

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 16.12.2020

Pronounced on : 22.12.2020

Coram

THE HONOURABLE **Mr. JUSTICE T.S.SIVAGNANAM**
AND
THE HONOURABLE **Mrs. JUSTICE V.BHAVANI SUBBAROYAN**

O.S.A.Nos.277 to 285 of 2020 and
C.M.P.Nos.13617 to 13624 and 13626 of 2020

O.S.A.No.277 of 2019

1. P.Raja Rao
2. Prathyusha Resources and Infra Private Limited
rep. by its Chairman and Managing Director,
Mr.P.Raja Rao, Prathyusha House,
No.25-40-12, Gangulavari Street,
Vishakapatnam, Andhrapradesh - 530 001
3. Prathyusha Global Trade Private Limited
rep. by its Chairman and Managing Director,
Mr.P.Raja Rao, Prathyusha House,
No.25-40-12, Gangulavari Street,
Vishakapatnam,
Andhrapradesh - 530 001 ... Appellants

Vs.

1. Ravindranath GE Medical Associates Pvt., Ltd.,
rep. by its Chairman and Managing Director,
Dr.Ravindranath Kancherla
439, Cheran Nagar, Sholinganallur,
Perumbakkam, Chennai - 600 100

2. Global Hospitals Pvt., Ltd.,
rep. by its Chairman and Managing Director,
Dr.Ravindranath Kancharla,
11-1070/1 to 4, Lakdikapool,
Hyderabad, Telangana - 500 004
also at
Plot No.303, F Road, No.25,
Jubilee Hills, Hyderabad - 500 033
Telangana

3. Dr.Ravindranath kancharla

4. Adilakshmi kancharla

5. Potiapally Lakshmi Sailaja

6. Dr.K.Pruthvinath

7. K.Prathyusha

8. Gleneagles Development Pvt., Ltd.,
rep. by its Director,
Mr.Ajay Bakshi, 111, Somerset Road,
15-101, Triple One, Somerset,
Singapore - 238 164

...Respondents

Original Side Appeals filed under Order XXXVI Rule 2 of OS Rules read with Section 13(1-A) of the Commercial Courts Act, 2015, is directed against the order passed by this Court in O.A.No.1178 of 2018 in C.S.No.874 of 2018 dated 01.07.2020.

In all Original Side Appeals

For Appellants : Mr.S.Rajesh

For Respondents : Mr.Sankaranarayanan
Senior Counsel for
Mr.Arun Karthik Mohan for R1
Mr.Vijeyendra Pratap Singh for
Mr.Suhrith Parthasarathy for R8

COMMON JUDGMENT

T.S.SIVAGNANAM, J.

All these appeals filed under Order XXXVI Rule 2 of Original Side Rules read with Section 13(1-A) of the Commercial Courts Act, 2015 are directed against the common order passed in Application Nos.1283 to 1288 of 2020 in O.A.No.1178 to 1180 of 2018 dated 01.07.2020.

2. The Original Applications, viz., O.A.Nos.1178 to 1180 of 2018 was filed by the appellants, who are plaintiffs in C.S.No.874 of 2018. The plaintiffs sought for eleven reliefs in the suit, which were all for a decree of mandatory injunction. The appellants sought for a decree of mandatory injunction to direct the 3rd respondent / 3rd defendant to transfer 37,04,330 shares of the 2nd respondent-defendant allotted to the 3rd respondent-defendant to the appellants / plaintiffs or in alternate to direct the respondents 2 and 3 to pay the 1st appellant / plaintiff, a sum of Rs.3,70,43,330/- together with interest at 15% per annum, totalling a sum of Rs.6,48,25,827/- along with future interest of 15% on the principal sum.

3. The 1st appellant / plaintiff also sought for a decree of mandatory injunction to direct the 3rd respondent to transfer 60,19,542 shares of the 2nd defendant allotted to the 3rd defendant to the 2nd plaintiff or in the alternate to direct the 2nd and 3rd respondents to pay the 2nd plaintiff a sum of Rs.6,01,95,420/- together with interest at 15% per annum totally amounting to Rs.11,04,87,456/- along with future interest of 15% on the principal sum. (ii) For a decree of mandatory injunction to direct the 3rd respondent to transfer 13,89,125 shares of the 2nd respondent allotted to the 3rd respondent to the 3rd plaintiff or in the alternate to direct the 2nd and 3rd respondents to pay the 3rd plaintiff, a sum of Rs.1,38,91,250/- along with interest at 15% totalling a sum of Rs.2,43,15,396/- along with future interest of 15% on the principal amount. (iii) For a decree of mandatory injunction directing the 2nd respondent to transfer 50,000/- 'Compulsorily Convertible Preference Shares' (CCPS) of the 1st respondent, out of the CCPS issued on 28.07.2014 to the 3rd plaintiff. (iv) To direct the 1st and 2nd respondents to pay the 3rd plaintiff, a sum of Rs.5,00,00,000/- along with interest at 15% and totally amounting to Rs.9,96,23,288/- along with future interest at 15% on the principal amount. (v) To direct the 2nd

respondent to pay the 1st appellant, a sum of Rs.29,56,667/- along with interest at 15% totalling a sum of Rs.54,82,800/- together with future interest at 15% on the principal amount (vi) Directing the 2nd respondent to pay the 2nd appellant a principal sum of Rs.48,04,583/- along with interest at 15% totalling a sum of Rs.88,18,708/- along with future interest at 15% on the principal sum. (vii) Directing the 2nd respondent to pay the 3rd appellant a principal sum of Rs.11,08,750/- together with interest at 15% per annum totally amounting to Rs.21,79,073/- along with future interest 15% on the principal amount.

4. In the said suit, the appellants / plaintiffs filed three applications for interim relief. In O.A.No.1178 of 2018, the appellants prayed for grant of an injunction to restrain the respondents 2 to 6 from alienating or transferring or altering the share holding of the 2nd respondent pending disposal of the suit. In O.A.No.1179 of 2018, the appellants prayed for grant of injunction to restrain the respondents 1 to 5 and 8 from implementing the 3rd amendment to the investment agreement dated 25.08.2018 approved in the Annual General Meeting of the 2nd respondent held on 29.09.2018. In O.A.No.1180 of 2018, the appellants

prayed for grant of an order of injunction to restrain the respondents 2 to 6 and 8 from alienating, transferring or in any manner altering the share holding of the 1st respondent.

5. The applications were heard by learned Single Bench on 21.12.2018 and after hearing the learned counsels for the parties, the Court ordered that the respondents 2 and 3 will maintain status quo, qua, the prayers in the aforementioned three applications till the next listing on 02.01.2019 and as a sequiter, it follows that the 1st and 8th respondents should also be directed to maintain status quo and it follows, as a further sequiter that the other respondents, namely, 4 and 7 should also maintain status quo, qua, the prayers in the three applications.

6. Since notice was yet to be served on the respondents 6 and 7, notice was permitted. The 1st and 8th respondents filed their counter affidavit titled as a 'reply' to the application for injunction filed by the appellants sometime during the 3rd week of January, 2019.

7. In June, 2019, the 1st respondent filed written statement in the suit and parallely the 1st and 8th respondents filed Application Nos.5144 and 5145 of 2019 to revoke the leave granted by the Court on 13.12.2018 to file the suit against the 1st and 8th defendants. These applications are still pending. In May 2020, the 1st and 8th respondents filed Application Nos.1283 to 1288 of 2020 in O.A.Nos.1178 to 1180 of 2018 to vacate the order of status quo granted on 21.12.2018.

8. These applications were listed before the Court on 11.06.2020, wherein the Court has recorded that there was a change of counsel for the appellants as well as for the respondents 6 and 7 and after recording the proceedings, the parties were granted time to complete the pleadings and the matter was directed to be listed on 21.06.2020. The appellants, who were arrayed as respondents in the application to vacate the interim order had filed counter affidavit in the said applications in June, 2020. By the impugned order, the order of status quo, which was granted was vacated. The applications for injunction were dismissed and the defendants 1 and 2 were directed to deposit a sum of Rs.5,00,00,000/- to the credit of the suit. This direction has been

complied with by the 1st respondent - defendant and the amount has been deposited. Thereafter, the applications to revoke the leave granted were listed before the Court and the matter was adjourned and the matter is pending. Aggrieved by the impugned order, the appellants are before us by way of these appeals.

9. Mr.S.Rajesh, learned counsel appearing for the appellants submitted that the interim order of status quo dated 21.12.2018 was granted against all the eight respondents and the 1st and the 8th respondents in their affidavit [Counter affidavit to the injunction application] had admitted the payment effected by the appellant / plaintiff towards the share application money and in the affidavit filed in support of the application to revoke the leave, have admitted that all the defendants in all the interlocutory applications undertook before the Court to maintain the status quo, qua prayers in the application. After taking such a stand in the affidavits filed in support of the vacate injunction application, they have taken a different stand by stating that it is only the 2nd and 3rd respondents / 2nd and 3rd defendants, who had

undertaken to maintain status quo, therefore, it is submitted that a inconsistent prayer is being pleaded by the respondents 1 and 8.

10. Further it is submitted that except the respondents 1 and 8 / defendants 1 and 8, no other respondents / defendants had filed application for vacating the interim order and therefore, the Court could not have vacated the interim order against the respondents 2 to 7. Further, the Court exceeded in granting a relief beyond the relief sought for by the respondents 1 and 8 in the application to vacate the interim order.

11. Also it is submitted that the applications for injunctions were not listed before the Court and only the applications for vacating the injunction was listed and therefore, the injunction application could not have been dismissed. Further, it is submitted that when the respondents 1 and 8 sought for a limited relief in the vacate injunction petition, the Court erred in dismissing the injunction application in toto beyond the relief sought for by the respondents 1 and 8.

12. It is reiterated by the learned counsel for the appellant that the investment in the 1st and 8th respondents-company has been admitted, the money invested by the plaintiffs were utilised by the respondents 1 and 2, but shares were not allotted as agreed, which allotment should have been done in the year 2012. Further, in the impugned order, the Court has observed that the dispute is a family dispute, which is factually incorrect because it is a corporate dispute. That apart, it is submitted that the suit filed by the appellants is a bonafide claim and the observation that the applications lacks bonafide is incorrect. In support of this contention, learned counsel placed reliance on the decision reported in State of Uttaranchal v. Pitamber Dutt Semwal [(2005) 11 SCC 477]

13. Mr.R.Sankaranarayanan, learned Senior Counsel appearing for Mr.Arun Karthik Mohan, learned counsel for 1st respondent submitted that the genesis of the dispute was a interse family issue, to which the 1st and 8th respondent-companies have absolutely no connection, which was rightly taken note of by the learned Single Bench while dismissing the injunction application. At the same time, the Court

has directed deposit of Rs.5 Crores to the extent of the appellants' claim in the 1st respondent-company to the credit of the suit and therefore, rights of the appellants against the 1st respondent / company stands fully protected pending disposal of the suit. Further, 1st respondent has complied with the order by depositing the said sum.

14. Further, it is submitted after the impugned order was passed, the 1st respondent / company has undertaken the rights issue and allotment of shares, pursuant to the same has been completed and the 3rd and 4th respondents, as share holder, in the 1st respondent company had filed C.P. No.301 of 2020 before the NCLT, Chennai, challenging the said rights issue. The respondents 1 and 8 have filed application under Section 45 of the Arbitration Act in the said proceedings and the applications are part-heard. Therefore, it is submitted that the present appeals at the instance of the plaintiffs, who are not share holders of the company relating to the rights issue that has been completed, is not maintainable.

15. Apart from the above, it is reiterated that the suit is family dispute between the family of the respondents 3 to 5 on one side and the appellants and the respondents 6 and 7 on the other side and the entire dispute pertains to money transaction between two families and the 1st and 8th respondents are completely alien to the family dispute. In this regard, the learned Senior Counsel referred to the relevant paragraphs in the plaint.

16. Further, it is submitted that no injunction is sought against the 1st respondent and mandatory injunction was sought for only against the 2nd respondent from transferring certain shares, no relief was claimed against the 8th respondent, consequently, no order could have been granted. Further, it is pointed out that though the appellants sought for an interim injunction to restrain the respondents 2 to 8 from transferring alienating or in any manner changing the share holding of the 1st respondent company, no relief has been sought for against the 8th respondent in the suit.

17. It is submitted that the order of status quo was passed on the basis of undertaking given by the counsel for the respondents 2 and 3. Taking the same on record, the Court directed the respondents 1 and 8 also to maintain status quo and thereafter, the respondents 1 and 8 have filed counter affidavits and the 1st respondent has also filed written statement. Thereafter, applications were filed to revoke the leave and the respondents 2 and 3 filed application to reject the plaint and the matter was kept pending, as the family members were attempting to settle the interse family dispute, which has been recorded by the Court in its order dated 20.09.2019.

18. Further, it is submitted that the matter was posted in the Chambers of the Hon'ble Judge on 02.10.2019, so that the matter could be resolved, however, the parties did not appear. Subsequently, the matter was listed on 31.10.2019 and the Court interacted with the family members and passed an order and adjourned the hearing to 12.11.2019. Consequently, on 12.11.2019, the Court has recorded the settlement, which was almost concluded between the parties. It is submitted that it is to be noted that in none of the proposals, the

respondents 1 and 8 were involved, which would clearly demonstrate that the dispute is an interse family dispute. On 22.11.2019, the Court has recorded the submission of the learned Senior Counsel for the party stating that they have settled the matter and subsequently, since the compromise memo was not filed, the Court has passed an order directing the appearance of the respondents 3, 6 and 7 on 31.03.2020. Due to pandemic, the matter was not taken on 31.03.2020.

19. It is also represented that in the meantime, the financial position of the 1st respondent company, significantly, deteriorated, which has been elaborately highlighted in Paragraph Nos.28 and 47 of the affidavit filed along with the application to vacate the interim order. Further, the appellants and the respondents 2 to 7 entered into a settlement agreement, to which, neither the 1st respondent nor the 8th respondents were party. सत्यमेव जयते

20. Further, the learned Senior Counsel referred to various averments in the affidavit filed by the respondents 1 and 8 and submitted that it has been clearly established that the appellants and

the respondents 2 to 4 had joined together to oppose the respondents 1 and 8 and therefore, the suit ceased to be a bonafide contest. The Court after taking into consideration that on account of the order of status quo, the 1st respondent could not proceed with the rights issue, the appellants' claim was family dispute between themselves and the respondents 2 to 4, the relief claimed against the 1st respondent was a monetary claim, no relief was sought for as against the 8th respondent. The family members attempted to settle the matter multiple times and several hearings took place, which has been recorded by the Court and the Court also held that an order granting stay of alteration of share capital, will have a serious impact on the affairs of the company.

21. Further, the Court has rightly observed that the family members including the appellants cannot hold 1st respondent company, which was majority owned by the 8th respondent and not the family members for ransom. The suit was not a bonafide contest and after noting all these facts with a view to protect the interest of the appellants, a sum of Rs.5 Crores was directed to be deposited to the credit of the

suit, which order has been complied with and after a period of five months, the appellants have approached this Court and are seeking for an order of stay of the impugned order.

22. Mr.Vijendrapratap Singh, learned counsel appearing for Mr.Suhrith Parthasarathy, learned counsel for 8th respondent while seeking to sustain the impugned order submitted that none of the ingredients required to be satisfied for grant of an injunction have been satisfied and the Court took into consideration all the materials on record and found that the claim to be lacking in bonafide and has given reasons as to why the discretion cannot be exercised in favour of the appellants. Further, it is submitted that the 8th respondent has been unnecessarily roped into the proceedings, which is essentially a family dispute between the parties and therefore, the Court rightly vacated the order of status quo, which was granted based upon a undertaking given by the learned counsel for the respondents 2 and 3 that they would maintain status quo and there was no undertaking by the 8th respondent and the 8th respondent is a company based in Singapore

and monies had to be raised to settle the outstanding bills payable to the Doctors, other suppliers etc.,

23. We have elaborately heard the learned counsels for the parties and carefully perused the materials placed on record.

24. The objections raised by Mr.S.Rajesh, learned counsel for the appellants are primarily on the technical grounds that an order of status quo was granted based on a undertaking, which was admitted by the respondents 1 and 8 in their affidavits filed in support of the application to revoke leave and in the affidavits filed in support of the vacate stay petitions, they have taken an inconsistent stand.

25. Secondly, it is argued that the relief sought for in the petition for vacate injunction filed by the 1st and 8th respondents was for a limited relief and the Court granted a relief, which was not prayed for. Further, the order of status quo was granted as against all the respondents and only the 1st and 8th respondents had filed petitions to vacate the interim order but the Court dismissed the Injunction application as against all the respondents.

26. Thirdly, it is submitted that it is only the applications filed to vacate the interim order, which were listed before the Court and the applications for interim order filed by the appellants were not listed and that is one more reason as to why the Court could not have dismissed the application for injunction.

27. Fourthly, it is submitted that the respondents 1 and 8 have been admitted the investment and the plaintiffs having not been allotted the shares, which should have been allotted to them in the year 2012 itself, the Court ought to have sustained the interim order and continued the same till the disposal of the suit.

28. On a perusal of the order dated 21.12.2018 passed in O.A.No.1178 to 1180 of 2018, it is submitted that it is clear that it is the learned senior counsel for defendants 2 and 3, who submitted that they will maintain status quo, qua the prayers in the three applications filed by the appellants till the next hearing. After recording the said submission the Court observed that as a sequiter, respondents 1 and 8 should also be directed to maintain status quo and as a further sequiter,

the other defendants / respondents 4 and 7 should also maintain status quo. Therefore, no undertaking was given on behalf of the respondents 1 and 8 when the injunction applications were heard by the Court on 21.12.2018, therefore, the submission made in this regard by the learned counsel for the appellants is rejected.

29. The learned counsel for the appellants would urge that in the affidavit filed in support of the application to revoke the leave, the 1st and 8th respondents have admitted that all the defendants in the interlocutory application undertook before the Court to maintain status quo, qua, prayers in the applications. This averment is sought to be pressed into service to state that in the vacate stay applications, the respondents 1 and 8 are taking a contrary stand.

30. The affidavit filed along with petition to revoke leave mentions about the order passed by the Court on 21.12.2018, therefore, we have to go by what has been stated in the order and not by any averment, concession, or any statement made by party to the proceedings. The order clearly states that the undertaking was given by the learned senior

counsel for the defendants 2 and 3 only and as a sequiter, the Court observed that the defendants 1 and 8 should also maintain status quo as well as defendants 4 and 7. Therefore, the second submission made by the learned counsel for the appellant also fails.

31. The third submission made by the learned counsel for the appellant is that in the application to vacate the interim order, the respondents 1 and 8 have sought for a limited relief, but the Court has dismissed the injunction application in toto and granted a relief not prayed for. There is a fundamental error in the submission made on behalf of the appellants. The party aggrieved can seek for vacating the interim order as against them only, in the instant case, the respondents 1 and 8 has specifically stated that the suit lacks bonafide, it is an interse family dispute between the plaintiff and the other defendants and the respondents 1 and 8 are totally alien to the dispute.

32. Apart from that, the conduct of the appellants and the defendants has also been brought out after narrating the entire factual matrix, the respondents 1 and 8 have pleaded as to how the order of

status quo granted in a suit, which is essentially a money claim has put to irreparable hardship by virtually crippling the operations of the hospital during the Covid crises, they could not settle the bills, pay the suppliers, nor pay the salary of the Doctors and a Paramedical staff, therefore, they had to raise monies and the order of status quo was causing immense hardship.

33. Taking into consideration all these submissions, the learned Single Bench has examined the averments set out in the pleadings and also after noting the arguments, has clearly recorded findings as to how the claim is essentially a money claim, an interse family dispute. Besides the above, the Court has also recorded the various orders passed in the proceedings from time to time, when the Court assisted the parties to come to a settlement and interestingly, the agreement which was prepared and memo of settlement which was drawn up etc., the respondents 1 and 8 were never in the scene.

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34. Further, the Court has also noted the stand taken by the respondents supporting the plaintiffs to come to a conclusion that the

claims lacks bonafide. Therefore, the Court was well within the jurisdiction to consider as to whether the order of status quo was to be continued or whether the application for interim relief is sustainable or not. Thus, the argument that larger relief was granted than sought for the respondents 1 and 8 is an incorrect submission.

35. Apart from that, the dispute which the appellants / defendants seek to raise is not on the entire share capital of the company and it is only relating to 4.75 % and all the three interim prayers sought for were only pertaining to 4.75%. The 3rd and 4th respondents agreed to pay the money, a memo was drawn up on 30.04.2020 and ultimately, the 8th respondent took a stand that they are not going to purchase the 4.75 % of the shares held by the 3rd respondent.

36. Further, we note that the financial position of the 1st respondent - company had deteriorated and as on 31.03.2020, the over due amount on creditors was approximately Rs.88 Crores. They had also defaulted in payment of rent to the tune of Rs.12 Crores and on account of the Covid situation, there was a reduction in the inflow of

patient and there was a severe drop in the revenue and the 1st respondent /company required not less than Rs.65 Crores to meet the commitments to the bank, to the creditors etc.,

37. Since the 1st respondent had failed to raise additional borrowal from the banks, they had no other option except to raise funds by issue of equity shares and a board meeting was convened on 27.04.2020, wherein it was resolved that the 1st respondent would request with the existing share holders to subscribe to a rights issue and thereby raising the capital, which was urgently required by them and realising that there was an order of status quo, which was passed, the 1st and 8th respondents had approached this Court for vacating the order.

38. We note that in the impugned order, the Court has noted the financial position of the 1st respondent/company. One more interesting fact is that the appellants and the respondents 2 to 7 entered into agreement called as 'settlement agreement', by which the respondents 2 to 4 would pay a certain sum of money to the appellants as well as the

respondents 6 and 7 to amicably resolve the dispute. The respondents 2 to 4 filed a joint memo before the Court on 02.05.2020 to record the settlement, but they added a condition that the 8th respondent should transfer Rs.90 Crores, so that the respondents 2 to 4 could make payments, as envisaged in the settlement agreement.

39. Further, in the agreement, it has been stated that the sum of Rs.90 Crores was the proposed sum in a draft agreement between the 2nd and the 3rd respondents and were negotiating with the 8th respondent. More interestingly, the 1st and 8th respondents were not party to the settlement agreement or to the joint memo, this aspect of the matter has been specifically dealt with in the impugned order, in Paragraph No.21.

40. The argument of the learned counsel for the appellants that the applications for injunction were not listed, is a submission which has to be outrightly rejected. To the best knowledge of this Court, in the Original side of this Court, it has been a consistent practice that the application for interim relief filed along with the suit is given the

nomenclature 'Original Application' [O.A.]. All other interlocutory relief sought for are assigned Application Numbers [Application No.]. As and when counter affidavit is filed by the respondent / defendant, the Original Application (O.A) will be set down for hearing.

41. It appears to be a practice adopted of much recent origin to file separate application to vacate the interim order, which in the opinion of this Court, is unnecessary because a counter affidavit along with a prayer for dismissing the interlocutory application would be sufficient for the Court to decide the relief sought for in the original application. When a separate relief is sought for, as in the instant case, where the respondents 1 and 8 had prayed for revoking the leave granted to sue them, where prayer was made to reject the plaint, such prayers have to be filed along with an application and Judges Summons. Therefore, the argument that the original application were not listed is an argument that should fail, more particularly, when the application for vacating the interim order has been filed in the original application. Further, no such argument was advanced before the learned Single Bench when the applications were heard. Therefore, this contention raised by the learned counsel for the appellant stands rejected.

42. Thus, taking into consideration all the above factors, we are of the considered view that the learned Single Bench rightly vacated the order of status quo and dismissed the injunction application and at the same time, in order to protect the interest of the plaintiffs, directed the defendants 1 and 2 to deposit a sum of Rs.5 Crores to the credit of the suit and the 1st defendant has complied with the same and further, the 1st respondent-company has undertaken rights issue and allotment of shares pursuant to the same has been completed and the respondents 3 and 4, as share holders of the 1st respondent / company have approached the NCLT, Chennai and filed C.P.No.301 of 2020 challenging the said rights issue and the respondents 1 and 8 have filed application under Section 45 in the said proceedings and the applications are pending before NCLT.

In the result, the present Original Side Appeals are dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

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22.12.2020

Index :Yes / No ;Internet :Yes / No
Speaking Judgment / Non Speaking Judgment

O.S.A.Nos.277 to 285 of 2020

T.S.SIVAGNANAM,J.,
AND
V.BHAVANI SUBBAROYAN, J.,

ssd



Pre-delivery Common Judgment in
O.S.A.Nos.277 to 285 of 2020

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