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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **24.11.2017**

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) No.20668 of 2017

R.Ravi,
General Secretary,
The Tamil Nadu Private Bus and
Transport Labours Association,
(Reg.No.290/TAJ),
No.4/95, Agrakharam,
Thiruvaiyaru (TK),
Thanjavur District.

: Petitioner

.vs.

1. The Government of Tamil Nadu,
represented by its Secretary,
Transport Department,
Fort St.George,
Chennai.

2. The District Collector,
Thanjavur District.

3. The Assistant Commissioner of Labour,
Thiruchirappalli.

: Respondents

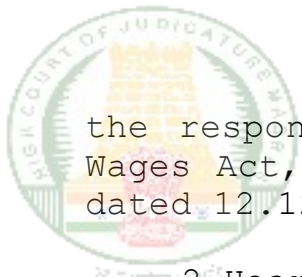
PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying this Court for issuance of a Writ of Mandamus directing the respondents 1 to 3 to consider the representation of the Petitioner dated 21.09.2016 and to direct the respondents to implement the order passed under the Minimum Wages Act, 1948 and as per the Government Order in G.O(2D) No.91, dated 12.12.2013.

For Petitioner	: M/s.V.Palanichamy
For Respondents	: Mr.T.R.Janarthanan Additional Govt.Pleader

O R D E R

[Order of the Court was made by **M.VENUGOPAL, J.**]

This Writ Petition has been filed seeking issuance of a Writ of Mandamus directing the respondents 1 to 3 to consider the representation of the Petitioner dated 21.09.2016 and to direct



the respondents to implement the order passed under the Minimum Wages Act, 1948 and as per the Government Order in G.O(2D) No.91, dated 12.12.2013.

2. Heard both sides. No counter is filed on behalf of the Respondents 1 to 3.

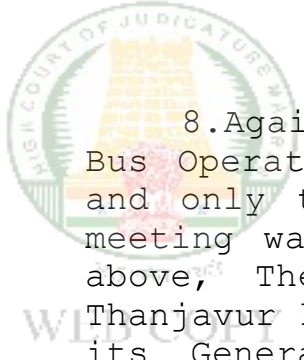
3. By consent, the main Writ Petition itself is taken up for final disposal.

4. According to the Petitioner/Association, individual representations, dated 21.09.2016 was addressed to the Second Respondent/The District Collector, Thanjavur District, the Third Respondent/The Assistant Commissioner of Labour, Tiruchirappalli and the Home Secretary to the Government of Tamil Nadu in regard to the directions being issued to the Private Transport Companies for providing Minimum Wages to the labourers as determined by the Minimum Wages Act, 1948.

5. It is the version of the Petitioner/Association that the Second Respondent/The District Collector, Tiruchirappalli had addressed a communication, dated 14.08.2016 to the General Secretary of Tamil Nadu Bus and All Transport Workers Association, Thanjavur (in respect of the Petition) to the effect that the Demand Notice were sought to be issued through the Deputy Inspector in respect of non-payment of minimum wages from the concerned Transport Operators. In fact, the Secretary of the Petitioner/Association was directed to approach the concerned Labour Inspectors and to seek redressal of their grievances.

6. It comes to be known that the Commissioner of Labour, Chennai-6 had addressed a communication, dated 27.2.2009 to the President of Tamil Nadu Private Bus and All Transport Workers Union, Bus Stand, Pattukkottai Depot, wherein, based on the complaint letter, dated 29.11.2007 of the President, Pattukkottai Tamil Nadu Bus and All Transport Workers Union to the effect that the concerned worker can file a petition before the Deputy Commissioner of Labour and to seek necessary relief.

7. It transpires that the Labour Inspector, Prabha Complex, Mangalapuram, Medical College Road, Thanjavur had addressed a communication, dated 18.01.2012 to the Secretary of Thanjavur District Private Bus Owners Association/Private Bus Operators, Thanjavur and another and to one R.Ravi, The State Secretary of Tamil Nadu Bus and All Transport Workers Union, Thanjavur, whereby and where-under, it was inter-alia mentioned that on 21.7.2011 talks, Private Bus Operators Union, District Representatives had not taken part and only the Union Office
<https://hcrs.ecourts.gov.in/doc/services> part and as such, the Second Level of Talks would be held at Thanjavur Labour Inspector's Office on 8.8.2011 at 11.30 a.m., on which time, they should participate without any default.



8. Again when the talks held on 21.7.2011 and 8.8.2011, Private Bus Operators Union, District Representatives had not taken part and only the Union Office Bearers took part and therefore, the meeting was adjourned to 15.9.2011 at 11.30 a.m. Apart from the above, The Tamil Nadu Bus and All Transport Workers Union, Thanjavur had addressed a communication, dated 19.12.2011 (through its General Secretary) to the Second Respondent/The District Collector, Thanjavur District, mentioning among other things, that the Bus Operators are not paying the minimum wages to the bus workers and they are indulging in cheating and therefore prayed for taking necessary action.

9. It comes to be known that the Inspector of Labour, Thanjavur on 18.1.2012 had addressed a communication to the Thanjavur District Private Bus Owners Association and to the State Secretary of the Tamil Nadu Bus and All Transport Workers Union stating that the Second Respondent/The District Collector, Thanjavur District had issued a direction for conducting talks in regard to the payment of wages to be held between the Private Bus Owners Union and the Tamil Nadu Bus and All Transport Workers Union and in this connection, for the proposed talks on 24.1.2012 at 11.00 a.m., the concerned persons were required to take part without any default. Once again, on 21.9.2016, the State Secretary of the Tamil Nadu Bus and All Transport Workers Union had addressed a communication to the Home Secretary of the State Government, stating that the minimum wages as recommended by the Government are not paid and as such, Salary List/Slip of the Private Transport Workers are to be examined by the Home Secretary and they prayed for a grant of salary on par with the Government. A similar letter, dated 21.9.2016 was addressed by the State General Secretary of the Tamil Nadu Bus and All Transport Workers Union, Thanjavur to the Second Respondent/District Collector, Thanjavur District and the Third Respondent/The Assistant Commissioner of Labour, Tiruchirappalli.

10. It appears that the Inspector of Labour, Thanjavur had addressed a communication to the State General Secretary of the Thanjavur District/Writ Petitioner mentioning to the effect that when the inspection was conducted by the Deputy Labour Inspectors in the Private Bus Operators Establishments, had come to light that those working in the said establishments were paid not below the minimum wages.

11. In spite of the above, the grievance of the Petitioner is that the labourers/workers of Private Bus Transport Companies received their wages not less than the minimum wages prescribed under the Minimum Wages Act, 1948 and hence, the Petitioner/Association left with no other option, had approached the State General Secretary of the Tamil Nadu Bus and All Transport Workers Union, Thanjavur to the Second Respondent/District Collector, Thanjavur District and the Third Respondent/The Assistant Commissioner of Labour, Tiruchirappalli, dated 21.09.2016 to issue a Writ of Mandamus for directing the Respondents to consider the representation of the Petitioner, dated 21.09.2016.

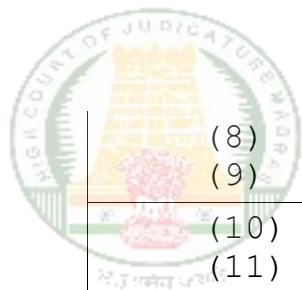
for fixing minimum wages in terms of Minimum Wages Act, 1948, coupled with the ingredients of G.O(2D)No.91, Labour and Employment(J1) Department, dated 12.12.2013, revising the minimum rates of wages for employment in Public Matter Transport.

12.A mere perusal of the ingredients of G.O(2D)No.91, Labour and Employment(J1) Department, dated 12.12.2013, un-erringly points out that a reference to G.O(2D)No.91, Labour and Employment(J1) Department, dated 12.12.2013 was made and a preliminary notification was issued in order to revise further the minimum rates of wages for the said employment in Public Motor Transport. In short, the Government payments of G.O(2D)No.91, Labour and Employment(J1) Department, dated 12.12.2013 had decided to confirm the orders issued in the preliminary notification and accordingly, in exercise of the powers conferred by Clause (b) of sub-section (1) of Section and sub-section (2) of section 5 of the Minimum Wages Act, 1948 and in supersession of the Labour and Employment Department Notification No.11(2).(LE)/525/2009, published at Pages 388 to 390 of Part-II-Section 2 of the Tamil Nadu Government Gazette, dated 14.10.2009, the Governor of Tamil Nadu after consultation with the Advisory Board, hereby revises the minimum rates of wages payable to the classes of employees in the employment in Public Motor Transport, in the State of Tamil Nadu specified in Column(2) of the Schedule below in the corresponding entries in column(3) thereof, the draft of the same having been previously published as required by clause (b) of sub-Section (1) of Section 5 of the said Act. Further, it was mentioned that notification shall come into force with effect on and from the date of its publication in the Tamil Nadu Government Gazette.

THE SCHEDULE

Employment in public motor transport

<u>Serial Number</u>	<u>Classes of employees</u>	<u>Rate of basic wages per mensem (Rs. Ps.)</u>
(1)	(2)	(3)
(1)	Mechanic	4793.00
(2)	Drivers including those employed by Tourist Car Operators.	4584.00
(3)	Assistant Mechanic	
(4)	Fitter	
(5)	Electrician	
(6)	Inspector	4584.00
(7)	Clerk	4584.00



(8)	Conductor	4414.00
(9)	Assistant Fitter	
(10)	Hammer Management	4200.00
(11)	Greaser	
(12)	Peon	4106.00
(13)	Scavenger	
(14)	Watchman	
(15)	Sweeper	
(16)	Blacksmith	4584.00
(17)	Carpenter	
(18)	Tinker	
(19)	Turner	
(20)	Liner	
(21)	Spray Painter	
(22)	Welder	
(23)	Tailor	
(24)	Moulder	
(25)	Painter	4498.00
(26)	Tyre-man	
(27)	Battery-man	
(28)	Vulcanizer and the like	
(29)	<u>Floor Supervisory:-</u> (i) Regulation of Parking of Vehicles (ii) Cleanliness of vehicles and work-yard (iii) Supervisor of washing and lubrication of vehicles (iv) Road Testing of vehicles in which defect is reported	4793.00
(30)	Typist who has passed the Government Technical Examination in the Typewriting by Higher Grade.	4793.00
(31)	Typist who has passed the Government Technical Examination in the Typewriting in Lower Grade.	4684.00
(32)	Store Keeper	
(33)	Shroff or Cashier	
(34)	Depot Starter	
(35)	Bench Fitter	
(36)	Parking Controller (Regulation of Parking Vehicles supervision, Washing and lubrication)	4584.00
(37)	Minist	4584.00
(38)	Ticket Checking Clerk or Booking Clerk	4498.00



(39)	Lubricating Inspector	4498.00
(40)	Radiator Fitter	
(41)	Electro-plater	
(42)	Workshop time keeper	
(43)	Winder	
(44)	Time Keeper and stand agent	4414.00
(45)	Assistant Blacksmith	
(46)	Assistant Tyre-man	
(47)	Assistant Tinker	
(48)	Attendar	
(49)	Assistant Electrician	
(50)	Controller	
(51)	Assistant Machinist	
(52)	Assistant Welder	
(53)	Assistant Tailor	
(54)	Workshop Tool Keeper	
(55)	Assistant Painter	4302.00
(56)	Lubricating Assistant	4200.00
(57)	Fitter Helper	
(58)	Charcoal Man	4106.00
(59)	Helper	
(60)	Mazdoor and the like	
(61)	Cleaner(Ordinary)	
(62)	Cleaner(Special and Stand)	
(63)	Water Carrier	
(64)	Petrol Pump Operator	
(65)	Canvasser	

Explanations:- (1) Dearness allowance.- In addition to the above minimum rates of basic wages, the employees shall be paid dearness allowance as follows:-

(i) The dearness allowance shall be linked to the Average Consumer Price Index Number for Chennai City for the year 2000 that is 475 points (with base 1982=100) and for every rise of one point over and above 475 points an increase of Rs.8.60 (Rupees Eight and Paise sixty only) per month shall be paid as dearness allowance.

(ii) The dearness allowance shall be calculated from the first April of every year on the basis of the average of the indices of the preceding twelve months, that is from January to December.

(iii) The revision shall be effective from the date of publication of this Notification in the Tamil Nadu Government Gazette based on the Average Consumer Price



(2) Where the nature of work is the same, no distinction in the payment of wages shall be made in the case of men and women employees.

(3) Where piece rate workers are employed in any public motor transport, the remuneration paid to each of them for a normal working day shall not be less than the minimum wages fixed for appropriate category.

(4) To arrive at the daily wages, the monthly wages shall be divided by 26.

(5) The Wages as defined in clause (h) of section 2 of the Minimum Wages Act, 1948 (Central Act XI of 1948) shall be the criteria for the purpose of compliance of this Notification.

(6) Wherever the existing wages are higher than the minimum wages fixed herein, such existing wages shall be continued to be paid.

13. At this stage, this Court, worthwhile recalls and recollects the decision of the Honourable Supreme Court in **Patel Ishwarhhai Prahladbhai .vs. Taluka Development Officer reported in AIR 1983 SC Page 336** wherein, it is observed and held that even if an employee, who is a Government servant and holds a public post, working in a scheduled employment and getting the wages lesser than prescribed by the Government under the Minimum Wages Act, 1948, he shall be entitled for the minimum wages prescribed under the Act and all other benefits including the overtime.

14. It is to be relevantly pointed out that the earnings of wages of a workman are whether he receives from his employment in return for his services, which include not only actual cash but also money's worth as per decision in **G.N.R .vs. Dawson reported in (1905) 1 KB 331**.

15. The term "Earnings" or 'Wages' is used to mean "Gross Earnings" or 'Wages' viz., the sum which the workman receives for his labour when he comes to it properly equipped, according to the general understanding and practice of the particular trade, in which, he is employed as per decision in **Abram Coal Co., .vs. Southern reported in (1903) AC 306**

16. At this stage, this Court aptly points out that Section 12 of Minimum Wages Act in respect of 'employments' specified in the Schedule, an employer is bound to pay the minimum wage as notified. In fact, Item-II, Part-I of the Schedule of the 'Act', pertains to employment in 'Public Motor Transport'.

17. It is worth to recall and recollect the decision in **Oriental Insurance Company Limited .vs. S.K. Dada Bademiya reported in 2004 (IV) LLJ (SUPP) 835 AP**, where, the fact is that



the deceased was a Cleaner of a 'Public Transport Vehicle', the minimum wage notified under the Minimum Wages Act was payable. It is held that taking the minimum wage for Cleaners of Lorries fixed under the Minimum Wages Act was neither erroneous or an irregular one.

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18.Indeed, as per G.O.(2D) No.17, Labour and Employment (J1), 16th March 2017, for a Driver/Store Keeper employed in Chemical Fertilizer Industry, the minim rate of wages payable is fixed as Rs.5,964/- per month.

19.Further, in the decision of the Honourable Supreme Court in **Patel Ishwarbhai Prahladbhai .vs. Taluka Development Officer reported in AIR 1983 SC 336**, it is observed and held that even if an employee, who is a Government Servant and holds a public post working in a scheduled employment and getting the wages lesser than the one prescribed by the Government as per the Minimum Wages Act, 1948, he shall be entitled for the minimum wages prescribed under the 'Act' and all other benefits including overtime.

20.Section 2(e) of the Minimum Wages Act, 1948 speaks of:

'employer 'means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, and includes,except in sub-section(3) of Section 26,--

(i) in a factory where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person named under (Clause(f) of sub-section(1) of Section 7 of the Factories act, 1948(63 of 1948),as manager of the factory;

(ii) in any scheduled employment under the control of any Government of India in respect of which minimum rates of wages have been fixed under this Act, the person or authority appointed by such Government for the supervision and control of employees or where no person or authority is so appointed, the head of the department.

(iii) in any scheduled employment under any local authority in respect of which minimum rates of wages have been fixed under this Act, the person appointed by such Government for the supervision and control of employees or where no person is so appointed, the chief executive officer of the local authority;

(iv) in any other case where there is carried on any scheduled employment in respect of which minimum



rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;''

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21. In fact, Section 2(c) enjoins:

''competent authority'' means the authority appointed by the appropriate Government by notification in its Official Gazette to ascertain from time to time the cost of living index number applicable to the employees employed in the scheduled employments specified in such notification.''

22. As a matter of fact, Section 2(h) of the 'Act', 1948 refers to :

''wages'' means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of the employment or of work done in such employment (and includes house rent allowance) but does not include--

(i) the value of --

(a) any house accommodation, supply of light, water, medical attendance, or (b) any other amenity or any service excluded by general or specific order of the appropriate Government;

(ii) any contribution paid by the employer to any Pension Fund or Provident Fund or under any scheme of social insurance;

(iii) any travelling allowance or the value of any travelling concession;

(iv) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(v) any gratuity payable or discharge;''

23. Also Section 2(i) of the Act reads as under:

''employee'' means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other place not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate



Government; but does not include any member of the Armed Forces of the (Union).''

24. Section 3 of the 'Act', pertains to Fixing of minimum rates of wages. Under Section 3(1)(b) of the Act, minimum rates of wages fixed should be reviewed and revised, if necessary at intervals not succeeding 5 years.

25. Section 4 deals with 'Minimum rate of Wages'.

26. Section 5 enjoins of 'Procedure for fixing and revising minimum wages'.

27. Section 12 relates to 'Payment of minimum rates of wages'.

28. Section 14 under the caption 'Overtime', provides for payment of overtime only to those who are getting minimum rate of wages under the Minimum Wages Act, 1945. It does not apply to all those who are getting better wages in other statutory rules as per the decision of **Municipal Council, Halta .vs. Bhagat Singh reported in AIR 1998 SC 1201.**

29. Section 19 of the Act, 1948 refers to appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be Inspector for the purposes of this Act and define the local limits within which they shall exercise their functions etc.,.

30. Section 20 refers to the 'claimants' which reads as follows:

'20. Claims.--(1) The appropriate Government may, by notification in the Official Gazette, appoint (any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any) other officer with experience as a Judge of a Civil Court or as a stipendary Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages (or in respect of the Payment of remuneration for days of rest or for work done on such days under clause (b) or clause () of sub-section (1) of Section 13 or of wages at the overtime rate under section 14 to the employees employed or paid in that area.

(2) (Where an employee has any claim of the nature referred to in sub-section (1)), the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf,



or any Inspector, or any person acting with the permission of the Authority under sub-section(1) may apply to such Authority for a direction under sub-section(3):

Provided that every such application shall be presented within six months from the date on which the minimum wages(or other amount) became payable:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

(3)When any application under sub-section(2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under the Act, direct--

(i)in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii)in any other case, the payment of the amount due to the employee together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees, and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application)

(4)If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

(5)Any amount directed to be paid under this Section may be recovered--

(a)if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or

(b)if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6)Every direction of the Authority under this Section shall be final

(7)Every Authority appointed under sub-section(1)



' 'The extra strain on the health of the worker for



doing overtime work may well have weighed with the rule making authority to assure to the worker as minimum wages double the ordinary wage received by him so as to enable him to maintain proper standard of health and stamina.''

40. Be that as it may, considering the fact that the Petitioner's representation, dated 21.09.2016 addressed to the three individual Respondents are pending without progress in the subject-matter in issue and also this Court on an over-all assessment of the attendant facts and circumstances of the instant case, in an integral manner, comes to an irresistible and inescapable conclusion that the Petitioner/Association's afore-said three individual representations, dated 21.09.2016 addressed to the three Respondents necessitates a suitable reply being furnished to the authorities concerned with a view to prevent an aberration of justice and in furtherance of substantial cause of justice.

41. Viewed in that perspective, this Court, without expressing any view on the merits of the subject-matter in issue and not dwelling deep into the same, at this stage, simpliciter, directs the Petitioner/Association to submit a fresh representation before the Government of Tamil Nadu, represented by its Secretary, Transport Department, Chennai - 600 009 in the subject-matter in issue within a period of two weeks from the date of receipt of a copy of this order. Soon after the receipt of representation from the Petitioner/Association by the First Respondent, of course, well within the time determined by this Court, then the First Respondent is directed to look into the said representation of the Petitioner and if he finds any substance in it, then he has to look into the matter with all seriousness and earnestness and to dispose of the representation of the Petitioner/Association by passing a reasoned speaking order on merits, of course, in qualitative and quantitative terms and also after providing necessary opportunity to the Petitioner/Association including the Private Bus Owners Association and Inspector appointed under the Minimum Wages Act and others concerned, if any, within a period of six weeks thereafter. It is open to the Petitioner to raise all factual and legal pleas before the First Respondent, who shall taken into account of the same and advert to the same at the time of passing of final orders. It cannot be gainsaid that the First Respondent is to pass final orders in question in a fair, just, impartial, unbiased and in-dispassionate manner and in any event, uninfluenced and untrammelled with any of the observations made by this Court in the present Writ Petition, within the time adumbrated by this Court.

<https://hcservices.courts.tn.nic.in/> 42. Be that as it may, starting with the case, this Court makes it lucidly clear that an individual employee can make a claim himself arising out of payment of less than the minimum rate of wages or



through Legal Practitioner or any official of a Trade Union authorized in this behalf to act etc before such Competent Authority and to seek appropriate remedy for redressal of his grievance, if he so desires/advised.

43. With the above said observation(s) and direction(s), the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
Transport Department,
Fort St. George,
Chennai.
2. The District Collector,
Thanjavur District.
3. The Assistant Commissioner of Labour,
Thiruchirappalli.

+1cc to Mr.V.Palanichamy, Advocate Sr.No.89423

+1cc to Spl.Government Pleader Sr.No.89878

VSN

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**ORDER MADE IN
W.P. (MD) No.20668 Of 2017
24.11.2017**