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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2020

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.4178 of 2019 and
W.M.P.Nos.4686 and 4687 of 2019
and
Cont.P.No.445 of 2019 in W.P.No.224 of 2018

W.P.No.4178 of 2019:

M/s.Al Ameen Green Energy Private Limited
rep.by its Chairman M.Basheer Ahamed
Green Palace Complex
No.67, Ramasamy Street
Mannady, Chennai-600 001.

... Petitioner

Vs.

1.The State of Tamil Nadu
rep.by its Secretary to Government
Energy Department
Secretariat, Fort St.George,
Chennai-600 009.

2.The Tamil Nadu Generation & Distribution Corporation Limited
(TANGEDCO),
rep.by its Director
2nd Floor, Eastern Wing
No.144, Anna Salai,
Chennai-600 002.

3.The Chairman,
Tamil Nadu Electricity Board (TNEB)
No.800, Anna Salai
Chennai-600 002.

4.The Tamil Nadu Electricity Regulatory Commission (TNERC)
rep.by its Chairman,
2nd Floor, Eastern Wing
No.144, Anna Salai, Chennai-600 002.

5.The Chief Engineer / Non Conventional Energy Sources (NCES)
2nd Floor, Eastern Wing
NPKRR Maligai No.144, Anna Salai
Chennai-600 002.

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned communication of the 2nd respondent in LR.No.CE/NECS/SE/solor/EE/SCB/AEE3/F.M/s.Al-AmeenGreen/D.164/19 dated 08.02.2019 and communicated to the petitioner by the fourth respondent, quash the same and consequently direct the respondents 1 to 3 and 5 to pass appropriate orders on the petitioner's request based on the letter dated 26.09.2018.

For Petitioner : Mr.S.Haja Mohideen Gisthi

For Respondents: Mr.J.Ramesh,
Additional Government Pleader for R1
Mr.P.H.Aravind Pandian,
Addl.Advocate General, assisted by
Mr.N.Damodaran for R2 to R5

Cont.P.No.445 of 2019:

M/s.Al Ameen Green Energy Private Limited
rep.by its Chairman M.Basheer Ahamed
Green Palace Complex
No.67, Ramasamy Street
Mannady, Chennai-600 001.

... Petitioner

Vs.

1.Mr.Vikram Kapur
Chairman cum Managing Director
Tamil Nadu Generation & Distribution Corporation Limited
(TANGEDCO),
2nd Floor, Eastern Wing
NPKRR Maligai,
No.144, Anna Salai,
Chennai-600 002.

2.Mr.Subramaniam
The Chief Engineer / Non Conventional Energy Sources (NCES)
2nd Floor, Eastern Wing
NPKRR Maligai
No.144, Anna Salai
Chennai-600 002.

... Respondents

Contempt Petition filed under Section 11 of the Contempt of Courts Act, praying to punish the respondents herein for willful disobedience of the order dated 28.09.2018 of this Court in W.P.No.224 of 2018.



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For Petitioner :Mr.S.Haja Mohideen Gisthi

For Respondents:Mr.P.H.Aravind Pandian,
Addl.Advocate General, assisted by
Mr.N.Damodaran

COMMON ORDER

The facts leading to the filing of the present writ petition are as follows:

(i)As per the Tamil Nadu State Solar Energy Policy announced by the Government of Tamil Nadu on 20.10.2012, it has been proposed to establish solar PV power plants for a capacity of 3000 MW for a period of three years. The said 3000 MW solar power generation would be achieved through Utility Scale Projects, Roof Tops and REC mechanism. The Solar Energy Policy mandates 6% Solar Purchase Obligation (SPO) (starting with 3% till December 2013 and 6% from January 2014) for HT consumers (HT Tariff I to V) and LT commercial consumers. The petitioner company was one of the successful bidders for the purposes of establishment of 100 MW Solar Power Plants at Veeracholan, Melachembur, Kadambangulam, Keelachembur and Minakkulam, Thirusuzhi Taluk, Virudhunagar Taluk. It is stated by the petitioner in the affidavit filed in support of this writ petition that as per the directions of the fifth respondent herein issued on 06.11.2014, the petitioner has paid a sum of Rs.10,000/- towards Registration Fee, Rs.5,00,000/- and Rs.61,800/- towards Load Flow Study Charges and ST respectively and Rs.2,68,75,000/- towards 50% of the applicable refundable security deposit for 100 MW. On 27.02.2015, the Load Flow Study result was communicated to the petitioner for establishment of 100 MW Solar PV power plant at Veerasholapuram Village, Kamuthi Taluk, Ramanathapuram District. The petitioner requested the fifth respondent on 14.03.2015 to change the substation from Kamuthi to Tiruchuli, since the work for the proposed substation, i.e.Kamuthi had not yet started and the control period at that time was till September 2015, as per the order of the TNERC dated 12.09.2014. The petitioner also made payment of a sum of Rs.5,61,800/- on 27.04.2015 towards revised load flow study charges. On 12.06.2015, the balance 50% of the EMD payment was also made. Thus, the petitioner had paid the entire amount for 100 MW totalling to Rs.5,37,50,000/-, to the fourth respondent. A further sum of Rs.50,000/- was also paid towards signing of the Energy Purchase Agreement. Pursuant to the same, the Tamil Nadu Generation & Distribution Corporation Limited has also issued the Noted for Record Letter, and the Energy Purchase Agreements for the Solar Power Plants covered under Order No.7 of 2014 dated 12.09.2014 was also signed between the petitioner and TANGEDCO on 10.07.2015 for 25 MW. Thereafter, the petitioner purchased materials from various suppliers for



carrying out the work. On 05.10.2015, the petitioner requested the fourth respondent to provide the remaining 25 MW Solar Power Project in the name of M/s.Al Ameen Green Energy Power Private Limited due to the requirements from banks and financial investors, for which he paid a sum of Rs.1,00,000/-. In furtherance of the same, accepting the petitioner's request, the required amendment was done and S.F. Number was also issued by the authorities.

(ii) For Phase-I, only 25 MW Energy Purchase Agreement was signed, but subsequently in respect of 15 MW, the petitioner made payments to the tune of Rs.81,25,000/- for the outstanding security deposit amount for 15 MW and also Rs.30,000/- towards Energy Purchase Agreement of 15 MW for which, Noted for Record Letter was issued on 03.03.2016. Further, as per the request of the petitioner on 24.03.2016, the name transfer from M/s.Al Ameen Green Energy Power Private Limited to M/s.Al Ameen Green Energy Private Limited was approved by TANGEDCO and on 24.03.2016, Energy Purchase Agreement for the Solar Power Plants covered under Order No.7 of 2014 dated 12.09.2014 was signed by the petitioner for 15 MW. Thereafter, since the petitioner was confronted with certain issues as regards financial assistance from banks, the petitioner requested TANGEDCO for extension of time and pursuant to the same, extension was also granted by TANGEDCO for six months by communication dated 16.07.2016. In these circumstances, the petitioner entered into a Joint Operation Agreement dated 22.12.2016 with Limited Liability Company "Legal Collaboration Company" and a Russian Company "Miyota Power India Pvt.Ltd." to carry out the work jointly and consistently within the project of construction and operation of 100 MW Solar PV Plant.

(iii) At this juncture, Tamil Nadu Electricity Regulatory Commission ("TNERC" in short) issued notice dated 06.02.2017 to the petitioner to commission the Preferential Tariff Scheme within 10 days and if the same is not done, the Noted for Record Letters would stand cancelled. The petitioner also replied to the same by letter dated 08.02.2017 stating that the petitioner company was scheduled to complete the 25 MW project before 31.03.2016 and obtain a tariff rate of Rs.7.01 per unit, but due to unforeseen circumstances, the petitioner was unable to obtain the financial closure on time, which led to delay in obtaining loans from the banks and as the time period for commissioning got expired after 31.03.2016, the tariff rate went down to Rs.5.10 per unit, for which the petitioner has to make necessary changes to the project's financial structure in order to achieve the financial feasibility for the investment and since there was delay for the same, it was not possible to avail loans from the banks. Thereafter, TANGEDCO granted extension of time for a period of one month vide letter dated 26.05.2017. At that time, the petitioner asked extension of time for about three months to complete the project, since the petitioner has raised the debt fund of about Rs.125 Crores



through term loan from a syndicate of banks and obtained sanction from two banks for about Rs.75 Crores, but could not complete the financial closure by January. The petitioner also stated other reasons for not able to continue with the site work, even though Rs.30 Crores of equipments were at site, ready to be installed. But TANGEDCO had not accepted the request of the petitioner and cancelled the "Noted on Record Letters", by way of passing orders in Lr.No.CE/NCES/SE/SOL/EE/SCB/A1/F.A1-Ameen/D.861/17 dated 18.09.2017 and Lr.No.CE/NCES/SE/SOL/EE/SCB/A1/F.A1-Ameen/D.859/17 dated 18.09.2017, and because of the same, the Energy Purchase Agreements dated 10.07.2015 and 24.03.2016 for 25 MW and 15 MW respectively, have become null and void.

(iv)Challenging the said orders dated 18.09.2017 and also the Energy Purchase Agreements signed on 10.07.2015 and 24.03.2016, the petitioner filed writ petitions in W.P.Nos.26228 and 26229 of 2017 before this Court and the same were disposed of by this Court on 09.10.2017 observing that the petitioner was not justified in invoking the discretionary jurisdiction of this Court under Article 226 of the Constitution of India, but giving liberty to the petitioner to resolve the dispute as contained in Clause 11 of the agreement entered into between the parties, wherein it is stated that if any dispute or difference of any kind whatsoever arises between the parties relating to the agreement, the same shall be settled amicably by the parties, failing which either party may approach the Commission for adjudication of such disputes under Section 86(1)(f) of the Electricity Act, 2003 in accordance with the Conduct of Business Regulations, 2004 and the Fees & Fines Regulations, 2004 of the Commission and that the agreement shall be governed by the laws of India and the Courts at Chennai alone shall have jurisdiction.

(v)Thereafter, the petitioner approached the Tamil Nadu Electricity Regulatory Commission on 09.10.2017 by filing a Dispute Resolution Petition (D.R.P.) along with a stay petition. Even though the Regulatory Commission took on file the main petition as well as the stay petition and the same have been numbered as D.R.P.Nos.4 and 5 of 2017, the same were not taken up by TNERC since there was no sitting of the Commission. Even though the petitioner's counsel requested for listing of the above cases by way of submitting a representation, the cases have not been listed, citing a reason that there is a dispute before the Hon'ble Supreme Court with regard to the appointment of the members for TNERC and hence the functioning of the TNERC has been stalled. Thereafter, the petitioner filed writ petitions before this Court in W.P.Nos.224 and 225 of 2018 challenging the orders dated 18.09.2017 cancelling the Noted on Record Letters issued by the second respondent. When these writ petitions were taken up, the learned counsel for the petitioner submitted before this Court that three options were given to the petitioner by TANGEDCO for



supply of power apart from sale of power to TANGEDCO under preferential tariff scheme and that the petitioner agreed to take the second and third options alone and gave a letter dated 26.09.2018 to the respondents 3 to 5 to that effect and the same has been agreed to by the learned Additional Advocate General. Recording the same, this Court directed the respondents to consider the options now adopted by the petitioner and pass appropriate orders as per law, within a period of two weeks from the date of receipt of a copy of the order, by order dated 28.09.2018. Despite passing of the said order, the respondents have not passed any orders with regard to the petitioner's grievances. The petitioner also requested the respondents by letter dated 01.02.2019 to consider the petitioner's case on merits and to pass appropriate orders. But to the shock and surprise of the petitioner, the petitioner has received the impugned proceedings dated 08.02.2019 directing the petitioner to pay a sum of Rs.18,437/- towards Registration Fee and Rs.2 Crores towards 50% of the refundable security deposit for 40 MW as if the petitioner is applying afresh. Though earlier the respondents have treated the petitioner's application in two separate files, now they have treated as one application for 40 MW and sent the impugned proceedings.

2.Hence, the present writ petition has been filed to set aside the impugned proceedings dated 08.02.2019 with a direction to the respondents 1 to 3 and 5 to pass appropriate orders on the petitioner's request based on his representation dated 26.09.2018. Cont.P.No.445 of 2019 has also been filed by the petitioner praying to punish the respondents therein for willful disobedience of the order dated 28.09.2018 passed by this Court in W.P.No.224 of 2018.

3.The learned counsel for the petitioner has submitted that even though this Court has passed an order on 28.09.2018 in W.P.Nos.224 and 225 of 2018 directing the respondents to consider the options adopted by the petitioner and pass appropriate orders as per law within a period of two weeks from the date of receipt of a copy of the order, the same has not been done by the respondents. The impugned proceedings dated 08.02.2019 goes beyond the order passed by this Court and the respondents have till date not returned the sum of Rs.3,50,00,000/- paid by the petitioner towards refundable security deposit, thus wanting to enrich themselves without any authority. The respondents had failed to note that the petitioner had already paid the Load Flow Study charges twice, entire security deposit for the Power Purchase Agreement and have also submitted land documents for the entire 500 acres. It is also submitted that the second and fourth respondents ought to have seen that the cancellation orders dated 18.09.2017 are highly arbitrary since they have received all the payments from the petitioner from time to time and without any proper enquiry, cancellation orders have been passed. It is further submitted that treating the petitioner as a fresh applicant for



establishing 40 MW (25 + 15 MW) Solar Power Plant is arbitrary and illegal and that the respondents 1 to 3 and 5 have miserably failed to consider the case of the petitioner in the light of the letter dated 26.09.2018 and that too when refundable security deposit of Rs.3,50,00,000/- is already available with them. By demanding an additional Rs.2 crores, the respondents are trying to fill up their coffers without any authority and justification. The learned counsel for the petitioner finally submitted that this writ petition has been filed only due to the high handed and arbitrary demands made by the respondents 2 and 5 and that unless the impugned proceedings is set aside, the petitioner will be put to irreparable hardship. Stating so, the learned counsel for the petitioner prayed for setting aside the impugned proceedings and to direct the respondents 1 to 3 and 5 to pass appropriate orders on the petitioner's request based on his letter dated 26.09.2018.

4.The learned Additional Government Pleader appearing for the first respondent and the learned Additional Advocate General, assisted by the standing counsel for TANGEDCO, appearing for respondents 2 to 5, have submitted that the petitioner has not taken effective steps for commissioning the proposed 25 MW and 15 MW Solar Power Plants, but was simply requesting for extension of time for commissioning the projects for unacceptable reasons. In this connection, TANGEDCO officials have inspected the project sites of the petitioner during April 2017 and found that 110kV power evacuation line work connecting the proposed project location and connectivity SS was completed only partially and the 110kV bay extension work at connectivity substation was not yet taken up by the petitioner. This shows the lack of interest on the part of the petitioner in commissioning the projects. Further, as per the terms and conditions of Noted for Record letters, the petitioner-company have to commission 25 MW and 15 MW Solar Power Plants within ten months from the respective dates of issue of the Noted for Record letters, otherwise the security deposit paid by them will be forfeited. The due dates for commissioning the 25 MW and 15 MW Solar Power Plants were 08.05.2016 and 02.01.2017 respectively, but the petitioner had not commissioned the above Solar Power Plants on or before 31.03.2016 to avail the tariff rate of Rs.7.01 per unit fixed in TNERC Order No.7 of 2014 dated 12.09.2014. It is submitted that even though extension of time has been granted three times, the petitioner company failed to commission the projects even within the extended time period. The learned counsels have contended that only because the petitioner had sought for change of substation from Kamuthi in Ramanathapuram District to Thiruchuli in Virudhunagar, the petitioner had to pay the load connectivity charges twice. Stating so, it has been submitted that there are no merits in the claims made by the petitioner and hence the writ petition has to be dismissed.

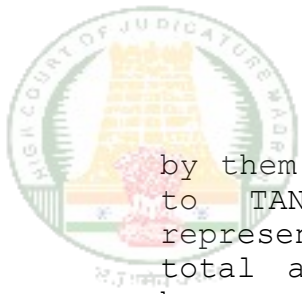


5. Heard the learned counsel on either side and perused the papers.

6. Against the orders passed on 18.09.2017 cancelling the Noted on Record Letters, the petitioner filed writ petitions in W.P.Nos.26228 and 26229 of 2017 before this Court and the same were disposed of by this Court on 09.10.2017 observing that the petitioner was not justified in invoking the discretionary jurisdiction of this Court under Article 226 of the Constitution of India and giving liberty to the petitioner to resolve the dispute as contained in Clause 11 of the agreement entered into between the parties, wherein it is stated that if any dispute or difference of any kind whatsoever arises between the parties relating to the agreement, the same shall be settled amicably by the parties, failing which either party may approach the Commission for adjudication of such disputes under Section 86(1)(f) of the Electricity Act, 2003 in accordance with the Conduct of Business Regulations, 2004 and the Fees & Fines Regulations, 2004 of the Commission and that the agreement shall be governed by the laws of India and the Courts at Chennai alone shall have jurisdiction.

7. Since the functioning of the TNERC had been stalled, as stated supra, the same orders dated 18.09.2017 cancelling the Noted on Record Letters issued by the second respondent were challenged before this Court in W.P.Nos.224 and 225 of 2018. On 28.09.2018, when these writ petitions were taken up, it was brought to the notice of this Court by the learned counsel for the petitioner that out of three options given in the impugned communications dated 18.09.2017, the petitioner has agreed to take the option (ii) - Wheeling of power to third party users under Intra State Open Access System and Option (iii) - Wheeling of power on captive consumption under Intra State Open Access System, in respect of supply of power apart from sale of power to TANGEDCO under preferential tariff scheme. It was also submitted before this Court on that date that the petitioner gave a letter dated 26.09.2018 to that effect and the same was also agreed to by the learned Additional Advocate General. Only under those circumstances, this Court directed the respondents to consider the options exercised by the petitioner and pass appropriate orders as per law within a period of two weeks. The respondents ought to have passed orders on merits as directed by this Court, but the same has not been done. Instead, the impugned proceedings dated 08.02.2019 has been passed directing the petitioner to make payments for Registration Fee amounting to Rs.18437/- [Rs.15625/- + Rs.2,812/- (18% GST)] and a sum of Rs.2,00,00,000/- towards 50% refundable security deposit for 40 MW. Hence the present writ petition has been filed.

8. The petitioner made a representation dated 26.09.2018, narrating the matter in detail, duly stating the options taken



by them in respect of supply of power apart from sale of power to TANGEDCO under preferential tariff scheme. In the representation, the petitioner has stated that they have paid a total amount of Rs.537.50 lakhs for 50 MW, but thereafter, because of the financial conditions of the company, they have opted for only 25 + 15 MW and they have not opted for the remaining 10 MW, since there were some financial commitments and that even at that time, liberty was given to them that 10 MW was already granted to them and it is lying with TANGEDCO till now. The petitioner has also stated that they have paid the PPA EMD of Rs.4.50 Crores and they have requested to accept their letter as per the guidelines stated in the orders passed on 18.09.2017 cancelling the Noted on Record Letters. Thereafter, this Court has passed the order in W.P.Nos.224 and 225 of 2018 on 28.09.2018. Pursuant to the same, another letter dated 01.02.2019 was sent by the petitioner, about the order passed by this Court on 28.09.2018.

9. When the present writ petition was taken up on 13.02.2019, the respondents were directed to maintain status quo for a period of two weeks. Thereafter, the interim order was periodically extended. On 26.04.2019, taking note of the fact that the petitioner has already invested huge amount and also has carried out extensive work and any delay would cause further loss of power to both parties, the status quo order was recalled and the petitioner was permitted to proceed with the project.

10. When the Contempt Petition was taken up by this Court on 12.07.2019, the learned counsel for the petitioner submitted that the petitioner has established a factory in and around 150 acres, out of 500 acres of land, procured the required materials and started the work by digging holes for installing cables, putting up transmission lines, installing MMS posts, erecting towers, etc. and almost completed the project and that, there was no flaw committed by them. The said submissions were stoutly denied on the side of the respondents. Taking note of the rival contentions, this Court, in order to ascertain the factual position prevailing at the work site, appointed two Advocate Commissioners to inspect the land in question with the assistance of the technical personnel attached with the Department and file a detailed report along with sketch and photographs, with regard to the material stock, progress of the work and its completion and evaluation of the project on or before 26.07.2019. Pursuant to the same, the Advocate Commissioners inspected the land in question and filed a comprehensive report dated 29.08.2019 enclosing photographs, sketch and other supporting documents, relating to the works done by the petitioner, works remaining to be done and the present status. As per the said report, all the materials/equipments have been available in the project site, except solar panels and transformer and they have placed orders for the supply of unavailable equipments viz., solar panels and



transformer, due to which, they have not installed the same in the land. It is further revealed from the said report that the transformer has been booked and it will be delivered, once the petitioner is given assurance by the respondents and that a similar transformer to receive the electricity generated from the Solar Power Plant is erected at the substation; if such a receiving transformer is not installed at the substation, they would incur huge loss after commissioning the plant; in the absence of such a transformer, whatever energy that might be generated would be wasted and it will have serious financial ramifications to the petitioner, whereas according to the respondent TANGEDCO, Tiruchuli Sub Station has got such transformer and other Solar Power Project are sending their generated power to the said Sub Station. The report also states that as per Critical Path Method (CPM), which is one of the methods for assessing the project, some activities are interdependent and that one cannot be commenced without the completion of the other dependent activity. Thus, according to the Advocate Commissioners, the petitioner has completed the civil works at 80%, fixture of module mounting structures at 49.2% and erection of towers at 76% and it was ultimately, concluded that taking note of the totality of the work done, the petitioner has completed nearly 50% of the work.

11. Pursuant to the filing of the report, a reply to the same has been filed on behalf of the respondents 1 and 2, in which, apart from narrating the events and their contentions which have already been placed by them before this Court in the earlier writ petitions, stated that based on the order of status quo passed by this Court on 26.04.2017 in W.P.No.4178 of 2019, they issued a letter dated 23.05.2019 intimating the petitioner to pay registration charges alone as the SD issue is sub-judice. It is also stated that as the status-quo order was issued during the hearing on 26.04.2017 in W.P.No.4178 of 2019, the evacuation facility has been kept reserved till date for connecting the proposed 25 + 15 MW Solar PV Plant of the petitioner company at New Muthuramalingapuram SS at 110kV level. Stating so, it has been pleaded that TANGEDCO has acted based on the Court directions issued to them then and there and therefore the petitioner's allegation that the respondents have willfully disobeyed the order dated 28.09.2018 passed by this Court, is totally false.

12. Upon hearing the submissions of the learned counsel on either side and taking note of the report of the Advocate Commissioners and also the facts and circumstances of the case, this Court is of the considered view that it is not correct on the part of the second respondent to pass the impugned proceedings dated 08.02.2019 when this Court has directed the respondents in the order dated 28.09.2018 to consider the options exercised by the petitioner and pass appropriate orders within a period of two weeks. The respondents ought to have passed orders as directed by this Court, but the same has not



been done, advancing various reasons.

13. In view of the above stated circumstances, the writ petition is allowed and the impugned proceedings dated 08.02.2019 passed by the second respondent is set aside and the respondents are directed to pass appropriate orders on the petitioner's representation dated 26.09.2018, as per the guidelines stated in the orders passed on 18.09.2017 by the fifth respondent cancelling the Noted on Record Letters, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

14. In view of the above order passed in W.P.No.4178 of 2019, the contempt petition in Cont.P.No.445 of 2019 does not survive for consideration and accordingly the same is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Secretary to Government,
Government of Tamil Nadu,
Energy Department, Secretariat, Fort St. George,
Chennai-600 009.
2. The Director,
Tamil Nadu Generation & Distribution Corporation Limited
(TANGEDCO), 2nd Floor, Eastern Wing
No.144, Anna Salai, Chennai-600 002.
3. The Chairman,
Tamil Nadu Electricity Board (TNEB)
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Copy to:
The Section Officer,
Contempt Section,
High Court, Madras-104.

W.P.No.4178 of 2019 and
W.M.P.Nos.4686 and 4687 of 2019
and
Cont.P.No.445 of 2019 in
W.P.No.224 of 2018

SSV(CO)
CB(21/07/2020)