



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.11453 of 2018

and

W.M.P. (MD) Nos.10439, 10440, 10441 & 11087 of 2018

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Pasumpon Mahalir Mandram
(Registration No.80 of 2015)
rep.by its Secretary
P.Kanagavalli, W/o.R.Pandi
K.Sundarajapuram
Kachirayanpatti Village
Melur Taluk, Madurai District

... Petitioner

vs.

- 1.The Secretary
Industries (MMC-2) Department
Secretariat, Chennai-600 009
- 2.The Commissioner / Director of
Geology & Mines Department
Guindy, Chennai-600 032
- 3.The District Collector
Madurai District, Madurai
- 4.The Assistant Director of
Geology and Mining, Madurai
- 5.The Revenue Divisional Officer
Madurai, Madurai District
- 6.The Tahsildar
Melur Taluk Office, Madurai District
- 7.Saravanan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus and quash the impugned orders passed by the 3rd respondent in Na.Ka.No.659 of 2015 Mines dated 12.01.2017 as confirmed by the 2nd respondent in Na.Ka.No.715/MM9/2017, dated 21.06.2017 and as confirmed by the 1st respondent in G.O.(D) No.98, dated 16.05.2018 and quash the same as



illegal and consequently direct the respondents 1 to 4 to grant lease of stone quarry situated in Survey No.21/1(P), Kachirayanpatti Village, Melur Taluk, Madurai District in favour of the petitioner.

For Petitioner : Mr.Devaraj
for Mr.M.Kannan

For Respondents : Mr.B.Pugalendhi
Additional Advocate General
Assisted by Mr.C.M.Mari Chelliah Prabhu
Additional Government Pleader for R1 to R6
Mr.Veera.Kathiravan, Senior Counsel
for M/s.Veera Associates for R7

O R D E R

The petitioner is a Society formed by the Women Self Help Group Members covered under the Sworna Jeyanthi Gram Swarozgar Yogana Scheme Groups (called as "SGSY Groups"). The petitioner - Society is registered under the Tamil Nadu Societies Registration Act, 1983. The petitioner - Society consists of fifteen women members, who are all residing within the limit of K.Sundarajapuram, Kachirayanpatti Village, Melur Taluk, Madurai District and having experience in stone quarry works in their locality for many years.

2. The third respondent / District Collector, Madurai District, vide notification dated 11.05.2015, issued a list of quarries to be auctioned under Rule 8(10-A) of the Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter, referred to as "the Rules") and called for applications from SGSY Groups and Free Bonded Labourers Welfare Associations. In Serial Nos.13 and 14 of the Schedule annexed to the Notification dated 11.05.2015, the stone quarry situated in Survey Nos.399/2A(P-1) and 399/2A(P-2) of Vanjinagaram Village, Melur Taluk, was notified. The petitioner - Society was registered for the said area and eligible to apply for grant of licence for the said quarry, in terms of Rule 8(10-A) of the Rules.

3. The petitioner - Society was formed on 25.03.2015 and had applied to the Registrar of Societies for registration of the Society. On receipt of the application for registration, eventually, the petitioner - Society came to be registered by the Authority concerned under the Tamil Nadu Societies Registration Act, 1983, only on 04.06.2015. In the bye-laws applicable to the petitioner - Society, it was clearly mentioned that the Society was formed on 25.03.2015. According to the petitioner - Society, they alone were eligible to be considered for grant of stone quarry licence for the subject of the above mentioned quarry, in terms of Rule 8(10-A) of the Rules and therefore, on 02.06.2015, they had applied in response to the Notification dated 11.05.2015 and paid necessary

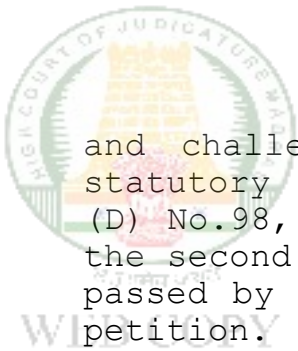


fees also on 04.06.2015. Simultaneously, the petitioner - Society had also approached the third respondent for grant of experience certificate certifying that the members of the Society were having more than two years of experience in stone quarry works, since the experience certificate was one of the requirements for being considered under Rule 8(10-A) of the Rules. In response to the application submitted by the petitioner - Society, the third respondent directed the fifth respondent / Revenue Divisional Officer, Madurai, to conduct enquiry and submit a report.

4. When the request for issuance of experience certificate was pending before the third respondent, by communication dated 24.06.2015, the petitioner - Society was directed to submit the documents, namely, registration certificate of the Society and experience certificate granted by the District Collector, within a period of fifteen days. On receipt of the said communication, on 30.06.2015, the petitioner - Society obtained a certified copy of the registration certificate of the Society from the District Registrar of Societies and submitted the same to the third respondent. However, in regard of the experience certificate, the petitioner - Society informed the third respondent that the application for issuance of experience certificate was pending before the third respondent himself and requested him to consider the same.

5. In such circumstances, when the application of the petitioner - Society for issuance of experience certificate was pending consideration before the third respondent, by a subsequent action of the third respondent, a further notification dated 06.11.2015 was issued towards grant of stone quarry licence in respect of the area notified earlier and treating the area as general category, instead of reserved category in terms of Rule 8 (10-A) of the Rules.

6. At this juncture, when the petitioner - Society approached the third respondent seeking the status of their application for issuance of experience certificate, it was informed that in due course licence would be granted to them. In the meanwhile, the third respondent had directed the petitioner - Society to appear before the Special Committee, which was formed under Rule 8(10-A) of the Rules, on 05.07.2016 and in terms of the direction issued by the third respondent, the petitioner - Society appeared before the Special Committee, headed by the third respondent, on the date fixed and submitted all the records and accounts in respect of their claim. After the meeting held on 05.07.2016, the third respondent passed an order, dated 12.01.2017, rejecting the request of the petitioner - Society for various reasons as set out therein. The said order was dated 06.02.2017, the petitioner - Society preferred an appeal before the second respondent, under Rule 36-C of the Rules. The said appeal was rejected by the second respondent on 21.06.2017



and challenging the same, the petitioner - Society preferred a statutory second appeal before the first respondent, who vide G.O. (D) No.98, Industries (MMC.2) Department, dated 16.05.2018, rejected the second appeal preferred by the petitioner - Society. The orders passed by the respondents 3 to 1 are put to challenge in this writ petition.

7. The learned counsel appearing for the petitioner - Society would vehemently contend that the rejection of the petitioner - Society's request for grant of stone quarry licence on the stated grounds cannot be countenanced either in law or on facts for the reason that the members of the petitioner - Society have fulfilled all the requisite conditions factually and unfortunately, the third respondent, without appreciating the claim of the petitioner - Society, had rejected the same on erroneous application of mind.

8. According to the learned counsel appearing for the petitioner - Society, the third respondent himself has given an experience certificate on 23.10.2015, which is evidenced by the document filed in this regard in the typed set of documents. According to the experience certificate dated 23.10.2015, the members of the petitioner - Society numbering 15 were having experience in stone quarry works for a period of two years. This experience certificate was, of course, not available when the application for grant of stone quarry licence, in response to the Notification dated 11.05.2015, was submitted, since such a certificate need to be produced only at the time when such a quarry licence is being granted. Therefore, the reason that the members of the petitioner - Society did not have experience in stone quarry works, as required by the Rules, is not factually correct.

9. According to the learned counsel appearing for the petitioner - Society, the other reasons set forth in the rejection order, dated 12.01.2017, passed by the third respondent are untenable and cannot be factually supported. Unfortunately, both the second and first respondents have overlooked the just claim of the petitioner - Society and rejected their application mechanically. One of the reasons that was held against the petitioner - Society was that the registration of the petitioner - Society itself had taken place after the Notification dated 11.05.2015, since admittedly the petitioner - Society was registered only on 04.06.2015 and therefore, the application submitted by the petitioner - Society lacked *bona fides*. According to the respondent - Authority, the petitioner - Society was formed only in order to secure the contract of stone quarry works and they did not have the required work experience or financial support to carry on the stone quarry works.

<https://hcservices.ecds.gov.in/Hcservices/> 10. Therefore, the learned counsel appearing for the petitioner - Society would submit that by rejecting the claim of the petitioner - Society, the very spirit of introduction of Rule 8(10-



A) of the Rules has been defeated, since the intended purpose of the said Rule is to help the downtrodden women, who had been working in stone quarries in subhuman conditions. By notifying the subject area as a general category and bypassing the claim of the petitioner - Society, the third respondent has violated the laudable object behind the enactment of the above said Rule and thereby, trampled upon the right of the petitioner - Society in order to favour the seventh respondent, who was ultimately granted the contract.

11. Per contra, Mr.B.Pugalendhi, learned Additional Advocate General, appearing for the respondents 1 to 6, would in equal vehemence contend that the Special Committee, which was constituted under the Chairmanship of the third respondent - District Collector had clearly recommended not to grant stone quarry licence to the petitioner - Society, since they did not fulfill all the requirements under Rule 8(10-A) of the Rules. According to the learned Additional Advocate General, the Special Committee sought a report from the Chairman of Madurai District Panchayat and Kottampatti Panchayat Union, who were members of the Special Committee and the reports submitted by those officials were fully against the petitioner - Society and did not support the claim of the petitioner - Society even remotely. According to the learned Additional Advocate General, the members of the petitioner - Society did not possess any experience for having worked in stone quarry and the petitioner - Society had included many members, who were relatives of the existing members and who did not possess experience in stone quarry works and the petitioner - Society itself has been formed in order to stake the claim for grant of stone quarry licence. According to the reports submitted by the aforesaid officials, it is very clear that those reports were issued only on the factual findings rendered by the members of the Special Committee and therefore, the third respondent acting on the recommendations of the Special Committee had decided to reject the claim for grant of stone quarry licence to the petitioner - Society.

12. On behalf of the third respondent, a counter affidavit has been filed. In Sub-Paragraph (c) of Paragraph No.3 of the counter affidavit, the basis of rejection of the petitioner - Society's claim has been mentioned. Sub-Paragraphs (a) to (d) of Paragraph No.3 of the counter affidavit, which are extracted hereunder:

"3. It is submitted that Rule 8[(10-A) provides direct grant of leases for stone quarries to the DWCRA Societies formed by released bonded labourers which are registered under the Tamil Nadu Co-operative Societies Act, 1983 and consequent on the merger of the DWCRA scheme with the Swarnajayanti Gram Swarozgar Yojana (SGSY) scheme introduced by the Government of India, the Government of Tamil Nadu in G.O.Ms.No.303 Industries (MMC-1) Department dated 25.08.2000 amended Rule 8(10-A) of the Tamil Nadu Minor Mineral Concession Rules, 1959.



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- a. It is submitted that in accordance with the same, a notification was published in the District Gazette (Extraordinary) No.5 dated 12.05.2015 inviting applications for the direct grant of rough stone quarry lease to SGSY Groups as per Rule 8 [(10-A) of Tamil Nadu Minor Mineral Concession Rules, 1959 for thirty stone quarries including S.F.No.21/1 (part) over an extent of 2.72.0 hectares of land of Kachirayanpatti village, Melur Taluk, Madurai District.
- b. It is submitted that on behalf of Pasumpon Mahalir Mandram, 27/5J Barathipuram Street, Melur Taluk, herein after referred to as 'Petitioner Mandram' a petition was filed on 04.06.2015 staking their claim for lease to conduct quarry in an extent of 2.72.0 hectares of land comprising in S.No.21/1 (part) of Kachirayanpatti village. Since the petition was filed a day before the last date for the receipt of application and not accompanied by necessary documents as per the publication referred to, they were directed to produce the same vide letter Roc.No.425/2013-Mines, dated 24.06.2015. In response to the above letter, the writ petitioner produced the copy of registration certificate on 10.07.2015. However, the application has been placed before the Special Committee constituted under rule 8 [(10-A) (b) (ii) of Tamil Nadu Minor Mineral Concession Rules, 1959 consisting at the District Collector as Chairman, President of the District Panchayat Council, Chairma of the Panchayat Union Council as the non official members of the Special Committee and Project Director, District Rural Development Agency, Madurai and the Deputy Director of Geology and Mining, Madurai as official members of the Committee.
- c. It is submitted that in the meanwhile, the said Pasumpon Mahalir Mandram filed a writ petition in WP (MD) No.11081 of 2016 for a Mandamus directing the 2nd respondent to grant lease of stone quarry situated in Survey No.21/1 (part) in Kachirayanpatti village, Melur Taluk, Madurai District as per Notification dated 12.05.2018 in favour of



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petitioner society and pass such further order as this Hon'ble court may deem fit. The subject writ petition is a premature one and deserves for summary rejection. Since the application of the writ petitioner was to be placed before the Special Committee constituted under rule 8[(10-A) (b) (2) of Tamil Nadu Minor Mineral Concession Rules, 1959 for scrutiny and the Hon'ble High Court has dismissed the subject writ petition as withdrawn.

d. It is submitted that the Special Committee which gone into the request of the Pasumpon Sangam, has recommended to reject the request on the following grounds:-

- i. The said Petitioner Sangam is not a registered Self Help Group as per the norms of Swarnajayanti Gram Swarozgar Yojana (SGSY) Scheme, instead it has been registered under section 27 the Tamil Nadu Societies' Registration Act, 1975 as 80/2015 dated 04.06.2015, a day before the last date for the receipt of application as per the afore-said Gazette Notification.
- ii. The Pasumpon Mandram has opened an account with Vanjinagaram Primary Co-op. Societies only from 15.10.2015 i.e. After the Notification.
- iii. No records of registers are being maintained as per the rules prescribed under Mahalir Thittam.
- iv. No certificate was obtained from the District Collector to show that the members of the said Pasumpon Mandram have worked for 2 years in stone quarry as mandated by Rule 8[(10-A) (a) (vii);
- v. The Chairman, District Panchayat Council has stated that the said Pasumpon Mandram was registered only after the Notification published in the Gazette and if lease is granted to such Sangams, it will cause loss of revenue to the State and hence prayed that the petition may be rejected;
- vi. The Chairman, Panchayat Union Council, Kottampatti has stated that the members of the said Sangam is not involved in stone quarry operations



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and that the addresses given by them is not genuine and if lease is granted to the Sangam it is likely to cause loss of revenue to the State;

- vii. The Pasumpon Mandram does not satisfy the mandate of Rule 8 (10-A) (a) of Tamil Nadu Minor Mineral Concession Rules, 1959 as the same is not a Swarnajayanti Gram Swarozgar Yojana (SGSY) Scheme.

By taking into consideration of all relevant parameters the request of the writ petitioner was rejected by the District Collector, Madurai as per Rule 8(10-A)(b)(ii) of Tamil Nadu Minor Mineral Concession Rules in Pro.Roc.659/2015 Mines dated 12.01.2017."

13. Thereafter, it appears that a decision was taken by the third respondent to grant licence in favour of the seventh respondent in order to prevent the loss of revenue to the State. The circumstances, in which the stone quarry licence was granted to the seventh respondent, were also explained in Paragraph No.9 of the counter affidavit, which is extracted hereunder:

"9. It is submitted that the in the meanwhile to prevent loss of revenue to the State Exchequer, in accordance with the Notification public in Madurai District Gazette No.19 dated 22.12.2017, auction cum tender was conducted on 11.01.2018 and insofar item No.32 pertaining to an extent of 2.72.0 hectares of poramboke land in S.No.21/1 part of Katchirayanpatti village one Thiru.Saravanan was the highest bidder quoting the amount of Rs.1,10,00,000/- for the quarry for which the upset price was fixed at Rs.80,00,000/- and hence he was declared as a successful bidder and as per Rule 8(5)(b)(vi) of the 'said Rules' he deposited the bid amount as per Rule 8(5)(b)(vii) of the 'said Rules' and hence as per Rule 8(8) of the 'said Rules', the bid was confirmed in favour of Thiru Saravanan to quarry rough stone for a period of five years by imposing the usual conditions vide orders of the District Collector, Madurai in Roc.No.72/2018 Mined dated 22.01.2018. He has obtained environmental clearance from the District Level Environment impact Assessment Authority vide DEIAA-TN-MDU/F.No.025/2018/1(a) dated 08.03.2018, as well as the consent from the Pollution Control Board, Madurai vide consent No.1805112812093 dated 01.06.2018. Due to the pendency of the present writ petition, other proceedings are kept in abeyance."



14. The learned Additional Advocate General would, therefore, submit that from the above it is clear that the request of the petitioner - Society for grant of licence was lacking in *bona fides* and the Society did not fulfil the mandatory requirements of the statutory Rules. In the absence of fulfillment of conditions, which are conditions precedent, it is not open to the petitioner - Society to challenge the orders passed by the respondents 3 to 1. The orders passed by the respondents 3 to 1 are well considered decisions and have sound factual and legal basis and the same cannot be assailed successfully by the petitioner - Society. He would, therefore, submit that the writ petition is devoid of merits and liable to be dismissed.

15. Mr.Veera.Kathiravan, learned Senior Counsel, appearing for the seventh respondent, who was ultimately granted stone quarry licence, would submit that in spite of lease granted to the seventh respondent, *status quo* is being maintained in view of pendency of the writ petition before this Court. He would, therefore, urge this Court to dismiss the writ petition, since at the instance of the unsuccessful bidder, the contract awarded to the seventh respondent has not fructified into any further progression and such a conduct of the petitioner - Society has resulted in irreparable loss and hardship to the seventh respondent.

16. Heard the learned counsel appearing for the petitioner - Society, learned Additional Advocate General appearing for the respondents 1 to 6 and Mr.Veera.Kathiravan, learned Senior Counsel appearing for the seventh respondent.

17. From the order dated 12.01.2017 passed by the third respondent, which culminated in the Government Order issued by the first respondent in G.O.(D) No.98, Industries (MMC.2) Department, dated 16.05.2018, it is clearly established that the petitioner - Society did not satisfy the mandatory requirements as provided under Rule 8(10-A) of the Rules. For the purpose of understanding the petitioner - Society's claim, which squarely hinges on the above said Rule, the same is extracted hereunder:

"(10-A) (a) Notwithstanding anything contrary contained in this rule, the District Collector shall by notification in the District Gazette published in the month of April every year call for applications for direct grant of leases of stone quarries to the ["Swarna Jayanthi Gram Swarozgar Yojana Scheme Groups (hereinafter called SGSY groups)"] registered either under the Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983) or under the Tamil Nadu Societies Registration Act, 1975 (Tamil Nadu Act 27 of 1975) and the Societies formed by released bonded labourers, subject to the



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following conditions, namely :-

- (i) Separate application shall be made for each area for which applications are invited by the District Collector through a Notification in the District Gazette in the Form prescribed in appendix VI-B. A chalan for Rs.500/- (Rupees Five hundred only) remitted towards non-refundable application fee in the concerned District Treasury shall be enclosed with the application.
- (ii) Any application made under this sub-rule, shall be made for an area which is located within the area of operation of the Co-operative Society or other Societies who are eligible to make applications under this sub-rule.
- (iii) The area of operation of the applicant society shall be specified in the applicant society's byelaws and such area of operation of the applicant society shall be within the limits of one panchayat area only.
- (iv) The stone quarry lease shall be granted only in the name of the applicant society and not in the name of any individual.
- (v) The applicant society shall furnish along with its application besides other documents that are required to be submitted for stone quarry leases, an attested copy of the Certificate of Registration of the society either under the Tamil Nadu Cooperative Societies Act, 1983 or under the Tamil Nadu Societies Registration Act, 1975 and a copy of the bye-laws of the society; and
- (vi) The period of lease for stone quarrying shall be five years. For valid reasons to be recorded in writing, before publishing notification inviting applications for grant of lease, wherever the District Collector consider it necessary the period of a lease may be fixed for a period of less than five years.
- (vii) [All members of the society, should have worked in any stone quarry for a period of not less than two years. The District Collector concerned is authorised to issue certificate to this effect.
- (viii) Before publication of the notification



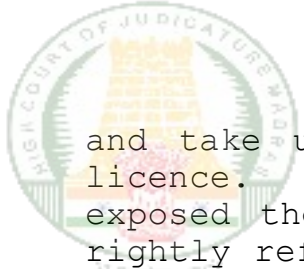
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of areas for direct grant of leases, the District Collector should assess the minimum viable area for optimum stone quarrying by assessing the average strength of the members of the society in the respective Panchayat Union"]."

18. According to the requirements of the above Rule, the members of the Society concerned should have worked in any stone quarry for a period of not less than two years and the District Collector concerned is authorized to issue certificate to this effect and it is also mentioned in Sub-Clause (iii) of the above Rule that the area of operation of the applicant society shall be specified in the applicant society's byelaws and such an area of operation of the applicant society shall be within the limits of one panchayat area only. Several other parameters have been laid in the above Rules for consideration of the claim of such applicant society in view of the fact that ultimately if any stone quarry licence is granted, it has to be given at the concessional rate without affecting the revenue of the State. This was more for taking care of the interest of the downtrodden women, who suffered during their employment in the stone quarry and the object of the Rule is to alleviate their pitiable condition, which they originally suffered. Such a laudable objective behind the Rule cannot be allowed to be hijacked by some vested interest and dubious organizations or associations, which were formed only to bag stone quarry licence.

19. From the records and the materials as disclosed, it is clear that the petitioner - Society was not registered at the time the third respondent issued notification for grant of licence to various stone quarries on 11.05.2015. In fact, admittedly, the petitioner - Society was registered only during June, 2015 and at that time, the members of the petitioner - Society could not substantiate their claim for having worked in any stone quarry and gained experience of not less than two years. In fact, the reports of the Chairman, Madurai District Panchayat and Kottampatti Panchayat Union, both were dated 16.08.2016, had been extremely inimical to the interest of the petitioner - Society and such reports were submitted on the basis of the factual assessment by the Members concerned. This Court does not see as to why the said reports cannot be relied upon by the third respondent while taking ultimate decision to reject the request of the petitioner - Society.

20. The third respondent as well as the respondents 2 and 1 have given elaborate reasons as to why the petitioner - Society could not be granted stone quarry licence and each one of the points raised by the Authorities concerned are found to be valid and genuine for not granting licence to the petitioner - Society. The laudable objective behind the framing of Rule 8(10-A) of the Rules is to forward towards grant of licence to the deserving Association and such a Rule cannot be allowed to be exploited by some vested interest in the garb of ex-quarry workers' Association



and take undue advantage in the matter of grant of stone quarry licence. Fortunately, in this case, the third respondent has exposed the falsity of the claim of the petitioner - Society and rightly refused to grant the stone quarry licence to the petitioner - Society. From the materials as disclosed, this Court has no hesitation to come to a conclusion that the petitioner - Society has been formed only to unjustly take advantage of the relevant Rule and in order to bag stone quarry licence in preference to the contract being awarded to the third parties. When certain concessions envisaged in the statute, such concessions have to be claimed only by satisfying all the mandatory requirements of the Rule and in the absence of satisfying such mandatory requirements, the same cannot be claimed as a matter of right. In this case, the petitioner - Society has miserably failed to satisfy the Authorities concerned about their *bona fides* and satisfaction of all the requirements provided under the Rule. Therefore, the third respondent has rightly upheld the interest of revenue being generated towards the State in respect of the grant of stone quarry licence and rejected the request of the petitioner - Society. The letter and spirit, in which Rule 8(10-A) of the Rules has been enacted, have to be adhered to and such adherence should be in fulfillment of the object of the Rules, if such dubious Association, like the petitioner - Society herein, is granted such licence under the special provision of the Rules, it defeats the very essence of the special Rules.

21. For the above said reasons, this Court does not find any infirmity in the orders passed by the respondents 3 to 1 herein. Hence, the writ petition is found to be completely devoid of merits and substance and the same is, therefore, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS II)

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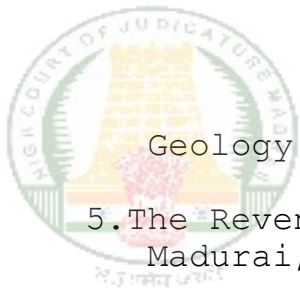
1.The Secretary,
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4.The Assistant Director of



Geology and Mining, Madurai.

5. The Revenue Divisional Officer,
Madurai, Madurai District.

6. The Tahsildar,
Melur Taluk Office, Madurai District.

2CC'S TO THE SPL GOVT PLEADER SR 83699 AND 83682

1CC TO MR. M. KANNAN, ADVOCATE SR 83488

1CC TO M/S. VEERA. ASSOCIATES ADVOCATES SR 83638

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