

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CMP.Nos.4176 to 4181/2018
IN WA.SR.Nos.7594, 7598, 7606, 7617, 7624 & 7631/2018

CMP.No.4176/2018 in WA.SR.No.7594/2018

1.M.D. India Health Care Services,
(TPA) Private Limited,
No.27 Lakshmi Towers,
3rd Floor, Dr. Radhakrishnan Salai,
Mylapore, Chennai-600 004 – represented by its
Senior Manager Operations.

2.The Chairman cum Managing Director
United India Insurance Co.Ltd
Whites Road,
Chennai 600 014.

Petitioners /
Appellants

Versus

1.G.Latha

1st respondent /
Writ Petitioner

2.The Commissioner of Treasuries and Account
Chennai 600 015.

3.The Managing Director
Tamilnadu State Transport Corporation(TPA) Pvt.Ltd.,
Salem 636 007.

Respondents/
Respondents

Prayer in CMP.No.4176/2018 in WA.SR.No.7594/2018:- Petition filed u/s.5 of Limitation Act, to condone the delay of 95 days in preferring the above writ appeal.

Prayer in Writ Appeal:- Appeal filed under Clause 15 of Letters Patent to set aside the order passed in WP.No.839/2016 dated 04.09.2017.

CMP.No.4177/2018 in WA.SR.No.7598/2018

M/s United India Insurance Co.Ltd
Rep by the Divisional Manager,
Divisional Office VI
No.212, Anna Salai
Chennai 600 006

.. Petitioner /
Appellant

Vs.

1.Ponnusamy

.. 1st Respondent
/ Writ Petitioner

2.Government of Tamilnadu
Rep by Secretary to Government
Finance (Pension) Department
Secretariat, Chennai 600 009

3.The Director of Treasuries and Accounts
Chennai 600 015

4.The Additional Treasury Officer
District Treasury
Krishnagiri

5.The Director of Medical and Rural Health Services
Chennai 600 006

6.The District Level Empowered Committee
Office of the Joint Director of Medical and Rural Health Services,
Chennai 600 006
Rep by its Chairman/The District Collector
Chennai 600 001.

7.The Director of Pension,
Chennai 600 006.

8.Sagar Hospitals
No.44/54, 39th Cross Tilaknagar,
Jayanagar Extension,
Bangalore 560 041
(8th respondent is not a necessary party
in W.P.No.27679/2016 ..

Respondents/
Respondents

Prayer in CMP.No.4177/2018 in WA.SR.No.7598/2018:- Petition filed u/s.5 of Limitation Act, to condone the delay of 95 days in preferring the above writ appeal.

Prayer in Writ Appeal:- Appeal filed under Clause 15 of Letters Patent to set aside the order passed in WP.No.27679/2016 dated 04.09.2017.

CMP.No.4178/2018 in WA.SR.No.7606/2018

M/s United India Insurance Co.Ltd
Rep by the Divisional Manager,
Divisional Office VI
No.212, Anna Salai
Chennai 600 006 ..

Petitioner /
Appellant

Vs.

1.S.Chellammal ..

1st Respondent
/ Writ Petitioner

2.Government of Tamilnadu
Rep by Secretary to Government
Finance (Pension) Department
Secretariat, Chennai 600 009

3.The Director of Treasuries and Accounts
Chennai 600 015

4.The Director of Medical and Rural Health Services
Chennai 600 006

5.The District Level Empowered Committee

Office of the Joint Director of Medical and Rural Health Services,
Chennai 600 006

Rep by its Chairman/The District Collector
Chennai 600 001.

.. Respondents /
Respondents

Prayer in CMP.No.4178/2018 in WA.SR.No.7594/2018:- Petition filed u/s.5 of Limitation Act, to condone the delay of 95 days in preferring the above writ appeal.

Prayer in Writ Appeal:- Appeal filed under Clause 15 of Letters Patent to set aside the order passed in WP.No.27926/2016 dated 04.09.2017.

CMP.No.4179/2018 in WA.SR.No.7617/2018

M/s United India Insurance Co.Ltd
Rep by the Divisional Manager,
Divisional Office VI
No.212, Anna Salai
Chennai 600 006

.. Petitioner /
Appellant

Vs.

1.T.R.Thendral

.. 1st Respondent
/ Writ Petitioner

2.Government of Tamilnadu
Rep by Secretary to Government
Finance (Pension) Department
Secretariat, Chennai 600 009

3.The State Level Empowered Committee
under New Health Insurance Scheme 2014
For Pensioners, rep.by the Director of
Medical and Rural Health Services,
Chennai 600 006.

4.The District Level Empowered Committee
under NHIS 2014 for Pensioners, rep.by
the District Collector, Krishnagiri.

5.The Treasury Officer,
District Treasury, Krishnagiri.

6.The Additional Treasury Officer
District Treasury, Krishnagiri.

7.The Director of Pension,
DMS Campus, Chennai 600 006.

8.N.H.Mazumdar Shaw Medical Centre
258/A, Bommasandra Industrial Area
Anekal Taluk, Bangalore 560099.
(8th respondent is not a necessary party
in W.P.No.29495/2016 ..

Respondents/
Respondents

Prayer in CMP.No.4179/2018 in WA.SR.No.7617/2018:- Petition filed u/s.5 of Limitation Act, to condone the delay of 95 days in preferring the above writ appeal.

Prayer in Writ Appeal:- Appeal filed under Clause 15 of Letters Patent to set aside the order passed in WP.No.29495/2016 dated 04.09.2017.

CMP.No.4180/2018 in WA.SR.No.7624/2018

M/s United India Insurance Co.Ltd
Rep by the Divisional Manager,
Divisional Office VI
No.212, Anna Salai
Chennai 600 006

.. Petitioner /
Appellant

Vs.

1.Mahalingam

.. 1st Respondent
/ Writ Petitioner

2.Government of Tamilnadu
Rep by Secretary to Government
Finance (Pension) Department
Secretariat, Chennai 600 009

- 3.The State Level Empowered Committee
under New Health Insurance Scheme 2014
For Pensioners, rep.by the Director of
Medical and Rural Health Services,
Chennai 600 006.
- 4.The District Level Empowered Committee
under NHIS 2014 for Pensioners, rep.by
the District Collector, Krishnagiri.
- 5.The Director of Treasuries and Accounts,
Panagal Building, Chennai 600 015.
- 6.The Additional Treasury Officer
District Treasury, Krishnagiri.
- 7.The Director of Pension,
DMS Campus, Chennai 600 006.
- 8.The Joint Director of Medical and Rural Health
Services, Krishnagiri District.
- 9.DNV Orthocare
72 A B Saleem Main Road
Dharmapuri 636 705.
(9th respondent is not a necessary party
in W.P.No.40705/2016 .. Respondents/
Respondents

Prayer in CMP.No.4180/2018 in WA.SR.No.7624/2018:- Petition filed u/s.5 of Limitation Act, to condone the delay of 95 days in preferring the above writ appeal.

Prayer in Writ Appeal:- Appeal filed under Clause 15 of Letters Patent to set aside the order passed in WP.No.40705/2016 dated 04.09.2017.

CMP.No.4181/2018 in WA.SR.No.7631/2018

M/s United India Insurance Co.Ltd
Rep by the Divisional Manager,
Divisional Office VI
No.212, Anna Salai
Chennai 600 006

..

Petitioner /
Appellant

Vs.

1.J.K.Periyannan

.. 1st Respondent
/ Writ Petitioner

2.Government of Tamilnadu

Rep by Secretary to Government
Finance (Pension) Department
Secretariat, Chennai 600 0093.The State Level Empowered Committee
under New Health Insurance Scheme 2014
For Pensioners, rep.by the Director of
Medical and Rural Health Services,
Chennai 600 006.4.The District Level Empowered Committee
under NHIS 2014 for Pensioners, rep.by
the District Collector, Krishnagiri.5.The Director of Treasuries and Accounts,
Panagal Building, Chennai 600 015.6.The Additional Treasury Officer
District Treasury, Krishnagiri.7.The Director of Pension,
DMS Campus, Chennai 600 006.8.The Joint Director of Medical and Rural Health
Services, Krishnagiri District.9.TCR Multispeciality Hospital
1/450 Avvai Nagar, near LIC
Chennai Bypass Road,
Krishnagiri 635 001.(9th respondent is not a necessary party
in W.P.No.40706/2016

..

Respondents/
Respondents

Prayer in CMP.No.4181/2018 in WA.SR.No.7631/2018:- Petition filed
u/s.5 of Limitation Act, to condone the delay of 95 days in preferring
the above writ appeal.

Prayer in Writ Appeal:- Appeal filed under Clause 15 of Letters Patent to set aside the order passed in WP.No.40706/2016 dated 04.09.2017.

For Petitioners in
all Petitions : Mr.T.Shanmugam

COMMON ORDER

[Order of the Court was made by N.SATHISH KUMAR, J.]

Since the issue involved in all the above miscellaneous petitions/appeals is one and the same, the same are heard together and are disposed of by the following common order.

2 The above miscellaneous petitions in WA.SR.Nos.7594, 7598, 7606, 7617, 7624 & 7631/2018 have been filed to condone the delay of 95 days in filing the writ appeals against the common order dated 04.09.2017 passed in WP.Nos.839/2016 ; 27926/2016 ; 29495/2016 ; 40705/2016 ; and 40706/2016.

3 Before issuing notice in this matter, we have heard the learned counsel appearing for the petitioners / appellants. After perusing the common order of the learned Single Judge dated 04.09.2017, we are of the view that petitions for condonation of delay can be disposed of today itself, without ordering any notice to the other side, in particular, the writ petitioners.

4 For easy understanding, we also felt that the common order of the learned Single Judge, which is impugned in the writ appeals, also to be extracted. The brief facts leading to filing of the writ appeal are as follows:

[a] Originally, the writ petitions were filed by the respective 1st respondent herein / writ petitioners seeking to quash the orders of the [1] 1st respondent therein dated 07.04.2015 and 16.09.2015 [WP.No.839/2016] ; [2] 3rd respondent therein dated 18.01.2016 [WP.No.27679/2016] ; [3] 5th respondent therein dated 15.04.2016 [WP.No.27926/2016] ; [4] 5th respondent therein dated 08.07.2016 [WP.No.29495/2016] ; [5] 5th respondent therein dated 18.01.2016 and 28.09.2016 [WP.No.40705/2016] ; and [6] 5th respondent dated 18.01.2016 and 28.09.2016 [WP.No.40706/2016], with a further direction to the respondents therein to reimburse the medical expenses incurred by them with interest for the delayed disbursement.

[b] The above writ petitions were contested by the appellants/petitioners herein on the ground that the respective writ petitioners/spouses have taken treatment in the hospitals which were not approved under the New Health Insurance Scheme. Learned Single Judge, in paragraphs No.10 to 18 has observed as follows:-

"10. The nature of the Medical Scheme is bipartite, in view of the fact that the writ petitioners had served several years as Government employees with the State Government and the State Government issued policies in order to provide certain medical facilities to the employees/retired employees. In turn, the task of settling the medical claims is entrusted to the Insurance Companies in recent times. Thus, the nature of transaction is to be viewed in this perspective. It is not disputed that the Insurance Company is receiving the monthly subscription/premium from the members of the Health Scheme. Thus, the liability attached to the Scheme cannot be disagreed nor the contention of the Insurance Company by merely saying that they will go only by the terms, cannot be accepted, in view of the fact that ultimately, the medical benefits ought to be settled in favour of the employees and in view of certain procedural difficulties between the Government and the Insurance Company, the right of medical reimbursement cannot be delayed or denied to the victims.

11. Right to life is a fundamental right enshrined in Article 21 of the Constitution of India. The Hon'ble Supreme Court of India, time and again, reiterated and emphasised that the right to life cannot be interpreted as a mere animal life and it includes a decent life in the Society and the same is to be ensured by the State. By enlarging the scope of Article 21 of the Constitution of India, the Hon'ble Supreme Court went one step ahead and held that, providing medical facilities by the State is also to be included in the right to life under Article 21. Thus, medical facilities have to be extended to all the citizens of this Great Nation and the same is the part of Constitutional Guarantee. The cases on hand are to be considered in this perspective.

12. When the Courts have repeatedly held that the medical reimbursement is also included under Article 21 of the Constitution of India, denial of the same is to be construed as violation

of fundamental rights. Therefore, the Constitutional Courts cannot deal with the violation of the fundamental right of a citizen in a routine manner. Infringement of the statutory right is to be distinguished from the violation of the fundamental rights of the citizens. For instance, preventive detention would be treated as violation of right to life under Article 21 of the Constitution of India. The Courts have to rescue the citizens, who are put in violation of fundamental rights ensured.

13. The State in this regard should be a model employer and the Insurance Companies, as a State, also have a duty to deliver the Schemes promptly. They cannot escape from the clutches of law on mere technicalities. This Court is aware that many countries in this world are settling the accident claims and medical insurance in advance soon after the persons are treated or met with an accident. Such a practice is not prevailing in our country for various reasons. But the Constitutional goal is to achieve such a result and we should thrive towards achieving the same. This Court is of the opinion that any accident victim / medical victim has to be provided with immediate assistance by the State as well as by the Insurance Company. Contrarily, it is painful to observe that the Insurance Company and the Government think that they are not liable, despite the fact that the huge amounts of premium are collected and millions of rupees are lying in the accounts of such Insurance Companies. When the insurance companies are not ready to settle the claim in favour of such victims, this Court is wondering in what manner, they are going to utilise this amount for the betterment of this great nation. This Court is anxious to express its concern in this regard and it is for the authorities to think over and act promptly in such cases of medical reimbursement/ accident victims.

14. No doubt, it is the duty of the respondent to find out the genuinity of the treatments undergone by the writ petitioners and

undoubtedly, it is the duty of the writ petitioners to establish that they had undergone the medical treatments and suffered monetary loss. Once the genuinity of the medical treatments undergone is established, then it is the duty mandated on the part of both the Insurance Company as well as the Government to see that the claims are settled in time without any further delay.

15. This Court is able to see that the aged pensioners are driven to this Court through these writ petitions in order to get their medical reimbursement. Driving such aged pensioners to the Court by the respondent ought to be deprecated. Even after such aged pensioners have filed writ petitions, at the minimum the respondents ought to have considered the same soon after they receive notice from the High Court. Instead of doing so, they are postponing the case or seeking adjournments in order to prolong the issue, which is also to be deprecated. The respondents seeking frequent adjournment in such cases is to be viewed seriously and, the adjournments in this regard could only be an exception and can never be a rule. But, this Court is frequently witnessing that such routine adjournments are obtained on one pretext or other, in order to delay such claims more specifically, medical reimbursement/accident claims.

16. The learned counsel appearing for the insurance company submitted a judgment of this Court passed on 27.02.2017, in which this Court directed to settle the medical reimbursement by the government, since the insurance company is not liable to settle as per the terms and conditions of the contract. This will have far reaching implications, in view of the fact that this is a bipartite agreement between the Government and the Insurance Company and such bipartite agreement was entered only for the welfare of the employee of the Government, both in-service and retired.

17. In the present case, the writ petitioners are State pensioners. The bipartite agreement between the Government and the Insurance Company, cannot violate or cannot take away the right of the writ petitioners from receiving the medical reimbursement in time. In other words, it is between the Government and the Insurance Company to settle the disputes in this regard, and under this pretext, neither the Insurance Company nor the Government shall take furthermore time, so as to deny the medical claim to the pensioners. Thus, this Court is of the firm opinion that the denial of medical reimbursement to the writ petitioners are certainly a Constitutional violation and the attitude of the respondents, both the Government and the Insurance Company, are not to be appreciated.

18. The officials concerned have got a public duty to see that such medical claims are settled in time and without any further delay. The Courts have, time and again, repeatedly held that settlement of medical claims, cannot be delayed. However, the Competent Authorities are not portraying insensitiveness in these issues and they are not guiding the retired/in-service employees, first of all to register their names in the rolls properly. In fact, it is the duty of the State to see that all in-service/retired employees properly registered their names under the Health Scheme, so as to avail the benefits. Thus the order of rejection cannot be sustained and the liability, both by the Insurance Company and by the Government, cannot be waived in this regard. It is the joint liability of the Government as well as the Insurance Company and the internal differences or controversy are to be sorted out between the Government and the Insurance Companies and because of that, the right of medical reimbursement can never be delayed or denied. The genuinity of the treatment is to be ascertained by the Competent Officials before disbursing the medical reimbursement claims.

and accordingly, allowed the writ petitions, as against which, the present appeals came to be filed by the aggrieved respondents in the writ petitions, along with applications to condone the delay of 95 days.

5 It is the stand of the petitioners/appellants in these miscellaneous petitions that the certified order copy of the order was received only on 27.09.2017. Therefore, after obtaining the opinion of the Government Pleader, they have forwarded the same to the Government for obtaining sanction and hence, there was a delay of 95 days in preferring the appeals. We are of the view that normally, the administrative delay is inherent in the Government Departments. But, at the same time, without any details as to when such exercise has been made, what are all the delay caused on the administrative side, such a casual and vague statement in the affidavits that the delay occurred due to administrative reasons/process, cannot be accepted mechanically. What is pitted against an ordinary litigant is also pitted against the Government before Court of law to establish a particular fact. Though the delay normally is condoned in a liberal manner, such liberal approach cannot be applied mechanically, without sufficient cause. Though the word "sufficient cause" has to be given a liberal approach, to exercise discretion for such liberal approach, there must be necessary facts in the affidavit filed in support of the same. But, on

a perusal of the affidavit, we do not find plausible explanation for such delay except stating that there is an administrative delay. Such vague and bald explanation cannot be accepted mechanically. When Courts are extending such liberal approach mechanically, it has become a routine affairs of the Government Departments to file the appeals against every order passed by the Court. The present day scenario in filing the appeal, challenging every order by the Government Departments, clearly exhibits shirking responsibility of the Department Heads. In fact, now the tendency has developed among the Department Heads, not to take any risk and to avoid any question relate to the litigation and only in order to avoid any query, the administrative side files these types of appeals, though there is no merit in the appeal.

6 The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration as the fundamental principle is that Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due

to nonchalant attitude should be curbed at the initial stage itself. Though it is not fair on our part to touch upon merits of the appeal, still we are of the view that the common order passed by the learned Single Judge cannot be faulted at all.

7 The only contention of the petitioners/appellants on merits in the matter is that since the hospitals where the treatment was taken by the writ petitioners are not included in the list of hospitals mentioned in the Insurance Scheme, reimbursement is not permissible. Such contention, in our view, cannot be countenanced for the simple reason that the Hon'ble Supreme Court of India in the decision reported in **2001 [9] SCC 217 [State of Punjab and others Vs. Mohan Lal Jindal]**, has held that *"when a Government Servant takes treatment from a hospital of his choice, the same cannot be curtailed, though the Government has power to restrict the claim by framing appropriate rules."* Similarly, in yet another judgment reported in **2008 [5] SCC 328 [State of Karnataka and another Vs. R.Vivekananda Swamy]**, it has been held by the Hon'ble Apex Court as follows:-

"24.In view of the aforementioned settled principles of law there cannot be any doubt that the Rules regarding reimbursement of medical claim of an employee when he obtains treatment from a hospital of his choice can be made limited. Such

Rules furthermore having been framed the proviso to Article 309 of the Constitution of India constitute conditions of service in terms whereof on the one hand the employee would be granted the facility of medical aid free of cost from the recognised Government hospital and on the other, he at his option, may get himself treated from other recognized hospitals/institutions subject of course to the condition that the reimbursement by the State therefor would be limited."

8 Considering the above aspects and further the affidavits filed for condoning the delay, do not contain any details as to how the delay of 95 days had occurred and that no plausible and proper explanation was assigned for each and every day's delay, we are of the view that it is a fit case where the discretion cannot be exercised for condonation of the delay.

9 Accordingly, the miscellaneous petitions seeking condonation of 95 days delay in preferring the writ appeals are dismissed. Consequently, the writ appeals also stand dismissed. No costs.

[CTSJ] [NSKJ]
01.03.2018

Internet : Yes

To

- 1.M.D. India Health Care Services,
(TPA) Private Limited,
No.27 Lakshmi Towrs,
3rd Floor, Dr. Radhakrishnan Salai,
Mylapore, Chennai-600 004 – represented by its
Senior Manager Operations.
- 2.The Chairman cum Managing Director
United India Insurance Co.Ltd
Whites Road,
Chennai 600 014.
- 3.The Commissioner of Treasuries and Account
Chennai 600 015.
- 4.The Managing Director
Tamilnadu State Transport Corporation(TPA) Pvt.Ltd.,
Salem 636 007.
- 5.The Divisional Manager
M/s United India Insurance Co.Ltd
Divisional Office VI, No.212, Anna Salai
Chennai 600 006.
- 6.The Secretary to Government,
Government of Tamilnadu
Finance (Pension) Department
Secretariat, Chennai 600 009
- 7.The Director of Treasuries and Accounts
Chennai 600 015
- 8.The Additional Treasury Officer
District Treasury, Krishnagiri
- 9.The Director of Medical and Rural Health Services
Chennai 600 006
- 10.The Chairman/The District Collector
District Level Empowered Committee
O/o.The Joint Director of Medical and Rural Health Services,
Chennai 600 001.

11. The Director of Pension,
Chennai 600 006.
12. The Director of
Medical and Rural Health Services,
State Level Empowered Committee
under New Health Insurance Scheme 2014
For Pensioners, Chennai 600 006.
13. The District Collector,
District Level Empowered Committee
under NHIS 2014 for Pensioners,
Krishnagiri.
14. The Treasury Officer,
District Treasury, Krishnagiri.
15. The Additional Treasury Officer
District Treasury, Krishnagiri.
16. The Director of Pension,
DMS Campus, Chennai 600 006.
17. The Director of Treasuries and Accounts,
Panagal Building, Chennai 600 015.
18. The Joint Director of Medical and Rural Health
Services, Krishnagiri District.
19. G.Latha
W/o.P.Nithiyanandam
Assistant, Salary Section,
Tamil Nadu State Transport Corporation
[TPA] Pvt. Ltd., Salem 636 007.
20. L.Ponnusamy
S/o.Laxamana Gounder
Retired Headmaster, Panchayat Union
Primary School, Ankinayanapalli,
Bargur Union, Krishnagiri District 635 104.

21.S.Chellammal
W/o.late Subramaniam
G3, Shakthi Enclave, Maruthi Nagar
Malleshpallorya, Bangalore 560075.

22.T.R.Thendral
W/o.K.Rathinam
Mohan Rao Colony
III Cross, Krishnagiri 635 001.

23.C.Mahalingam
S/o.Cenroya Gounder
Head Constable [Retired]
Veppalampatti Village
Santhoor post, Pochampalli Taluk
Krishnagiri District 635 206.

24.J.K.Periyannan
S/o.Kariya Gounder
Retired SSI of Police
Jamedharmedu, Kaveripattinam
Krishnagiri District 6335 112.

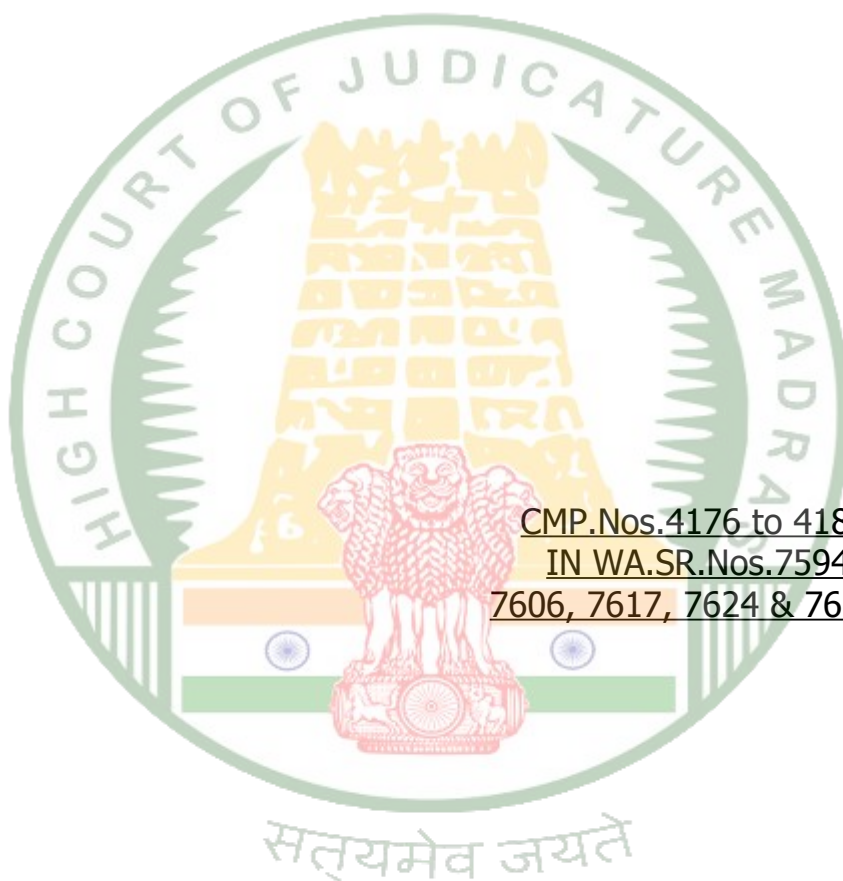
****Copy of the above order marked to respondents 19 to 24 / writ
petitioners as per the order of this Court.

सत्यमेव जयते

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C.T.SELVAM, J.,
AND
N.SATHISH KUMAR, J.,

AP



CMP.Nos.4176 to 4181/2018
IN WA.SR.Nos.7594, 7598,
7606, 7617, 7624 & 7631/2018

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