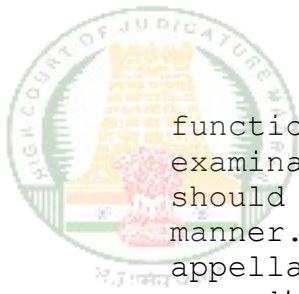
15. In effect, the argument projected on behalf of the Petitioner is that the non production of Structural Stability Certificate from the Fourth Respondent, cannot be a reason to refuse continuation of affiliation for the year 2016-2017 and as such, the reasons mentioned by the second Respondent in its order dated 08.06.2016 to decline affiliation for the year 2016-2017 is untenable and militates against the orders of the Hon'ble Supreme Court dated 13.08.2014, 15.05.2015 and 28.07.2015 respectively.

16. The Learned counsel for the Petitioner submits that the continuance of the students for the years 2014-2015 and 2015-2016, academic sessions made under the orders of Hon'ble Supreme Court will be rendered untenable, if the provisional affiliation for the year 2016-2017 is not continued and in fact, no prejudice would be caused to the Respondents, as the Hon'ble Supreme Court had inter alia found the buildings structurally stable and safe to permit the college to commence in 2014-2015 and continue in 2015-2016.

17. The Learned counsel for the Petitioner contends that a Stability Certificate dated 25.08.2014 issued by the Chartered Engineer in respect of the Petitioner's college for the period from 25.08.2014 to 24.07.2017 mentions that the building will be structurally sound for the aforesaid period and as such, there can be no impediment in including the Petitioner's name in the list of affiliated colleges, as the counselling for students for the academic year 2016-2017 is scheduled to be commenced shortly.

18. The Learned counsel for the Petitioner in support of his contention that minor deficiencies cannot be against the Petitioner in denying affiliation, cites a decision of the Hon'ble Supreme Court in AL-KARIM EDUCATIONAL TRUST v. STATE OF BIHAR reported in 1996 (8) SCC 330 at special page 331, wherein it is mentioned as follows:-

"From the manner in which the deficiencies have been pointed out from time to time, each time the old deficiencies were shown to have been removed, new deficiencies were shown, gives the impression that the affiliation is unnecessarily delayed. For the removal of the minor deficiencies pointed out in the enquiry report, a compliance affidavit was filed. The deficiencies have been substantially complied with and minor deficiencies pointed out are not such as to permit withholding of the affiliation to which the appellants' Institution is entitled. These minor deficiencies, if they exist, shall be taken care of by those in charge of the Institution. For taking such further steps, the grant of affiliation need not wait. It is impractical to insist, for a foolproof or absolute adherence to all requirements without regard to their importance or relevance, for the purpose of imparting education, in a practical way, especially because the Institution has begun to



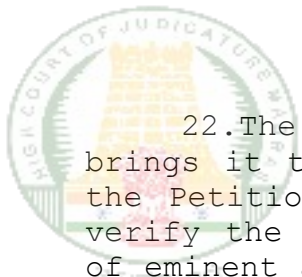
function, students admitted to the Institution have taken the examination and the fate of a good many number of students should not hang in the balance in an unending or everlasting manner. Therefore, the steps for the grant of affiliation to the appellants' Institution may now be expedited and the Respondents are directed to issue the necessary orders without loss of time."

19. The Learned counsel for the Petitioner relies on the decision of Hon'ble Supreme Court in *MAA VAISHNO DEVI MAHILA MHAVIDYALAYA v. STATE OF U.P.* reported in 2013 (2) SCC 617 at special page 623, wherein it is among other things, observed as follows:-

"... The affiliating/examining body and the State Government must abide by the proficiency and command of NCTE's directions. The Central and the State body should act in tandem and, with due coordination, come to a final conclusion as to the steps which are required to be taken in regard to both recognition and affiliation. But certainly, the State Government and the University cannot act in derogation to NCTE. The State opinion, as contemplated under Section 37 of the 1973 U.P. Act to the extent it admits to overreach, is reconcilable and its results are not in its orientation to the directives of NCTE are void and inoperative to the extent they cannot be resolved in which case clear precedence is to be given to the directives of NCTE during such resolution. The opinion of the State, therefore, has to be read and construed to mean that it would keep the factors determined by NCTE intact and then examine the matter for grant of affiliation. The role of the State Government is minimised at this stage which, in fact, is a second stage. It should primarily be for the University to determine the grant or refusal of affiliation and role of the State should be the bare minimum, non-interfering and non-infringing."

20. Per contra, it is the submission of the Learned Additional Advocate General for the Respondents that the second Respondent/University appointed an Inspection Committee to inspect the Petitioner college for the purpose of affiliation and to submit a report and the Inspection Committee inspected the Petitioner/College on 20.07.2011 and submitted a report pointing out three trivial defects and the Inspection Committee at the time of inspection and pointing out three trivial defects, failed to note the absence of stability certificate for the buildings and other certificates required from the Director of Town and Country Planning and the Certificate under Section 37-B of the Tamil Nadu Land Reforms (Fixation and Ceiling) Act, 1971 etc.

21. At this stage, the Learned Additional Advocate General for the Respondents contends that the Hon'ble Supreme Court in *S.L.P. (C) No. 21901 of 2014*, while observing that as per Section 7 of the Anna University Act, affiliation is required to be obtained for each and every year, the order is confined only to the academic years 2014-2015 and 2015-2016 and had further proceeded to state that the subsequent academic years, it is open to the Petitioner to apply for the same before the First Respondent University in accordance with the statutory requirement.



22.The Learned Additional Advocate General for the Respondents brings it to the notice of this Court that the application submitted by the Petitioner Institution was scrutinised by the Standing Committee to verify the fulfilment of statutory and academic requirements and a team of eminent and senior professors formed and they inspected the college in the presence of representatives of the College on 06.05.2016 and they verified the documents and certificates submitted by the college and since four necessary documents were not submitted, the college was informed of the same through a letter dated 14.05.2016 and a rectification report was also received from the Petitioner/Institution and a perusal of the same revealed that though in serial No.4, it was indicated that the Certificate from Superintending Engineer for the Structural Stability of building was enclosed, the said document was missing.

23.The Learned Additional Advocate General for the Respondents submits that it is absolutely necessary in the interest and safety of the students and staff of the college that the building is stable and structurally sound and a certificate to that effect by a Superintending Engineer, Public Works Department, Government of Tamil Nadu, which is an essential one as he is the competent authority in terms of the statutory requirement of the statutes for Affiliation (2004) published in the Gazette of Tamil Nadu, in addition to the documents and certificates listed in page 201, Regulation - 6.2 (vide Section 5.5. of the statutes).

24.Furthermore, it is represented by the Learned Additional Advocate General for the Respondents that the Petitioner was issued with the communication dated 08.06.2016, directing it to obtain a Stability Certificate from the competent Superintending Engineer of Public Works Department for the purpose of granting provisional affiliation for the academic year 2016-2017 and in fact no other college in the State of Tamil Nadu was accorded provisional affiliation without the said stability certificate issued by the competent Superintending Engineer of the Public Works Department in the academic years 2012-2013; 2013-2014; 2014-2015 and 2015-2016.

25.The Learned Additional Advocate General for the Respondents cites the order of this Court, dated 08.09.2015 in W.P.No.26455 of 2015 between MELVISHARAM MUSLIM EDUCATIONAL SOCIETY REP. BY ITS GENERAL SECRETARY - S.ZIAUDDIN AHMED v. THE DIRECTOR, CENTRE FOR AFFILIATION OF INSTITUTIONS, ANNA UNIVERISTY, CHENNAI, wherein a direction was issued to the Petitioner therein to submit a fresh representation to the Respondent by enclosing the relevant documents within two weeks from the date of receipt of a copy of the order and on receipt of the same, the Respondent was directed to consider the same and pass order in accordance with law, within a period of four weeks thereafter.

26.Also, the Learned Additional Advocate General for the Respondents relies on the Judgment of the Hon'ble Supreme Court in W.P.(Civil) No.482 of 2004 between AVINASH MEHROTRA v. UNION OF INDIA dated 13.04.2009, wherein at paragraph No.40, the following directions were issued:-

"(i)Before granting recognition or affiliation, the concerned State Government and Union Territories are directed to ensure that the buildings are safe and secured from every angle and they are constructed according to the safety norms



incorporated in the National Building Code of India.

(ii) All existing government and private schools shall install fire extinguishing equipments within a period of six months.

(iii) The school buildings be kept free from inflammable and toxic material. If storage is inevitable, they should be stored safely.

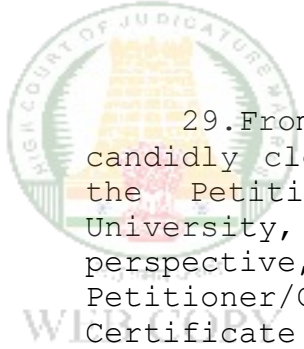
(iv) Evaluation of structural aspect of the school may be carried out periodically. We direct that the concerned engineers and officials must strictly follow the National Building Code. The safety certificate be issued only after proper inspection. Dereliction in duty must attract immediate disciplinary action against the concerned officials.

(v) Necessary training be imparted to the staff and other officials of the school to use the fire extinguishing equipments."

27. Besides the above, on behalf of the Respondents, the attention of this Court is invited to the Judgment of this Court, dated 21.07.2015 in W.A.No.873 of 2014, wherein at paragraph No.27, it is, among other things, observed as under:-

"It is seen, from the relevant decisions relied on by the Learned Advocate General appearing on behalf of the appellants, that the affiliation to be granted, by the University, is not purely based on the approval granted by the AICTE. Therefore, it cannot be said that the grant of affiliation is an event, that should happen, automatically, following the grant of approval, by the AICTE. The norms prescribed for the approval of the College, by the AICTE, are different from those which have been prescribed for the grant of affiliation, to the Petitioner College, by the University. As such, the contentions raised on behalf of the Petitioner College that it would not be open to the University to deny the grant of affiliation, based on the norms, which have been prescribed for the grant of approval, by the AICTE, cannot be countenanced."

28. The Learned Additional Advocate General appearing for the Respondents contends that the Stability Certificate of Chartered Engineer dated 25.08.2014 relied on the side of the Petitioner cannot be substitute for the statutory requirement of the production of Structural Stability Certificate to be issued by the Public Works Department Superintending Engineer. As far as the present case is concerned, this court pertinently points out that the Hon'ble Supreme Court in the order dated 28.07.2015 in S.L.P.(C)No.21901 of 2014, between M/s.DHAYA COLLEGE OF ENGINEERING v. THE ANNA UNIVERSITY AND OTHERS, had among other things observed that "... As per the provisions of Section 7 of the Anna University Act, affiliation is required to be obtained for each and every academic year. We make it clear that pursuant to the earlier affiliation order in favour of the Petitioner-institution by the Respondent-University for the Academic years 2014-2015 and 2015-2016, we confine the said order for those academic years. However, for the subsequent academic year(s) it is open for the Petitioner-institution to apply for the same to the First Respondent-University in accordance with the statutory requirements."



29. From the aforesaid order of the Hon'ble Supreme Court, it is candidly clear that for the subsequent academic year (years), it is for the Petitioner/college to apply before the First Respondent/Anna University, in accordance with the statutory requirements. Viewed in that perspective, this Court is of the considered opinion that the Petitioner/College is to produce necessary Structural Stability Certificate issued by the Public Works Department Superintending Engineer, and the same is a mandatory and essential requirement, as per Regulation 6.2 vide Section 5.5 of the statutes/affiliation (2004) of Anna University Act. The furnishing of the said certificate as per statute, cannot be dispensed with. Furthermore, the reliance placed on the side of the Petitioner in regard to the Stability Certificate, dated 25.08.2014, issued by the Chartered Engineer, is not a substitute for the Structural Stability Certificate to be issued by the Public Works Department Superintending Engineer. As per Section 7 of the Anna University Act, for any College applying for grant of affiliation for each and every academic year, the said affiliation is to be obtained. Even the Hon'ble Supreme Court's order, dated 28.07.2015 in S.L.P.(MD) No.21901 of 2014 in respect of the subsequent year (years) i.e. for 2016-2017, it is clearly observed that it is open to the Petitioner/College to apply for the same before the First Respondent University in accordance with the statutory requirements. Looking at from any angle, the impugned order of the First Respondent, dated 08.06.2016, requiring the Petitioner to submit the necessary Structural Stability Certificate issued by the Public Works Department, cannot be found fault with. Consequently, the writ petition fails.

30. In fine, the writ petition is dismissed leaving the parties to bear their own costs. Before parting with the case, it is made clear by this Court that the dismissal of the writ petition will not preclude the Petitioner/College to submit a representation before the concerned authorities seeking to grant continuation of affiliation to the Petitioner/College for the year 2016-2017 bearing in mind the paramount interest and welfare of the students, who were admitted in the academic batches for the years 2014-2015 and 2015-2016 respectively, if it so desires/advised. If such a representation is received by the concerned authorities, then, they may consider the same with a humane and sympathetic consideration and pass necessary orders. The connected Miscellaneous Petitions are also dismissed.

Sd/
Assistant Registrar(CS-I)

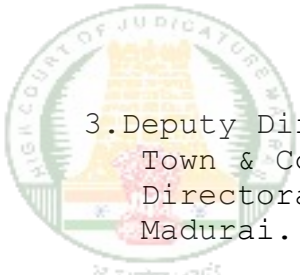
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Sub Assistant Registrar.

To:

1. The Registrar.
The Anna University,
Chennai 600 025,

2. Centre for Affiliation of Institutions,
The Anna University,
Chennai - 600 025.



3. Deputy Director,
Town & Country Planning,
Directorate of Town and Country Planning,
Madurai.

4. Superintending Engineer, PWD,
(I/C) Building (C&M) Circle,
Madurai.

+1CC to M/S.S.Sivaraman, Advocate, SR.No. 32785
+1CC to M/S.M.Rajaraman, Advocate, SR.No. 32692

Order Made in
W.P. (MD) No.10681 of 2016
24.06.2016

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