

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :24.04.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos. 12132 & 12138 of 2019

and

W.M.P.Nos.12410, 12412, 12418 & 12420 of 2019

K.Kannan(803369)
Manager,
Power & Utilities,
CPCL, Manali,
Chennai - 68.

..Petitioner in W.P.No. 12132/2019

Chennai Petroleum Officer's
Association,
(Registration No.178/TVR),
CPCL Campus Manali,
Chennai - 600 068.
Rep by its President,
Mr.N.Jayaraj

..Petitioner in W.P.No. 12138/2019

- Vs. -

1.The Managing Director,
Chennai Petroleum Corporation Ltd,
Manali,
Chennai - 68.

2.The Chief General Manager,
Chennai Petroleum Corporation Ltd,
Manali,
Chennai - 68.

.. Respondents in W.P.No.12132/2019

1.Chennai Petroleum Corporation Ltd,
Manali,
Chennai - 68.
Rep by its Managing Director.

.. Respondent in W.P.No.12138/2019

Prayer in W.P.No. 12132 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to quash the Transfer Policy of the respondents dated 01.04.2019 and also the orders of Transfer dated 03.04.2019 in HRD:05:045 assed by the 2nd respondent and

consequently forebear the respondents from unilaterally transferring the petitioner without his willingness or consent.

Prayer in W.P.No. 12138 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to quash the Transfer Policy of the respondents dated 01.04.2019 and consequently forebear the respondent from transferring the employees of the Respondent Corporation to IOCL.

For Petitioner in Both WPs' : Mr.V.Prakash, Senior Counsel
for AMI.V.Kataria

For Respondents in Both WPs' : Mr.P.H.Aravind Pandian,
Senior Counsel
for Mr.S.Arjun Suresh
for M/s.DUA Associates

COMMON ORDER

The transfer policy approved by the Board of Directors of Chennai Petroleum Limited (CPCL) in their 305th meeting held on 11.07.2015 as well as the consequential transfer orders issued to the writ petitioners in proceedings dated 01.04.2019, are under challenge in these writ petitions.

2.The learned Senior Counsel appearing on behalf of the writ petitioners states that the first respondent Corporation was formerly known as the Madras Refineries Limited, which was formed as a Joint Venture between the Government of India (GOI) and National Iranian Oil Company (NIOC) and AMOCO. Thereafter, during the year 2001, GOI divested its shares in favour of the Indian Oil Corporation Limited. At present IOCL holds around 51% of the shares of the 1st respondent Corporation, Naftiran Intra trade Co Ltd., 15% and the remaining shares are held by financial institutions, Insurance companies, banks etc.

3.The learned Senior Counsel appearing on behalf of the writ petitioners state that the respondents have absolutely no power to transfer the officers of the respondent Corporation. Undoubtedly, it is a subsidiary corporation of IOCL and even then the transfer policy cannot be implemented without the consent of the officials concerned.

4.The learned Senior counsel is of the opinion that it is not a case of victimization nor a mala fide transfer, it is a case, where the authorities are lacking power. In view of the fact that the respondents/ Chennai Petroleum Corporation Limited

as well as the Indian Oil Corporation Limited are two different entities and therefore, the transfer of the writ petitioners from CPCL to IOCL is absolutely untenable and without any jurisdiction.

5.The learned Senior Counsel made an attempt to clarify that these two companies are different entities and of course subsidiary companies. However, the service conditions are separately provided. The respondent cannot issue an order of transfer, transferring the employees of the respondent corporation to the IOCL without the written consent of such employees.

6.In reliance, the learned Senior Counsel referred to the judgment of the Hon'ble Supreme Court of India in the case of M/s.Kundan Sugar Mills vs. Ziyauddin and others stating that "ordinarily the existence and the employees would have agreed only to serve in the factory then in existence and the employer would have employed them only in respect of that factory. The matter does not stop there. In the instant case, as we have indicated, the two factories are distinct entitled, situated at different places and, to import a term conferring a right on the employer to transfer respondents 1 to 4 to a different concerns is really to make a new contract between them."

7.The learned Senior Counsel further referred Paragraph No.7 of the judgment, which is extracted hereunder:

"7. We have referred to the decisions only to distinguish them from the present case, and not to express our opinion as to the correctness of the decisions therein. It would be enough to point out that in all the said decisions the workers had been employed in a business or a concern and the question that arose was whether in the circumstances of each case the transfer from one branch to another was valid or amounted to victimization. None of these decisions deals with a case similar to that presented in this appeal, namely, whether a person employed in a factory can be transferred to some other independent concern started by the same employer at a stage subsequent to the date of his employment. None of these cases holds, as it is suggested by the learned counsel for the appellant, that every employer has the inherent right to transfer his employee to another place where he chooses to start a business subsequent to the date of the employment. We, therefore, hold that it was not a condition of service of employment of the respondents either express or implied that the employer has the right to transfer them to a new concern started by him subsequent to the date of their employment."

In Paragraph No.7 it is clarified that the every employer has the inherent right to transfer his employee to another place where he choses to start a business subsequent to the date of

the employment. We, therefore, hold that it was not a condition of service of employment of the respondent either express or implied that the employer has the right to transfer them to a new concern started by him subsequent to the date of their employment.

8. In the case of Jawaharlal Nehru University vs. Dr.K.S.Jawalkar reported in 1989 AIR (SC) 1577, the learned Senior Counsel referred Paragraph No.7, which is extracted hereunder:

"7. In this appeal the main contention of the appellant is that the respondent was appointed at the Centre of Postgraduate Studies, Imphal, and when the Centre was transferred to the Manipur University, his services were automatically transferred to that University, and consequently he could not claim to be an employee of the appellant University. The argument proceeds on the assumption that the Centre of Postgraduate Studies at Imphal was an independent entity which existed by itself and was not a department of the appellant University. The submission proceeds on a fallacy. The Centre of Postgraduate Studies was set up at Imphal as an activity of the appellant University. To give expression to that activity, the appellant University set up and organised the Centre at Imphal and appointed a teaching and administrative staff to man it. Since the Centre represented an activity of the appellant University the teaching and administrative staff must be understood as employees of the appellant University. In the case of the respondent, there can be no doubt whatever that he was, and continues to be, an employee of the appellant University. There is also no doubt that his employment could not be transferred by the appellant University to the Manipur University without his consent, notwithstanding any statutory provision to that effect whether in the Manipur University Act or elsewhere. The contract of service entered into by the respondent was a contract with the appellant University and no law can convert that contract into a contract between the respondent and the Manipur University without simultaneously making it, either expressly or by necessary implication, subject to the respondent's consent. When the Manipur University Act provides for the transfer of the services of the staff working at the Centre of Postgraduate Studies, Imphal, to employment in the Manipur University, it must be construed as a provision enabling such transfer of employment but only on the assumption that the employee concerned is a consenting party to such transfer. It makes no difference that the respondent was not shown

in the list of Assistant Professors of the appellant University or that the provision was not indicated in its budget; that must be regarded as proceeding from an erroneous conception of the status of the respondent. The position in law is clear, that no employee can be transferred, without his consent, from one employer to another. The consent may be express or implied. We do not find it necessary to refer to any case law in support of this conclusion."

9. Finally, the judgment of the Supreme Court of India, in the case of Balco Captive Power Plant Mazdoor Sangh and another vs. National Thermal Power Corporation and others reported in (2007) 14 Supreme Court Cases 234 was referred. The learned Senior Counsel emphasised the observations made in Paragraph Nos. 7, 22 as well as 30 and 37 of the judgment, which is extracted hereunder:

"7. The said agreement entered into between the two parties cannot be made retrospectively in case it affects the rights and liabilities of the third person. The same was entered into between two parties without knowledge, consent and willingness of the employees. Therefore, these clauses are not binding nor can be enforced against the employees, unless they agree to such conditions. The appellants are employees of NTPC forever. Further during the course of employment process, NTPC has not disclosed to the appellants that they are employing them for and on behalf of BALCO as their agent. Therefore, the O&M agreement i.e. agreement to manage BCPP on behalf of BALCO is not applicable to the appellants.

22. It is not in dispute that NTPC is a public sector undertaking wholly owned by the Government of India. Likewise, initially BALCO was also a public sector undertaking and BCPP is wholly owned by BALCO which was set up for production of power for their units. Subsequently in the year 2001, by virtue of disinvestment policy of the Government of India, BALCO including BCPP were transferred to M/s Sterlite which is a private concern. Though the agreement between BALCO and NTPC was entered into on 22-5-1990 enabling NTPC to manage, operate, supervise, maintain and control BCPP in all aspects, as per Clause 21.0, the terms and conditions deemed to come into operation from 29-6-1987.

30. As rightly pointed out by the learned Senior Counsel for the employees and from the materials brought on record either before the High Court or this Court, it is evident that during the process of recruitment it was never disclosed to the

candidates/selectees that their recruitment is exclusively for BALCO, on the other hand, in some of the appointment letters issued by NTPC, the terms and conditions of appointment are mentioned. It provides pay scale of NTPC, allowances and HRA payable as per Rules of NTPC and other facilities as admissible under the Rules of NTPC. It also provides other benefits of the company-contributory provident fund and gratuity are payable as per Rules of NTPC. Para 8 of the appointment letter provides for initial appointment and posting to work at Korba and thereafter liable to be posted at the discretion of NTPC in other office/project/unit or in any other public sector undertakings in India or abroad. The aforesaid terms and conditions lead to an irresistible conclusion that NTPC was their employer for all purposes.

37. It is clear that no employee could be transferred without his consent from one employer to another. Therefore, in view of the aforesaid rulings the transfer of employees from NTPC – a public sector undertaking to BALCO which is a private organisation is bad in law.”

10.The learned Senior Counsel appearing on behalf of the respondent Corporation disputed the entire contentions raised on behalf of the writ petitioners by stating that undoubtedly CPCL is the Subsidiary Company of IOCL. However, both are carrying on the same business nature and the IOCL is holding 51% of the share and there was a transfer policy in order to utilise the services of the employees for the betterment of the administration as well as to improvise the business transactions of these two companies.

11.The learned Senior Counsel for the respondent referred earlier transfer policy of the respondent corporation, which states that it did not have any such condition of service to transfer the officers from CPCL to IOCL. However, on account of the purchase of share by the IOCL during the year 2001 a revised transfer policy was issued and accordingly, the Board of Directors in their 305th meeting held on 11.07.2015 had approved revision of transfer policy for officers. It is further informed that the said transfer policy approved by the Board of Directors on 11.07.2015 was communicated to all the officers of the respondent Corporation (CPCL).

12.Transfer policy of the year 2015 are important for the purpose of considering the case on hand. Paragraph Nos.1.0, 1.1, 1.2 of the transfer policy reads as under:

“1.0 Background

1.1 The organization had formulated a Transfer Policy for movement of employees within CBR and Manali in 1991. The said Policy was reviewed in the year 2003 along with the Transfer benefits. Subsequently, the Board of Directors in their meeting held on 08.09.2008 had approved the revision of transfer benefits in line with IOCL. The Board of Directors in their meeting held on 12.02.2013 had desired that a Scheme for movement of employees from CPCL to IOCL and vice versa may be worked out.

1.2 Business scenario of CPCL has been constantly changing from a standalone refinery to a subsidiary company of Indian Oil Corporation Ltd. (IOCL). The working requirements and practices of CPCL are also being benchmarked with IOCL. Hence a need is felt that CPCL Officers are also exposed to the various work practices, challenges, requirements, etc of IOCL / other administrative functions of IOCL by means of transfer."

13.Paragraph No.4.0, provides Broad Principles regarding the transfers, which reads as under:

i)Officers who have completed a period of 5 years at Manali / CBR refinery shall be considered for transfer to other CPCL/IOCL locations keeping in mind the developmental need of the Officers. For this purpose, the period of 5 years from the date of joining the company will be considered. 2

ii)Officers occupying sensitive positions will be rotated / transferred as per the CVC guidelines in vogue from time to time.

iii)Officers who are due to superannuate within a period of two years shall not be normally considered for transfers unless at their own request or on specific business requirement.

14.Paragraph No.5.0, denotes guidelines for Job Rotation/Transfers reads as follows:

i)Job rotation and transfers will be based on Organizational need; however, to the extent possible, the individuals preferences may be taken into account.

ii)Generally the Officers who have completed tenure of five years in any CPCL locations shall be considered for transfer to other CPCL/IOCL locations. However, there shall be no bar for transfer of officers to other locations if required by work/business exigencies irrespective of the tenure completed.

iii)Barring exceptional circumstances, Officers transferred from one location to another shall work for a minimum period of 3 years which may be extended based on business/work requirement. In case of transfers to

IOCL locations, extension beyond three years shall be done on mutual agreement with IOCL - CO HR for a period of 1 year and such extensions shall be limited for a maximum of two times.

7.0 Transfer Benefits

Transfer benefits applicable to CPCL officers will be as approved from time to time. Cases or Transfer involving personal request shall be governed as under:

a) The officer would be entitled to full transfer benefits, as admissible, provided s/he has served for at least three completed calendar years at the location.

As regard transfers of officers (involving personal request) back to the location of their immediate previous posting, the officer may be entitled to full transfer benefits, as admissible, provided s/he has served for not less than five years at the location in line with Transfer Policy.

b) However, if the officer on transfer involving personal request has served at the location for a period lesser than the above prescribed period, then s/he will be only allowed following transfer benefits (as admissible):

- Journey fare for self & dependent family members,
- Transportation of household/personal effects, and
- Transportation of conveyance.

The benefits applicable in case of transfers on personal request will be subject to review as per the approved policy from time to time.

15. Relying on the said transfer policy, which was communicated to all the officials of the respondent corporation and the writ petitioners categorically enumerates the Board of Directors meeting held on 12.02.2013 had desired that a scheme for movement of employees from CPCL to IOCL and vice versa may be worked out. In paragraph No.1.2, it is stated that the working requirements and practices of CPCL are also being benchmarked with IOCL. Hence a need is felt that CPCL officers are also exposed to the various work practices, challenges, requirements, etc of IOCL/ other administrative functions of IOCL by means of transfer.

In Paragraph No.4.0, Broad Principles states that the officers who have completed about five years shall be considered for transfer to other CPCL/IOCL locations keeping in mind the developmental need of the officers.

Sub section iii of Paragraph No.5.0, stipulates that barring exceptional circumstances, Officers transferred from one location to another shall work for a minimum period of 3 years which may be extended based on business/work requirement. In case of transfers to IOCL locations, extension beyond three years shall be done on mutual agreement with IOCL - CO HR for a

period of 1 year and such extensions shall be limited for a maximum of two times.

16. Relying on the above transfer policy, the learned Senior Counsel for the respondent states that the transfer policy can never be challenged, as it forms all the service conditions of the employees. The respondent corporation is a subsidiary company and the nature of business are similar and the business transactions are to be improvised by utilising the services of all these officials both in CPCL and IOCL by transferring the employees. Even in case of transfer to IOCL, the period mentioned in the transfer policy is only three years and on administrative grounds the period can be extended for one year for a maximum of two times. Thus, the writ petitioner is bound to work only for three years and the decision taken to transfer the writ petitioner is on administrative grounds and individual interest of the administration of the Corporation.

17. The learned Senior Counsel for the respondent contended that the judgment cited by the learned counsel for the writ petitioners are inapplicable as far as the facts and circumstances of the present case is concerned. In respect of the case decided by the Supreme Court of India in M/s. Kundan Sugar Mills vs. Ziyauddin and others, the learned counsel for the respondents states that the facts before the Supreme Court of India are entirely different and the facts are enumerated in Paragraph No.1 of the judgment.

"The new factory was named Pannijee Sugar and General Mills, Bulandshahr. On January 19, 1955, the General Manager of the appellant - mills orders the transfer of the respondents 1 to 4 from the appellant - mills to the new mill at Bulandshahr. The said respondents through their representative, the fifth respondent, protested to the General Manager against the said transfer. But the General Manager, by his letter dated January 22/24, 1955, insisted upon their joining the new mill at Bulandshahr. But the said respondents did not accede to his request. On January 28, 1955, the General Manager served a notice on the respondents 1 to 4 stating that they had disobeyed his orders and thereby committed misconduct under Standing Order No.L(a). They were asked to submit their explanation as to why action should not be taken against them under the Standing Order."

In paragraph No.4 also the Hon'ble Supreme Court of India made an observation as under:

"Ordinarily the employees would have agreed only to serve in the factory then in existence and the employer would have employed them only in respect of that factory. The matter does not stop there. In the instant case, as we have indicated, the two factories are distinct entitled, situated at different places and, to import a term conferring a right on the employer

to transfer respondents 1 to 4 to a different concern is really to make a new contract between them."

18. Citing the facts, the learned Senior Counsel for the respondents states that transfers of the respondents 1 to 4 from the appellant - Mills to the new Mill at Bulandshahr is not in accordance with the conditions of service. By transferring the employee from one concern to different concern, it makes a new contract between them.

19. In the present case, the facts and circumstances adjudicated by the Supreme Court of India are absolutely inapplicable and therefore, the decision relied upon is of no avail to the writ petitioners.

20. As far as the decision taken by the Hon'ble Supreme Court of India in the case of Jawaharlal Nehru University vs. Dr. K.S. Jawalkar, the learned Senior Counsel for the respondents informed that the facts are also dissimilar and reliance placed have no relevance at all.

21. The case referred by the writ petitioner in the case of Balco Captive Power Plant Mazdoor Sangh and another vs. National Thermal Power Corporation and others reported in (2007) 14 Supreme Court Cases 234, the learned Senior Counsel for the respondent relied upon Paragraph No.2 of the judgment "being taken for transferring them to Bharat Aluminium Company Limited (for short "BALCO") which was originally a public sector undertaking under the Government of India, subsequently by policy of disinvestment the entire management had vested with M/s Sterlite under agreement dated 20.06.2002 w.e.f. 1.07.2002.

22. Further, the learned Senior Counsel for the respondents referred Paragraph No.37 which reads as under:

"it is clear that no employee could be transferred without his consent from one employer to another. Therefore, in view of the aforesaid rulings the transfer of employees from NTPC - a public sector undertaking to BALCO which is a private organization is bad in law."

The Apex Court observed that "a public sector undertaking to Balco which is a private organization is bad in law".

23. Curiously, this Court examined the appointment orders enclosed by the writ petitioners in proceedings dated 07.04.1993, which is enclosed in Page No.1 of the typed set of papers. The terms and conditions stipulated in the order of appointment states that "at any time during your employment with this company, you will be liable for transfer to any section / Department / Plant within the Unit or to our Cauvery Basin Crude

Distillation Unit at Nagapattinam or anywhere in India or abroad according to the exigencies of business of the company."

Wider terms are used in the conditions of the appointment. Thus, the services of the officers are utilised at the interest of the company as well as the business exigencies of the company. The term employment in the conditions of appointment are wider enough to cover the deputation, transfer to a subsidiary company or in the interest of business administration of a company.

24. For example, an employee, who is working in a Corporation ended by Government of India are a public undertaking. Such an officials in the interest of public administration or in order to improvise the business transactions and developments can be transferred to another corporation or public sector undertaking. On account of the various facts and circumstances, such transfers cannot be normally questioned by employees as the transfer is a condition of service and more so, an incidental to service. Transfer of service, if affects the service conditions of the employees, then alone, they have a right to question the same.

25. Admittedly, the service conditions of the IOCL and the benefits extended to the IOCL and CPCL are similar and in fact, the learned Senior Counsel for the respondent, placed on record by stating that the benefits granted to the IOCL are extended to the employees of the CPCL. Thus, the service conditions are not altered and the benefits entitled to the officials are extended even after their transfer to IOCL.

26. The present writ petitions are filed, challenging the transfer policy, which was approved by respondent during the year 2015.

27. The learned senior counsel for the writ petitioners states that the policy was not implemented for the past four years and now the transfer has been issued, which made the writ petitioners to challenge the very transfer policy itself. Thus, the delay in challenging the transfer policy cannot be held against the writ petitioners on the ground of laches.

28. This Court is of the considered opinion that it is the administrative prerogative of the management to implement the transfer policies. If at all, the transfer policy implemented is affecting the service conditions of the employees, then alone, the policy can be challenged and not otherwise. In other words, policies which all are not affecting the service conditions of the employees cannot be questioned by the employees.

29.The CPCL and IOCL are subsidiary companies and both the companies are under administrative control of the Government of India. The employees in both the organizations are granted the benefits and other facilities on par with each other. This apart, the transfer now issued is for a specific period of three years, transferring the employees from CPCL to IOCL and it is made clear that such an employees will not be retained in IOCL on permanent basis. The transfer issued for a period of three years may be extended to another one year and the maximum of two years on certain administrative exigencies. Thus, the said period of transfer cannot be construed as detrimental to the interest of the employees and contrarily, it is in the interest of the administration of the respective companies.

30.The business interest as well as the administrations of the organizations are of paramount important. The respondent Corporation is catering the needs of the public in general. In the current day world, the importance of petroleum corporations can never be disputed and these companies are doing public service which all are vital and important. The officers of the respondent corporation are performing the public duties and thus, they are duty bound to participate in the administrative developments, business improvisations being implemented by the administration.

31.In this context, the transfer policies are being implemented by the administration of the respondents. The transfer policy itself stipulates that the transfer is for a specific period of three years and the same may be extended for the further period of two years maximum. The said policy would not affect the service conditions of the officials working in the respondent corporation.

32.Undoubtedly, transfers may cause certain personal inconvenience and that cannot be considered by the Court, as such, personal grievances are to be redressed by the Competent Authorities. The interest of public administration as well as the business developments are the reasons for such transfer policies and there is no victimization or malafide intention on the part of the respondents in transferring these writ petitioners from one place to another place and the service conditions of the employees are not affected. Thus, there is no reason to question the policy of transfer, as transfer is an incidental to service and a condition of service. Transfers on administrative grounds are the prerogative of the competent authorities and the Administrators are the best persons to decide the place and post in which the employees should be allowed to continue in service. Such administrative decisions must be taken for the effective and efficient administration of

the corporation.

33. Constitutional Courts would not interfere with the routine administration of the management and in the event of such interruptions, there is a possibility of lowering the efficiency level in the public administration by the competent authorities. Power of judicial review against the orders of transfers are undoubtedly limited and High Court is expected to exercise restraint in interfering with the orders of administrative transfers. The orders of transfers and transfer policies can be interfered with, only if the same is issued on mala fide ground or in violation of statutory rules in force or the same is without jurisdiction. Though the ground of jurisdiction is raised, the policy on transfer was between the subsidiary companies and as enumerated above, it is within the jurisdiction conferred on administration and there is no illegality in this regard.

34. In the present cases, the transfer policy unambiguously enumerates that the employees can be transferred from CPCL to IOCL and vice versa in the interest of administration. The broad principles enunciated in the transfer policy reiterates that the officers, who have completed the period of 5 years shall be considered for transfer to other CPCL/IOCL locations keeping in mind the developmental need of the officers. Thus, the respondents have implemented the transfer policy for officers in the interest of the administration and for its business transactions. Under these circumstances, the writ petitioners cannot express any grievances in respect of such transfers and they are liable to work in the place where they have posted for betterment and improvisation of the business activities of the corporation.

35. This being the factum, this Court has no hesitation in coming to the conclusion that the transfer policy and the order of transfer challenged by the organization as well as by the individual employee are in consonance with the established principles of law and there is no infirmity as such.

36. Accordingly, both the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pns

To

1.The Managing Director,
Chennai Petroleum Corporation Ltd,
Manali,
Chennai - 68.

2.The Chief General Manager,
Chennai Petroleum Corporation Ltd,
Manali,
Chennai - 68.

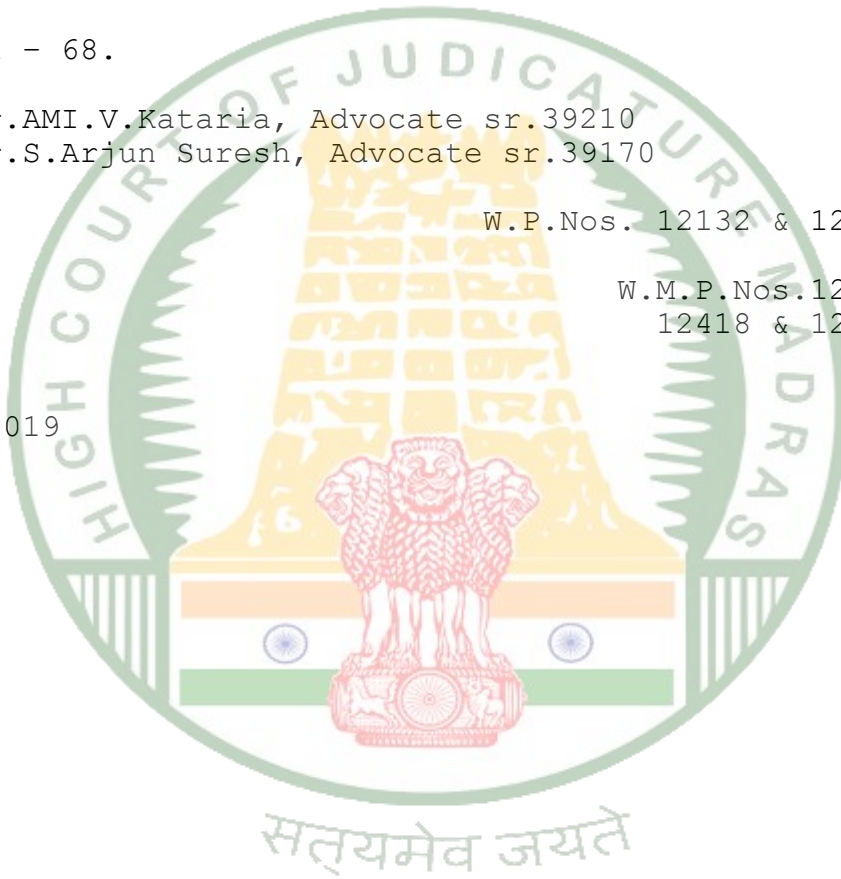
+2cc to Mr.AMI.V.Kataria, Advocate sr.39210

+1cc to Mr.S.Arjun Suresh, Advocate sr.39170

W.P.Nos. 12132 & 12138 of 2019
and

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12418 & 12420 of 2019

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