



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2021

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THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

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W.P.(MD)No.13833 of 2021

and

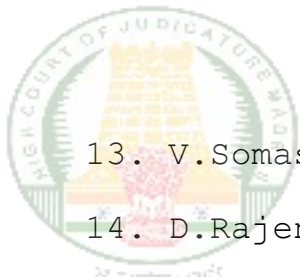
WMP (MD) .Nos.13234 and 10799 of 2021

N.Lakshmanan

... Petitioner

Vs.

1. Government of Tamil Nadu,
rep. by its Principal Secretary,
Higher Education Department,
fort St.George, Chennai - 600 009.
2. The Director of Collegiate Education,
D.P.I.Campus, College Road,
Nungambakkam,
Chennai - 600 006.
3. The Joint Director of Collegiate Education,
Madurai Region, Madurai.
4. Madurai Kamaraj University,
rep. by its Registrar,
Palkalai Nagar,
Madurai.
5. The Sub Registrar,
Sub Registrar Office,
Arasaradi, Madurai District.
6. Narayanan Chettiar Trust,
rep. by its Trustee.
7. Saraswathi Narayanan college,
Rep. by its Secretary.
8. Mr.T.Narayanan
9. Navanna Charitable Trust,
Rep.by its Trustee.
10. N.Palaniappan
11. P.L.Narayanan
12. Agilandan



13. V.Somasundaram

14. D.Rajendran

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, to declare the proceedings issued by the respondent No.2 vide Na.Ka.No.20064/G4/2019 dated 10.06.2021 as illegal and without jurisdiction and consequently for a direction, forbearing the respondents from alienating the properties of the 8th respondent college in an extent of 21 Acres, 52 Cents in S.Nos.73/7, 73/10, 73/11, 73/12, 73/14, 73/15, 74/10, 74/11, 75/4, 75/5, 75/6, 75/10, 77/1, 77/2, 77/3, 77/4, 77/5, 77/6, 78/2, 78/3, 78/4, 78/5, 78/6, 78/7, 78/8, 78/9, 78/10, 79/1, 79/3A, 79/3B, 82/1, 82/4, 83/6, 82/8, 82/9, 82/11, 82/10, Part 82/11, Part 82/10, Part 82/11, Part 82/5, Part 83/4, Part 82/11, Part 75/9, 82/10, 82/2, 83/3, 82/11, 82/6, 82/3, 82/12 Thubariman Village, Madurai District in violation of the Section 27 of the Tamil Nadu Private Colleges (Regulation) Act, 1976.

For Petitioner : T.Lajapathi Roy

For Respondents : Mr.H.Arumugam for R6 and R8
Mr.C.M.Arumugam for R7
Mr.M.Thirunavukkarasu for R9 to R11
Mr.Narasimhan for Mr.K.Esakki
for R12 to R14.
Mr.P.Subburaj,
Learned counsel for the State,
for R1 to R3 and R5.

O R D E R

At the core of this petition, by which an order dated 10.06.2021 of the second respondent is assailed, and indeed of the dispute between the contesting parties, is the interpretation of Sections 26 and 27 of the Tamil Nadu Private Colleges (Regulation) Act, 1976 (Act 19 of 1976) and the rules framed in respect thereof under the Tamil Nadu Private Colleges (Regulation) Rules, 1976 (the Rules).

2. The petitioner is the son of the late Narayanan Chettiar, who created the sixth respondent Trust, namely, the Narayanan Chettiar Trust through a registered Trust Deed dated 29.03.1957, bearing Document No.144/1957 on the file of the Joint I, SRO, Madurai (South). The said Trust, the sixth respondent herein, is a public trust. The seventh respondent, the Saraswathi Narayanan College (the College), was established by the sixth respondent Trust in the year 1966. It is a Government aided College which is



governed by Act 19 of 1976. Upon the entry into force of the said enactment, the admitted position is that the sixth respondent is the Educational Agency in respect of the College for the purposes of Act 19 of 1976.

3. By a Deed of Endowment dated 27.06.1967 (the First Endowment Deed), 16.92 acres, in the aggregate, in multiple survey numbers of Thuvariman Village were endowed and vested in the College by the sixth respondent Trust. Such endowment was for the upkeep and maintenance of the College. The endowment was subject to the condition that the properties and the income derived therefrom shall be utilized only for the purpose of the endowment by the College. The First Endowment Deed enabled the College to exchange the properties with other properties of equal value without detriment to the income accruing therefrom. A few years later, a Deed of Declaration of Trust was executed on 05.12.1972 (the Second Endowment Deed). In terms thereof, about 1.88 acres of wet lands were endowed for the benefit and use of the College by the sixth respondent Trust. The terms and conditions of the Second Endowment Deed largely mirrored the terms of the First Endowment Deed. However, in the Second Endowment Deed, the previous permission of the Madurai University was made mandatory even for exchange of properties by the College with properties of equal value. Another Deed of Declaration of Trust was executed on 27.05.1983 (the Third Endowment Deed) by the Narayanan Chettiar Trust. By this Deed, about 2.72 acres of wet lands at Thuvariman Village were endowed for the benefit and use of the College. The terms and conditions were identical to that in the Second Endowment Deed.

4. The petitioner's father, who founded the sixth respondent Trust, expired on 24.03.2003. After his death, it appears that one of his sons, namely, N.Thiagarajan, became the managing trustee of the Narayanan Chettiar Trust. By three separate registered gift deeds each dated 04.06.2015, the sixth respondent Trust, represented by its Managing Trustee, N.Thiagarajan, donated the properties described in the schedule to the respective gift deed to the Navanna Charitable Trust, i.e. the ninth respondent herein. The admitted factual position is that these are the same properties that were endowed and vested with the sixth respondent Trust earlier. According to the petitioner, the Navanna Charitable Trust is controlled by the tenth respondent herein. Upon coming to know of the above mentioned gift deeds, the petitioner submitted a representation on 24.05.2019 to the official respondents seeking action under Section 27 of Act 19 of 1976. Since no action was taken on the said representation, the petitioner filed W.P(MD).No.12684 of 2019. By order dated 14.12.2020, this Court disposed of the writ petition by directing the respondent therein to pass orders on the representation within a period of 120 days from the date of receipt of a copy of the order. Pursuant thereto, the petitioner alleges that the order was not communicated to him. Instead, the petitioner



gained knowledge about the order from the encumbrance certificate issued on 13.07.2021.

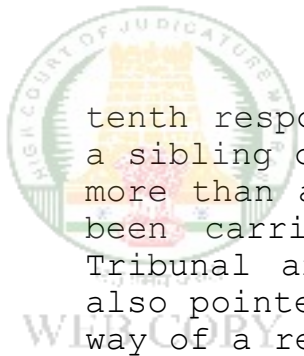
5. The order dated 10.06.2021 of the second respondent is assailed by the petitioner on the ground that it contravenes Sections 26 and 27 of Act 19 of 1976.

6. Oral submissions were made on behalf of: the petitioner by Mr.T.Lajapathi Roy, learned counsel; respondents 1 to 5 by Mr. P. Subbaraj, learned counsel for the State; respondents 9 and 10 by Mr.Ajmal Khan, learned Senior Counsel, instructed by Mr.M.Thirunavukkarasu, learned counsel; respondent 6 by Mr. H.Arumugam, learned counsel; respondent 7 by Mr.C.M.Arumugam, learned counsel; and respondents 12-14 by Mr.Narasimhan, learned counsel, instructed by Mr.K. Esakki, learned counsel.

7. The petitioner adverted to the Trust Deed dated 29.03.1957 by which the sixth respondent Trust was constituted. The petitioner also invited the attention of the Court to the First, Second and Third Endowment Deeds. On such basis, it was contended that the properties described in the schedules to the respective documents were declared to be properties of the Saraswathi Narayanan College, Perungudi. The petitioner also emphasized that the endowment was for the benefit and use of the College and that the properties were vested with the College. Consequently, the petitioner contended that the alienation of these properties without the prior written permission of the competent authority is null and void in terms of Section 27(1)(d) of Act 19 of 1976.

8. The petitioner also contended that the reason cited in the impugned order to the effect that the property cannot be considered as the property of the College on account of the non-inclusion thereof in the statement of properties submitted by the Educational Agency under Rule 17 of the Rules is patently erroneous. The petitioner asserted that the object and purpose of Sections 26 and 27 is to ensure that the assets of the College are available for use by and for the benefit of the College and that such assets should not be alienated or disposed of without the prior permission of the competent authority. In support of the contention relating to the interpretation of Section 27 of Act 19 of 1976, the petitioner relied upon the judgment in *Association of University Teachers, National College Unit v. All India Council for Technical Education*, AIR 1999 Madras 164. With regard to the interpretation of the word "endowment", the petitioner relied upon Ramanathan Iyer's Law Lexicon. The petitioner pointed out that the word endowment is defined therein as "property or money bestowed as a permanent fund; property held in trust for any charity; (as) the endowments of a college, a hospital or a library".

9. The aforesaid contentions were refuted by the ninth and



tenth respondents. The said respondents said that the petitioner is a sibling of the tenth respondent and that the present dispute is no more than a battle in the larger war between the siblings which has been carried to various fora such as the National Company Law Tribunal and the jurisdictional civil court. The said respondents also pointed out that the impugned order is subject to correction by way of a revision petition under Section 41 of Act 19 of 1976. These respondents pointed out that the petitioner has filed a suit under Section 92 of the Code of Civil Procedure. The said suit is in respect of the gift deeds executed by the sixth respondent in favour of the ninth respondent. In view of the existence of both a statutory and a civil remedy, these respondents contended that discretionary jurisdiction should not be exercised in favour of the petitioner. On the merits, these respondents contended that the relevant properties are not the properties of the seventh respondent. For such purpose, reliance was placed on a Deed of Surrender of Endowment dated 17.08.2008 by which the College surrendered these assets to the sixth respondent Trust. A communication dated 17.06.2019 with regard to the endowment policy of the Madurai Kamaraj University was also relied on as recognition by the University of the surrender of these immovable assets and the substitution thereof with a fixed deposit or the like. By referring to and relying upon the judgment reported in (1977) 1 SCC 1, it was contended that a person who initiates parallel proceedings is not entitled to discretionary relief.

10. The sixth respondent contended that the object and purpose of the endowments was only to provide security in relation to the recognition of the College by the University. Therefore, it was submitted that the endowments are akin to a security or guarantee. The sixth respondent made reference by way of analogy to a kattalai and contended that these endowments in favour of the seventh respondent were akin to a kattalai. Consequently, it was contended that the properties dealt with in the First, Second and Third Endowment Deeds cannot be considered as the property of the College for purposes of Section 26 and 27 of Act 19 of 1976 read with the relevant rules. The next contention of the sixth respondent was that the petitioner had suppressed the filing of the suit, and that, therefore, the writ petition is liable to be dismissed. The last contention of the sixth respondent was that the meaning of the word "endowment" can be gleaned from Section 6(17) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

11. The seventh respondent contended that Section 27 is applicable only to the properties included in the statement under Rule 17 of the Rules. Respondents 12 to 14 made two seemingly contradictory submissions. On the one hand, it was contended that the endowments were in favour of the University and not the College. For such purpose, reliance was placed on Rule 3(3) of the Rules. On the other, these respondents also contended that the



relevant properties are properties of the Educational Agency and not the College. Since the making of the endowments was prescribed by the University, these respondents contended that the money value of the endowments were provided to the University by way of a bank guarantee in lieu of these properties.

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12. By way of rejoinder, the petitioner pointed out that both the suit and the present proceedings are maintainable. The petitioner contended that the writ petition is directed at and assails an order of the second respondent and the scope of the writ petition revolves around the obligations imposed on the Educational Agency and educational authorities under Act 19 of 1976, whereas the suit pertains to the management of the assets and affairs of the sixth respondent Trust. It was also pointed out that the suit is at the stage of granting leave under Section 92. With regard to the contention that the deeds permit an exchange of the properties with the consent of the University, the petitioner pointed out that Section 27 prescribes that the stipulation therein would override any stipulation to the contrary in any deed.

13. As stated at the outset, the interpretation of Sections 26 and 27 of Act 19 of 1976 is at the heart of the controversy. The two central considerations in the interpretation of legal texts are text and context. Much of the debate and contest over interpretation revolves around the meaning of the relevant text or over how wide the contextual net may be cast and for what purpose. Whether the interpreter is wholly invested in principles or canons of construction or has little patience with the same, a la Judge Richard Posner, the inevitable starting point is the relevant text. Accordingly, Sections 26 and 27 of Act 19 of 1976 are set out below:

"26. Educational agency to send list of properties - The educational agency shall, on or before the prescribed date in each year, furnish to the competent authority a statement (with such particulars as may be prescribed) of every -

(a) movable property of not less than such value as may be prescribed; and

(b) immovable property of the private college.

27. Restriction on alienation of property of the private college -

(1) notwithstanding anything contained in any other law for the time being in force or in any deed, document or instrument having effect by virtue of such other law -

(a) no property of a private college shall, except with the previous permission in writing of the competent authority, be transferred by way of sale, exchange, mortgage, charge, pledge, lease, gift or in any other manner whatsoever; and

(b) if any such property is transferred without such permission, the transfer shall be null and void.

(2) the competent authority may -



(a) grant the permission under clause (a) of subclause (1) if the transfer is made in furtherance of the purposes of the private college or of similar purposes approved by the competent authority; and the assets resulting from the transfer are to be wholly utilised in furtherance of the said purposes; and

(b) when granting such permission, impose such conditions as it deems fit to ensure that such assets are wholly utilised in furtherance of such purposes; but a contravention of any such condition shall not invalidate the transfer:

provided that the permission shall not be refused under the section unless the applicant has been given an opportunity of making his representations.

Explanation I - for the purposes of this section, "property" means any -

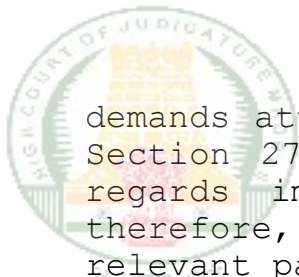
(a) movable property of not less than such value as may be prescribed; and

(b) such immovable property as may be specified in the rules made in this behalf.

Explanation II - in this section and sections 28 and 29, "private college" does not include a minority college."

The text of Section 26 uses mandatory language, i.e. "shall", to impose an obligation on the educational agency to provide to the competent authority a statement containing prescribed particulars of every movable property of prescribed value and every immovable property of the private college. Section 27 opens with a non-obstante clause and categorically prohibits, by using the mandatory "shall", a transfer of the property of the private college, whether by way of sale, exchange, mortgage, charge, pledge, lease, gift or in any other manner, without prior permission in writing of the competent authority. Clause (b) of Subsection 1 stipulates that if the property of the college is transferred without permission, the transfer shall be null and void. Subsection (2) enables the competent authority to grant permission if the transfer is in furtherance of the purposes of the private college or of similar purposes approved by the competent authority provided that assets resulting from the transfer are to be wholly utilized in furtherance of the said purposes. Explanation I to Section 27 prescribes that property for purposes of the section means such immovable property as may be specified in the rules made in this behalf.

14. The text of Section 27(1)(a) uses the expression "property of a private college". Therefore, a question of considerable importance is: what is meant by "property of a private college"? Does it only include assets to which the college concerned has unimpeachable title? Would it also include an asset endowed with the college or let to a college on lease? This is an aspect that



demands attention after dealing with an issue that Explanation I to Section 27 throws up. Explanation I refers to specified rules as regards immovable properties to which Section 27 would apply; therefore, such rules warrant scrutiny. The relevant rules, in relevant part, are set out below:

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"17. Educational agency to send list of properties - (1) Every educational agency shall, on or before the first day of July of each year commencing from 1 July, 1976, send to the competent authority a statement of all movable properties the value of which, individually is not less than Rs.100 (rupees one hundred only) and where there more than one article of the same category, if the total value of such articles exceeds Rs.500 (rupees five hundred only) and a statement of all immovable properties.....

(2) whenever there is any change in the movable or immovable properties, such change should be indicated in the statement.

18. Restriction on alienation of property of college- (1) The movable and immovable properties referred to in Rule 17 shall be the movable and immovable properties for the purpose of Section 27.

....."

Rule 18 read with Explanation I to Section 27 appears to indicate at first blush that the prohibition would only apply to the properties listed in the statement under Section 26 read with Rule 17. However, if such interpretation were to be accepted, any college can circumvent the rigours of Section 27 and Rule 18 by not including certain assets in the statement under Section 26. If so, Section 26 and the obligation to include "every property" , as prescribed therein, and Rule 17 and the obligation to include "all immovable properties", as prescribed therein, would be robbed of all meaning and purpose. Section 27 cannot be read in isolation, as if it operates in a silo divorced from the preceding Section 26, and even the most dogmatic textualist would not frown on casting the contextual net to the preceding section of the same enactment. Once construed as a pair of symbiotic provisions, the relevant test to gauge compliance would be to examine the evidence on whether the assets concerned qualify as "property of the private college" and this, in turn, leads back to the question: when does a property qualify as property of the college? This question is addressed next.

15. By way of preamble, it should be noted that the phrase "property of the private college"? is not defined in Act 19 of 1976 although there is an Explanation pertaining thereto. It should also be noticed that Section 27 does not impose a complete embargo on transfer, which is possible subject to prior permission. A college may function on property duly owned by it or endowed and vested with it or even let to it on lease. If, for instance, a college were to function on lands endowed to it without being conveyed absolutely:



can it be said that such assets do not qualify as "property of the private college"? If the buildings from which teaching and other core activities of such college are carried on are lands which are subject matter of such endowment, unless the prohibition or restriction under Section 27 were to operate in respect of the said endowed asset, the college concerned could become completely dysfunctional if the asset were to be transferred. The same scenario could play out if an asset is let on long-term lease to a college. Thus, given the object and purpose of Section 27, the expression "property of the private college" should be construed as encompassing all assets over which the college concerned has legitimate property rights or interest. It is another matter that the nature of interest may play a material role among other factors if a request for prior permission for transfer is made. Therefore, the key question is whether the evidence on record indicates that the college concerned has or had legitimate interest in the relevant assets. If such evidence indicates that the relevant assets were transferred, endowed in, vested with or even let on lease to the college for its use, the educational agency concerned cannot circumvent the prohibition under Section 27 by failing to comply with its obligation under Section 26. Otherwise, an educational agency which defaults in the performance of a statutory obligation under Section 26, which is punishable under Chapter VIII of the statute, would stand unfairly and unjustly rewarded.

16. While on this subject, it should be noted that Section 27 overrides even contractual stipulations, such as in the Deeds, to the contrary. Even otherwise, the letter dated 17.06.2019 from the Madurai Kamaraj University by which its endowment policy was indicated does not constitute sufficient evidence that the University granted permission to exchange these assets. The contention that the endowments were pursuant to prescriptions by the University for establishing the College under Rule 3(3) of the Rules and, therefore, were duly substituted with the consent of the University is untenable because both the First and Second Endowment Deeds, in this case, preceded the entry into force of Act 19 of 1976 and the Rules. In addition, there is no evidence that the University gave prior written consent to the Deed of Surrender of Endowment or the subsequent documents. In light of the above discussion and analysis, the fine distinctions sought to be drawn by the private respondents between ownership and endowment or by drawing the analogy of a kattalai do not advance their cause. The evidence on record in the case at hand remains to be examined to assess whether the relevant immovable assets could be construed as "property of the private college" and such issue is addressed next.

17. For such purpose, the First, Second and Third Endowment Deeds are of paramount significance. Clause(a) of the First Endowment Deed is set out below:

"a. That the party of the first part hereby endows and vest the



properties described in the schedule with all its income and appurtenant rights in the party of the second part for the purpose of maintaining and running the said Saraswathy Narayanan College at Perungudi."

Similarly, Clause 1 of the Second Endowment Deed reads as under:

"1. The properties described in the schedule hereunder are valued at Rs.66,000/- and are hereby declared as properties belonging to the second party and the same are hereby endowed for the benefit and use of the second party and for the said purpose the same is hereby vested with the second party."

Clause 1 of the Third Endowment Deed is, in substance, identical to Clause 1 of the Second Endowment Deed. In view of the aforesaid clauses of the relevant deeds, it is beyond doubt that the properties described in the schedules to the said Deeds were endowed and vested with the College. Indeed, the Third Endowment Deed declares that the properties belong to the College. Therefore, it cannot be said that these assets were not vested in the College. Indeed, there is unimpeachable evidence in that regard. Respondents 9 and 10 relied on a Deed of Surrender of Endowment dated 17.08.2008 and contended that upon such surrender, the relevant assets stood re-transferred to the sixth respondent Trust. The fallacy in the said contention is that once the properties in question were vested in the College, the Deed of Surrender of Endowment contravened Section 27. The sequitur of concluding that these are "properties of the private college" is that the transfer of these assets, whether by the Deed of Surrender of Endowment or by the subsequent documents, including gift deeds, without the prior permission of the competent authority, is null and void.

18. The next issue that arises for consideration is whether the writ petition is liable to be rejected in view of the pending civil suit. The private respondents contended that the petitioner has availed of the civil remedy and therefore discretionary jurisdiction should not be exercised in his favour. Therefore, the said contention should be examined. The prescriptions in Sections 26 and 27 are intended to protect and further the interest of the relevant educational institution and all its stake holders such as students, staff and teachers. On the other hand, the civil law remedy under Section 92 of the Code of Civil Procedure is intended for purposes of ensuring the proper administration of the relevant trust, which could, as in this case, be the educational agency *qua* the college. While it is stated that the gift deeds executed by the sixth respondent are under challenge in the said suit, the focus and object of Act 19 of 1976 is distinct. On this issue, it is pertinent to note that the civil court's jurisdiction is ousted under Section 49 in respect of questions that are required to be dealt with by any authority or officer under Act 19 of 1976 and Act 19 of 1976 also



includes a non-obstante provision in Section 52 thereof. Consequently, the writ petition is not liable to be dismissed on that count.

19. The remedy under Section 41 of Act 19 of 1976 was referred to by respondents 9 and 10 as a ground to reject the writ petition. An alternative remedy is certainly not a bar to the exercise of jurisdiction under Article 226 of the Constitution although it is a material consideration while deciding whether to exercise discretionary jurisdiction. The petitioner has brought to the notice of the Court issues of significance to the College and its stakeholders. The said issues carry a strong public law and even public interest element and, therefore, the petitioner is not liable to be non-suited in view of Section 41.

20. This leads to the impugned order. The impugned order rejects the petitioner's representation on the sole ground that the relevant properties were not included in the statement submitted under Rule 17. For various reasons set out above, the said interpretation of Sections 26 and 27 read with Rules 17 and 18 is patently erroneous. Therefore, the impugned order is unsustainable and is hereby quashed. As a corollary, the educational authorities concerned are directed to initiate appropriate action in relation to the violation of Sections 26 and 27 of Act 19 of 1976 by the Educational Agency, namely, the sixth respondent. On account of the conclusion that the properties dealt with under the First, Second and Third Endowment Deeds are properties of the College, the private respondents are restrained from alienating, encumbering or otherwise dealing with the said properties. In addition, importantly, action should be taken to restore possession of these assets to the College.

21. W.P(MD).No.13833 of 2021 is allowed on these terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The Principal Secretary,
Government of Tamil Nadu,
Higher Education Department,
fort St.George, Chennai - 600 009.
2. The Director of Collegiate Education,
D.P.I.Campus,
College Road, Nungambakkam,
Chennai - 600 006.
3. The Joint Director of Collegiate Education,
Madurai Region, Madurai.
4. The Registrar,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai.
5. The Sub Registrar,
Sub Registrar Office,
Arasaradi, Madurai District.

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-32457[F] dated 25/10/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-32523[F] dated 26/10/2021)

+1 CC to M/s.SPL.GP (SR-32587[F] dated 26/10/2021)

W.P. (MD)No.13833 of 2021
25.10.2021

RD/JGB(02.11.2021) 12P 9C