



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2019

CORAM :

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD)Nos.19445 and 19449 of 2019
and
W.M.P. (MD)Nos.15888, 15889 and 15892 of 2019
in W.P. (MD)No.19445 of 2019
and
W.M.P. (MD)Nos.15887, 15890 and 15896 of 2019
in W.P. (MD)No.19449 of 2019

G.Manuneethi

... Petitioner in
both the W.Ps.

vs.

1.The Additional Chief Secretary to Government,
Highways & Minor Ports,
(HL2 Department), Secretariat,
Chennai - 600 009.

2.The Chief Engineer,
National Highways,
Guindy, Chennai.

3.Mr.Balamurugan,
Now working as Chief Engineer,
National Highways,
Guindy, Chennai.

... Respondents in
both the W.Ps.

COMMON PRAYER IN W.P. (MD)Nos.19445 of 2019 and 19449 of 2019:

Writ Petitions filed under Article 226 of the Constitution of India, seeking for issuance of Writs of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the first respondent in Letter Nos.16821/HL2/2018-6 and 16823/HL2/2018-6, dated 14.05.2019, quash the same and consequently, direct the respondents 1 and 2 to consider the promotion of the petitioner on par with the juniors as Superintending Engineer in the respondent Department with all monetary and attendant benefits.

For Petitioner : Mr.Veerakathiravan
in both the W.Ps. Senior Counsel
for M/s.Veera Associates



For R1 and R2 : Mr.M.Rajagopal
in both the W.Ps. Additional Advocate General
Assisted by
Mrs.S.Srimathy
Special Government Pleader

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For R3 : Mr.R.Singaravelan
in both the W.Ps. Senior Counsel
for Mr.D.Selvanayagam

COMMON ORDER

These Writ Petitions have been filed seeking to quash the impugned proceedings of the first respondent in Letter Nos.16821/HL2/2018-6 and 16823/HL2/2018-6, dated 14.05.2019, and consequently, direct the respondents 1 and 2 to consider the promotion of the petitioner on par with the juniors as Superintending Engineer in the respondent Department with all monetary and attendant benefits.

2.The learned Senior Counsel appearing for the petitioner submitted that the petitioner was served with two charge memos, both dated 14.05.2019, with same set of allegations, except different names of the Contractors. The charges are vague and the documents relied on by the respondents itself show that the petitioner has not committed any misconduct and he is innocent. In the arbitration proceedings, the Government relied on the order of rejection passed by the petitioner against the Contractor and contended that the Government is not liable to pay any amount to the Contractor. The petitioner worked from 14.02.2013 to 31.08.2015 in Coimbatore as Divisional Engineer. Before he joined as Divisional Engineer in Coimbatore Division, the contract was given and the work was commenced and concluded. Only one S.P.Palanivel and the third respondent handled the arbitration proceedings. These two persons did not properly conduct the arbitration proceedings on behalf of the Government, which has resulted in an Award being passed against the Government.

3.The learned Senior Counsel further contended that due to extension of time granted by S.P.Palanivel, the price adjustment was made. The Government has initiated departmental proceedings only against the petitioner with a *mala fide* intention to deprive his promotion. The charges are vague and only based on the documents relied on in the arbitration proceedings, the charges are framed. The learned Senior Counsel referred to the documents filed in the arbitration proceedings, which are annexed in the typed set of papers and submitted that in the arbitration proceedings, the Government relied on the rejection order passed by the petitioner that the Contractor is not liable to any amount. The said S.P.Palanivel did not give evidence and both S.P.Palanivel and the third respondent mishandled the arbitration proceedings, which resulted in an Award being passed against the Government. The Government did not take any



action against S.P.Palanivel and he was permitted to retire from service.

4.The learned Senior Counsel appearing for the petitioner further contended that the petitioner is seeking to quash the charge memos issued against him on the ground that the documents relied on by the respondents before the Arbitrator itself show that the petitioner is innocent and the Government suffered loss only due to the mishandling by S.P.Palanivel and the third respondent.

5.In support of his submissions, the learned Senior Counsel appearing for the petitioner relied on the following judgments:-

(i) **N.Saravanakumar Vs. The Government of Tamil Nadu, Rep. by its Secretary, Commercial Taxes and Registration Department, Fort St. George, Chennai and others [W.P.No.29030 of 2015, dated 30.09.2015]**, wherein at Paragraphs 16, 23 and 24, it has been held as follows:-

'16.It is very pertinent to point out at this juncture that the allegation merely pertains to loss of revenue to the State and no ill-will or motive or corrupt practice has been levelled against the petitioner except the general charge, namely Charge No.8 which speaks about Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973. In the considered opinion of the Court, the charges framed against the petitioner are vague and admittedly, Annexure-II to the charge memo would also indicate that even prior to the tenure of the petitioner also, such alleged lapses took place, for which, the concerned officials have not been proceeded with and the said fact was also brought to the knowledge of the Disciplinary Authority by the petitioner in his interim reply, for which also, no response is forthcoming. Thus, on account of vague and indefinite charges framed against the petitioner, he is put to grave prejudice and hardship in defending the charges framed against him.

23. In the considered opinion of the Court, in the absence of specific imputation of dishonest/oblique motive, lack of bonafide or utter negligence in discharge of duties, initiation of disciplinary proceedings is required to be quashed. The allegations pertains to the alleged act of the petitioner during his tenure as Commercial Tax Officer, Melur Assessment Circle for the period between 30.07.2012 and 31.12.2012 and in pursuant to the orders passed in W.P.Nos.11129/2013, 11324/2013 and 20336 of 2013, the petitioner and others were promoted as Assistant Commissioners and this Court is of the view that subsequent promotion of the petitioner has also washed out his alleged delinquency. The petitioner alone has been proceeded with for the reasons best known to the Disciplinary Authority and that apart, the



charges framed against the petitioner are also very vague and in the absence of any specific allegation as to dishonest/oblique motive or deliberate act of negligence or undue favour shown, the impugned charge memo cannot be sustainable.

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24. In the result, this Writ Petition is allowed and the impugned charge memo bearing Ref.No.CD2/16647/2014-III dated 30.10.2014 on the file of the second respondent is quashed. No costs. Consequently connected miscellaneous petitions are closed.''

(ii) **Senthurpandian Vs. The Government of Tamil Nadu, Rep. by its Secretary, Rural Development and Panchayat Raj Department, Chennai and another** reported in 2010 SCC Online Mad 356, wherein at Paragraphs 6, 33 and 34, it has been held as follows:-

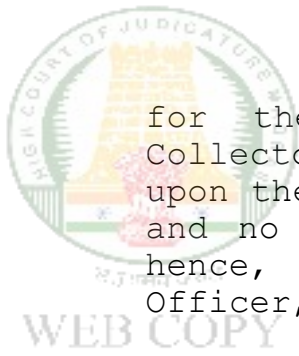
''6. Further, there is no basis for the charges and in respect of certain happenings that had taken place in the year 2003, these charges were framed in the year 2009 only with the intention of not giving promotion to the higher post.

33. In this case also, the gist of the charge memo is failure to verify the eligible criteria of the beneficiaries and nothing has been whispered as to any dishonest motive on the part of the petitioner and there is no allegation that there has been any misuse of his official position for personal gain.

Therefore, following the above judgment, in my opinion, in the absence of specific allegations that the alleged negligence in discharging his official duty was with dishonest motive or in the absence of any allegation that there was misuse of official position for personal gain 17(b) charges cannot be framed against the petitioner. Therefore, the respondents should not have framed charges under section 17(b) of the Tamil Nadu Civil service (Disciplinary and Appeal) Rules, having regard to the nature of the charges levelled against the petitioner. This Issue is, therefore, answered in favour of the petitioner.

34. Issue No. 3 and 4: Having regard to the answer given to Issue No. 2, I am of the opinion that charge 17(b) cannot be framed against the petitioner.

Further this issue can be answered from another angle. It is submitted by the learned counsel appearing for the petitioner Mrs. J. Nisha Banu that even according to the case of the respondent along with the petitioner, the Block Development Officer was also equally responsible and no action has been taken against the Block Development Officer and the petitioner was singled out. According to the learned counsel appearing



for the petitioner as per the letter of the District Collector, Ramanathapuram, dated 20.05.2003, the duty is cast upon the Block Development Officer to select the beneficiaries and no role has been assigned to the Extension Officer and hence, without taking action against the Block Development Officer, the petitioner cannot be held responsible for that.'

(iii) **Zunjarrao Bhikaji Nagarkar Vs. Union of India and others** reported in **1997 (7) SCC 409**, wherein at Paragraphs 41 to 44, it has been held as follows:-

'41. When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. The record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed "favour" to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form a basis for initiating disciplinary proceedings against an officer while he is acting as a quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal.

42. Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.

43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial



authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

44.Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary proceedings against the appellant. The charge of misconduct against him was not proper. It has to be quashed.''

(iv) **B.K.Gunasekaran Vs. The State of Tamil Nadu, Rep. by the Secretary to Government, Commercial Tax and Registration Department, Secretariat, Chennai and others** reported in 2010 (2) LW 964, wherein at Paragraph 17, it has been held as follows:-

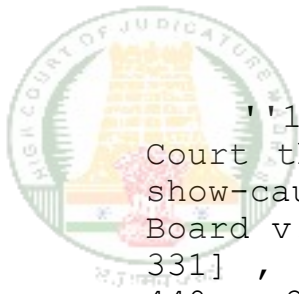
'17.Thus, the entire proceedings appears to have not been conducted in a fair and reasonable manner and the petitioner has been put to disadvantage at every stage of the matter. That apart as pointed out by the learned Senior counsels for the petitioner one other person by Mr.A.M.Jameed Bhasha, who has also a delinquent has been exonerated of the charge and there is no reason as to why the petitioner alone should be made to suffer.''

6.The learned Additional Advocate General appearing for the respondents 1 and 2 submitted that the charge memos are issued based on the materials on record, which show the misconduct committed by the petitioner. This Court cannot decide whether the charges levelled against the petitioner are correct or not in a writ proceedings. It is for the respondents to substantiate the charges levelled against the petitioner in the domestic enquiry by letting in acceptable evidence. The contention of the learned Senior Counsel is that the documents mentioned in the charge memo itself show that the petitioner is innocent and the Government suffered loss only due to mishandling by S.P.Palanivel and the third respondent, but the learned Senior Counsel did not refer any of the documents annexed in the charge memo to substantiate his claim.

7.The learned Additional Advocate General further contended that the charge memo can be quashed only when the same was issued without authority. In the present case, the charge memos are issued by the person having jurisdiction. Secondly, the Court has to see the validity, tenability and merits of the charges and prayed for dismissal of the Writ Petitions.

8.In support of his contentions, the learned Additional Advocate General relied on the following judgments:-

(i) **Union of India and another Vs. Kunisetty Satyanarayana** reported in 2006 (12) SCC 28, wherein at paragraphs 13 to 16, it has been held as follows:-



'13.It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327 : JT (1995) 8 SC 331] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] , Ulagappa v. Divisional Commr., Mysore [(2001) 10 SCC 639] , State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , etc.

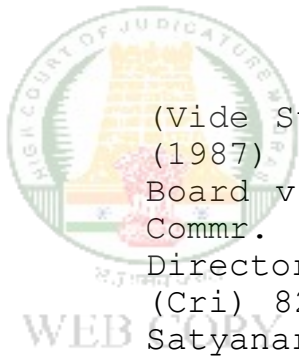
14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15.Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.'

(ii) **Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha** reported in **2012 (11) SCC 565**, wherein at paragraphs 10 to 12, it has been held as follows:-

'10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court.



(Vide State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327] , Ulagappa v. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] .)

11. In State of Orissa v. Sangram Keshari Misra [(2010) 13 SCC 311 : (2011) 1 SCC (L&S) 380] (SCC pp. 315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority. (See also Union of India v. Upendra Singh [(1994) 3 SCC 357 : 1994 SCC (L&S) 768 : (1994) 27 ATC 200] .)

12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.'

(iii) **Union of India and another Vs. Ashok Kumar Aggarwal** reported in **2013 (16) SCC 147**, wherein at paragraph 9, 14, 19 and 20, it has been held as follows:-

'9. The appellants had been reviewing the suspension order from time to time and thus, the respondent filed OA No. 2842 of 2010 before the Tribunal for quashing of the suspension order and the same was disposed of by the Tribunal vide order dated 16-12-2011 [Ashok Kumar Aggarwal v. Union of India, OA No. 2842 of 2010, order dated 16-12-2011 (CAT)] directing the appellants to convene a meeting of the Special Review Committee (SRC) within a stipulated period to consider revocation or continuation of suspension of the respondent after taking into consideration various factors mentioned in the said order.

14. It was submitted that the scope of judicial review is limited in cases of suspension for the reason that passing of



suspension order is of an administrative nature and suspension is not a punishment. Its purpose is to only forbid the delinquent to work in the office and it is in the exclusive domain of the employer to revoke the suspension order. The Tribunal or the court cannot function as an appellate authority over the decision taken by the disciplinary authority in these regards.

19. During suspension, the relationship of master and servant continues between the employer and the employee. However, the employee is forbidden to perform his official duties. Thus, a suspension order does not put an end to the service. Suspension means the action of debarring for the time being from a function or privilege or temporary deprivation of working in the office. In certain cases, suspension may cause stigma even after exoneration in the departmental proceedings or acquittal by the criminal court, but it cannot be treated as a punishment even by any stretch of imagination in the strict legal sense. (Vide O.P. Gupta v. Union of India [(1987) 4 SCC 328 : 1987 SCC (L&S) 400 : (1987) 5 ATC 14 : AIR 1987 SC 2257] and Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. [(1999) 3 SCC 679 : 1999 SCC (L&S) 810 : AIR 1999 SC 1416])

20. In State of Orissa v. Bimal Kumar Mohanty [(1994) 4 SCC 126 : 1994 SCC (L&S) 875 : (1994) 27 ATC 530] this Court observed as under: (SCC p. 133, para 13)

"13. ... the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by the disciplinary authority. Appointing authority or disciplinary authority should consider ... and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. ... In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had an opportunity in office to impede the progress of the investigation or inquiry, etc. ... It would be another thing if the action is actuated by mala fides, arbitrarily or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the inquiry or inquiry. The authority also should keep in



mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge." (emphasis added)

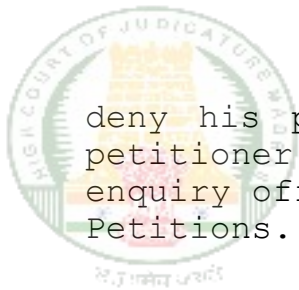
(See also R.P. Kapur v. Union of India [AIR 1964 SC 787] and Balvantrai Ratilal Patel v. State of Maharashtra [AIR 1968 SC 800].)

9.The learned Senior Counsel appearing for the third respondent submitted that the third respondent was posted as Divisional Engineer in Coimbatore Division from 31.08.2015 to 27.12.2016. The third respondent was not working as Divisional Engineer during the relevant period and he is not aware of the Award proceedings. Before he joined as Divisional Engineer, the contract work was completed and amount was paid after deducting the penalty amount. The petitioner recommended excess amount to the Contractor. During this period, he made two recommendations for payment to the Contractor.

10.I have heard the learned counsel appearing for the parties and perused the materials on record.

11.From materials on record and the documents relied on by the learned Senior Counsel appearing for the petitioner, it is seen that the learned Senior Counsel is relying on the documents, which were filed before the Arbitrator. According to the learned Additional Advocate General, those documents do not form part of the annexure to the charge memo. In view of the same, as rightly pointed out by the learned Additional Advocate General, those documents cannot be looked into and considered by this Court in a writ proceeding. The petitioner can produce those documents before the Enquiry Officer and substantiate his contention that he is innocent and has not committed any misconduct. Further, the contention of the learned Senior Counsel appearing for the petitioner that the petitioner alone was singled out and disciplinary proceedings initiated with *mala fide* intention is contrary to the facts. The learned Additional Advocate General has submitted that the charge memo has been issued to Palanivel and the petitioner and the Government, vide proceedings dated 10.10.2019, appointed Mr.C.Vijayaraj Kumar, as Inquiry Officer to inquire into the charges framed against the said S.P.Palanivel, the petitioner and R.Ravikumar, Divisional Accountant (u/s), Construction and Maintenance, Ooty, then Divisional Accountant (NH), Coimbatore. The learned Senior Counsel appearing for the petitioner did not dispute the said contention.

12.The learned Senior Counsel did not refer to any of the documents annexed with the charge memo to substantiate his contention. As rightly pointed out by the learned Additional Advocate General, the charge memo has to be substantiated by the respondents by letting in acceptable evidence before the Enquiry Officer. Whether the petitioner has committed misconduct or not and charges framed against the petitioner with an intention to



deny his promotion cannot be decided in a writ proceeding. The petitioner has to raise all the objections before the domestic enquiry officer and substantiate his contention now made in the Writ Petitions.

13.The learned Senior Counsel appearing for the petitioner contended that the petitioner had rejected the claim of the Contractor and that rejection was relied on by the Government before the Contractor. On the other hand, learned Additional Advocate General contended that the petitioner after eight months of his joining as Divisional Engineer, recommended payment to Contractors and in view of such recommendation only, the Government suffered loss. Whether the petitioner has rejected or recommended the claim of the Contractor is the disputed question of fact. It is well settled that the disputed question of facts cannot be decided in the writ proceedings.

14.In view of the above, the petitioner is directed to submit his explanation within a period of 15 days from the date of receipt of a copy of this order. On receipt of such explanation, the

respondents are directed to conclude the disciplinary proceedings within a period of nine months thereafter.

15.With the above direction, these Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Additional Chief Secretary to Government,
Highways & Minor Ports,
(HL2 Department), Secretariat,
Chennai - 600 009.

2.The Chief Engineer,
National Highways,
Guindy, Chennai.



+2 CC to M/s.D.SELVANAYAGAM, Advocate (SR-93731[F] dated
22/10/2019), 93728

+2 CC to M/s.VEERA ASSOCIATES, Advocate (SR-93864[F] dated
23/10/2019), 93863

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22.10.2019

KK/SAR/19.11.2019/12P-7C/