



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P(MD)No.17074 of 2020

and

W.M.P (MD) Nos.14262, 14263 and 16515 of 2020

V.S.Rajan

... Petitioner

Vs

- 1.The Joint Director (Personnel),
Directorate of School Education,
DPI Campus, College Road,
Chennai - 600 006.
- 2.The District Collector,
Kanyakumari District @ Nagercoil,
Nagercoil.
- 3.The Chief Educational Officer,
Kanyakumari District @ Nagercoil,
Nagercoil.
- 4.The District Educational Officer,
Nagercoil Education District,
Nagercoil,
Kanyakumari District.
- 5.The Chief Educational Officer,
Thenkasi District,
Thenkasi.
- 6.The District Educational Officer,
Thenkasi Educational District,
Thenkasi
- 7.K.R.Bindu

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Certiorari and to call for the records relating to the Transfer Order Na.Ka.No.37805/C1/E3/2020, dated 10.11.2020 passed by the first respondent and consequential relieving order Na.Ka.No.123/2020, dated 16.11.2020 passed by the 7th respondent and quash the same.



For Petitioner : Mr.A.Thirumurthy
For Respondents : Mr.Veera Kathiravan,
1 to 6 Additional Advocate General

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Assisted by
Mr.A.Kannan,
Additional Government Pleader

ORDER

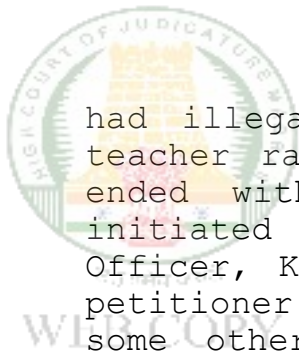
The petitioner has filed this writ petition as against the order of transfer dated 10.11.2020 passed by the first respondent and the consequential relieving order dated 16.11.2020 passed by the seventh respondent.

2.Learned Counsel for the petitioner submitted that the petitioner is working as a Headmaster in the Government High School, Eraviputhoor, Kanyakumari District. By the order impugned, he has been transferred from Kanyakumari District to Tenkasi District. However, a stigma has been cast upon the petitioner, since the transfer order has been made based on a complaint lodged against him and that too, without conducting proper enquiry.

3.Learned Counsel, by referring to the order of transfer, further submitted that the order has been stated to have passed on the ground of administrative reasons. However, in paragraph no.4 of the counter affidavit, certain allegations have been made as against the petitioner - that he had illegal intimacy with a co-teacher; the husband of the teacher came to the School and attacked the petitioner; and a preliminary enquiry was also conducted on the complaints received against the petitioner by the Chief Education Officer and thereafter, the petitioner has been transferred.

4.When the Department is taking a specific stand that there are some other reasons for transfer, it is contended by the learned Counsel that the Department ought not to have passed the order of transfer on grounds of administrative reasons. Therefore, according to the learned Counsel, the counter affidavit filed by the respondents exposes that the transfer is punitive in nature and without conducting an enquiry, the petitioner has been transferred as a punishment and hence, the impugned order is liable to be set aside.

5.Learned Additional Advocate General appearing for the official respondents submitted that the impugned transfer order was passed on administrative reasons and also on the adverse remarks which were recorded in the impugned order itself. According to him, certain adverse inputs were received against the petitioner that he



had illegal intimacy with a co-teacher and the husband of that teacher raised an issue with the petitioner in the School, which ended with a police complaint. Therefore, the Department has initiated an enquiry into the issue by the Chief Educational Officer, Kanyakumari District @ Nagercoil. During the enquiry, the petitioner came forward with a request that he can be transferred to some other District, preferably to Tenkasi District. The Chief Educational Officer / Enquiry Officer made a recommendation to the first respondent for transfer of the petitioner, vide letter dated 17.10.2020 along with the request of the petitioner dated 17.09.2020 and the complaints received against the petitioner. Based on the recommendation of the Chief Educational Officer, the first respondent has passed the impugned transfer order dated 10.11.2020.

6. In response, learned Counsel for the petitioner submitted that though a request letter was made by the petitioner, he has withdrawn the said request letter on 08.10.2020. Therefore, the respondents are not justified in referring to the request letter of the petitioner dated 17.09.2020, which was already withdrawn by him on 08.10.2020, in the impugned order dated 10.11.2020.

7. By referring to the decision of the Hon'ble Supreme Court in **Somesh Tiwari v. Union of India & Ors, AIR 2009 SC 1399**, the learned Counsel for the petitioner reiterated his case and submitted that the impugned transfer order was passed, as an order of punishment, without any inquiry and therefore, the same is liable to be set aside. The relevant portion from the said decision is extracted as follows:

"It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

8. This Court paid it's anxious consideration to the rival submissions and also perused the available materials.

9. Transfer is an incident of service and the scope of judicial review is very limited. If the transfer is made on administrative grounds, the Courts are not supposed to substitute their own decision, without knowing the exact requirement of particular Department. Before deciding the issue involved in this case, it is useful to refer the ratio laid down by the Hon'ble Supreme Court on this subject.

10. In **Gujarat Electricity Board v. Atmaram Sungomal Poshani**, reported in **1989 AIR 1433**, the Hon'ble Supreme Court has observed as under:-

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"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the another is an incident of service. No Government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration."

11.In **Union of India v. H.N. Kirtania**, reported in **1989 AIR 1774**, the Hon'ble Supreme Court has observed as under:-

"Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafide."

12.In **N.K.Singh v. Union of India**, reported in **1994 6 SCC 98**, the Hon'ble Supreme Court has held as follows:

"23. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated."

13.In **State of M.P. v. S.S.Kourav** reported in **(1995) 3 SCC 270**, the Hon'ble Supreme Court has held as follows:

"4. The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of



the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

14.In **State Bank of India v. Anjan Sanyal, Appeal (Civil) No.226 of 1997, dated 12.04.2001**, the Hon'ble Supreme Court has held as under:-

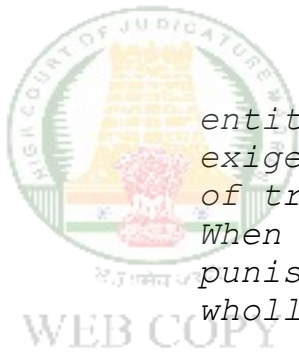
"4. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order."

15.The Hon'ble Supreme Court, in the decision reported in **(2004) 11 SCC 402 [State of U.P. v. Gobardhan Lal]**, has held as follows:-

"7.It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment, but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service."

16.In **Somesh Tiwari v. Union of India and others**, reported in **(2009) 2 SCC 592**, the Hon'ble Supreme Court has held as follows:

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is



entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

17. In **Airports Authority of India v. Rajeev Ratan Pandey** reported in (2009) 8 SCC 336, the Hon'ble Supreme Court has held as follows:

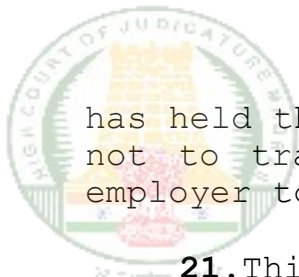
"10. In a matter of transfer of a government employee, [the] scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer."

18. The transfer order may cause great hardship, as an employee would be forced to have a second establishment at a far distant place; education of his / her children may be adversely affected; may not be able to manage his / her affairs and to look after his / her family. This aspect was also considered by the Hon'ble Supreme Court in **S.S.Kourav's** case (referred to supra), wherein it has been held that it is not permissible for the Court to go into the relative hardship of the employee. It is for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration.

19. In **Registrar General, High Court of Judicature of Madras v. R.Perachi and others**, reported in (2011) 12 SCC 137, the Hon'ble Supreme Court has held as follows:

"As seen above, the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against first respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the unit concerned. That is desirable from the point of view of the administration as well as that of the employee. The complaint with respect to the first respondent was that he was dominating the administration of the District Judiciary, and the District Judge had reported that his retention in the district was undesirable, and also that departmental enquiries were pending against him and other employees, with respect to their integrity. In the circumstances the decision of the then Chief Justice to transfer him outside that district could not be faulted."

20. Very recently, in **Namratha Verma v. State of U.P.** [SLP.No.36717 of 2017, dated 06.09.2021], the Hon'ble Supreme Court
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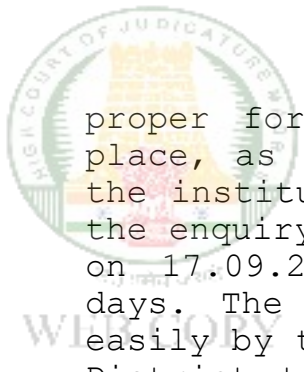
has held that "it is not for the employee to insist him / her and or not to transfer him / her at a particular place. It is for the employer to transfer an employee considering the requirement."

21.This writ petition is filed as against the order of transfer. The petitioner who is working as a Headmaster in the Government High School, Eraviputhoor, Kanyakumari District, was transferred by the impugned order dated 10.11.2020. The first respondent has mentioned about an incident, which had taken place in the School, the preliminary enquiry conducted by the Chief Educational Officer and has passed the order of transfer on administrative ground.

22.The official respondents have filed a detailed counter affidavit stating that the petitioner had illegal intimacy with a co-teacher in the School and her husband came to the School, assaulted the petitioner and there was an unwanted incident took place in the School. A complaint was lodged in this regard and the same was treated as a petition enquiry in CSR No. 267 of 2020 on the file of the Anjugramam Police Station, Kanyakumari District. The said complaint, later, appears to have been withdrawn by the complainant, one Rajamohan. However, based on this incident took place in the School, an enquiry was conducted by the third respondent.

23.It appears that the petitioner, during the course of enquiry, has made a request on 17.09.2020 voluntarily opting for transfer from Piraviputhur, Kanyakumari District to Tenkasi District. The third respondent / Chief Educational Officer, in order to give a quietus to the issue, by his letter dated 17.10.2020, made a recommendation to the first respondent, by enclosing the copy of the complaints received against the petitioner along with the request letter of the petitioner with a request to transfer him from Piraviputhur to any other place. In the meantime, the petitioner appears to have withdrawn his earlier request letter dated 17.09.2020 on 08.10.2020. However, the impugned order has been passed on 10.11.2020, based on the recommendation of the third respondent and consequently, the petitioner has been transferred to the Government High School, Melasenkottai, Tenkasi District and he was also relieved on 16.11.2020. The petitioner challenged these orders in this writ petition and obtained an order of stay on 27.11.2020.

24.The petitioner, the Head of the Institution himself is involved in a mischief and facing serious allegation that he is having illegal intimacy with a co-teacher. It is an unbecoming conduct of a Teacher, that too, a Headmaster and taking note of the serious and obnoxious allegations, the respondents have rightly initiated an enquiry through the third respondent. If the Head of the Institution himself is indulged in such an activity, it is not



proper for the Department to allow him to continue in the same place, as it involves the morality of the Teachers and Students in the institution. At the same time, it appears that in order to shut the enquiry, the petitioner himself offered for a voluntary transfer on 17.09.2020 and thereafter, withdrew the request after twenty days. The respondents also appears to have sorted out the issue easily by transferring the petitioner from Piraviputhur, Kanyakumari District to Tenkasi District and closed the entire issue, without conducting any further enquiry and taking appropriate action.

25.The petitioner, who is working as a Headmaster of a School, must be an example to the Students as well as to the Teachers and other staff. But he is facing an allegation of illegal relationship with his subordinate. The educational institutions are established to impart not only education to Students, but also discipline and other moral values. Any education without discipline is like a building without a basement.

26.For every Student, the Parents and the Teachers are their role models. To some extent, the Students imbibe the qualities of their Parents and Teachers. In fact, a Student is spending more time with the Teacher than their Parents. The Teachers, who are in the important place of imparting the moral values to the Students, if indulge in such activity, it is not known as to how the future generation would be groomed. The discipline is considered to be more valuable than our life.

The great saint, Thiruvalluvar in a couplet has stated as follows:

“ஒழுக்கம் விழுப்பந் தரலான் ஒழுக்கம்
உயிரினும் ஒம்பப் படும்”

It means to say that as Morality is the virtue affording superiority to all, it must therefore, be considered and praised more than life itself.

27.In fact, this Court has witnessed several incidents of sexual harassments taking place in the educational institutions. The Teachers who are having some control over the Students on internal marks or by some other means, influence the Students, subjecting them for sexual harassment. Several girl students are committing suicide on account of such sexual harassment and one student has even left a suicide note that “the safest place for a girl is the mother’s womb and the cemetery”. Every citizen of this country has to feel ashamed of the observation made by that Student.

28.The Father of our Nation has observed that the real independence can be enjoyed only when our sisters can move freely even in the night hours. This is the value, which is expected to be inculcated in the young generations. But, if the Teachers themselves



involve in such type of activities, then it is the disaster of society.

29. The Hon'ble Supreme Court in **Avinash Nagra v. Navodya Vidyalaya Samiti, (1997) 2 SCC 534** has referred to the words of the great leaders, as follows:

"Mahatma Gandhiji, the Father of the Nation has stated that "a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them". Shri Aurobindo has stated that "it is the teacher's province to hold aloft the torch, to insist at all times and at all places that this nation of ours was founded on idealism and that whatever may be the prevailing tendencies of the times, our children shall learn to live among the sunlit peaks". Dr S. Radhakrishnan has stated that "we in our country look upon teacher as gurus or, as acharyas. An Acharya is one whose aachar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness. The ideal of a true teacher is andhakaraniridhata gurur itya bhidhiyate. Andhakar is not merely intellectual ignorance but is also spiritual blindness. He who is able to remove that kind of spiritual blindness is called a guru. Are we deserving the noble appellation of an acharya or a guru?" Swami Vivekananda had stated that "the student should live from his very boyhood with one whose character is a blazing fire and should have before him a living example of the highest teaching. In our country, the imparting of knowledge has always been through men of renunciation. The charge of imparting knowledge should again fall upon the shoulder of Tyagis"".

30. The Hon'ble Supreme Court has also discussed about the importance of Moral Values in **Santosh Singh v. Union of India, (2016) 8 SCC 253** as follows:

"There can be no gainsaying the fact that moral values are an integral component of value-based education. The purpose of education is to engender in the young, a spirit of enquiry, a desire for knowledge and a sense of values. Among those values are the fundamental values on which our constitutional core is founded: liberty, equality and the dignity of each individual. The



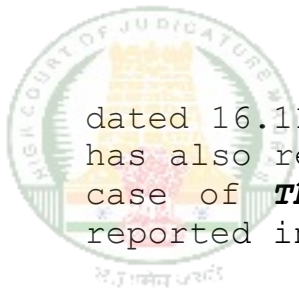
purpose of education also includes the creation of responsible and informed citizens conscious both of their rights and of their duties to others."

31.The quality, competence and character of a Teacher are most significant to mould the character, calibre, and capacity of the Student.

32.In this case, there was an incident in the School premises. A police complaint was also lodged before Anjugramam Police Station. The Chief Educational Officer conducted a preliminary enquiry. To avoid this inquiry, the petitioner, cleverly, appears to have made a request for transfer to any place in Tenkasi District. Accordingly, the Chief Educational Officer, made a recommendation to the first respondent along with the complaints, inquiry report, and the request of the petitioner. The first respondent has also passed an order based on the report of the Chief Educational Officer. Though the petitioner claims that he withdrew the letter dated 17.09.2020, the same was made after 21 days. Since this petitioner has withdrawn the letter dated 17.09.2020 by a subsequent later dated 08.10.2020, it cannot be presumed that the earlier letter dated 17.09.2020 was obtained under threat or coercion. The petitioner has not made any averment that the earlier letter dated 17.09.2020 was obtained under threat or coercion. In the absence of any materials that the letter dated 17.09.2020 was forcibly obtained, this court cannot give any adverse inference as against the third respondent based on the petitioner's letter dated 08.10.2020. The impugned order came to be passed based on the interim report and also based on the request of the petitioner dated 17.09.2020.

33.In view of the foregoing discussions and the decisions referred to supra, this Court is not inclined to interfere with the impugned transfer order. At the same time, this Court is not inclined to allow the respondents to close the issue by simply transferring the petitioner. Any moral turpitude on the part of the petitioner is liable to be enquired per Rule 3(3) of the Tamilnadu Government Servants Conduct (Discipline & Appeal) Rules. As per the Tamilnadu Educational Rules, if any irregularities are noted, the Director is duty bound to enquire and if it is found to be true, the delinquent has to be declared as unfit to be a Headmaster or a Teacher for a specified period or permanently as the circumstances of the case warrants. The allegations levelled are serious in nature, which needs to be inquired and the truth needs to be unearthed.

34.Learned Counsel for the petitioner, at this juncture, intervened and submitted that though this Court has granted an order of interim stay on 27.11.2020 in respect of the impugned order of transfer dated 10.11.2020 and the consequential relieving order



dated 16.11.2020, the petitioner has not been paid salary so far. He has also relied upon a judgement of the Hon'ble Supreme Court in the case of **The Commissioner, Karnataka Housing Board v. C. Muddaiah** reported in **AIR 2007 SC 3100**, wherein it has been held as under:

"We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgement, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected."

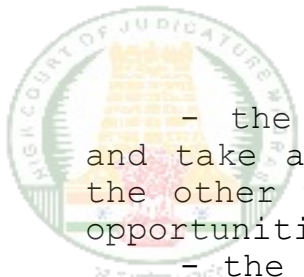
Therefore, he prayed for appropriate orders.

35.In response, learned Additional Advocate General submitted that this Court has stayed the transfer order dated 10.11.2020 and the consequential relieving order dated 16.11.2020 only on 27.11.2020, ie., even before the order of stay, the petitioner was transferred and another person / seventh respondent took charge as Headmaster (in-charge). When the petitioner was relieved from duty, he is not expected to retain the key of the Headmaster's room of the School. However, the petitioner is still retaining the key and therefore, prayed for appropriate orders.

36.Admittedly, this Court by order dated 27.11.2020, has stayed the impugned transfer order dated 10.11.2020 as well as the consequential relieving order dated 16.11.2020 and as such, from 27.11.2020 onwards, the petitioner is protected by an order of this Court. No doubt, the respondents have filed an application to vacate the interim order, however, no order has been passed on the said application. Therefore, the respondents have to pay the necessary salary to the petitioner. At the same time, if the petitioner had retained the key, without any authority, even for a single day, between the date of his transfer & relieving and the date of interim stay granted by this Court, it is always open to the respondents to initiate appropriate action as against him, in the manner known to law.

37.In the result,

- this writ petition stands dismissed;
- the interim order already granted stands vacated;
- the respondents are directed to calculate and disburse the eligible salary to the petitioner from 27.11.2020 till date;



- the respondents are expected to proceed with the complaint and take appropriate action as against the petitioner as well as the other teacher, in the manner known to law, after affording due opportunities of hearing;

- the petitioner is directed to return the keys, if any, in his possession within a period of two days from the date of receipt of order copy of this order;

- the respondents are at liberty to initiate action as against the petitioner for having retained the keys of a Government (Educational) Institution, even it was for a single day without any authority;

- there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

dn/gk

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Joint Director (Personnel),
Directorate of School Education,
DPI Campus,
College Road,
Chennai - 600 006.
- 2.The District Collector,
Kanyakumari District @ Nagercoil,
Nagercoil.
- 3.The Chief Educational Officer,
Kanyakumari District @ Nagercoil, Nagercoil.
- 4.The District Educational Officer,
Nagercoil Education District,
Nagercoil, Kanyakumari District.



5.The Chief Educational Officer,
Thenkasi District,
Thenkasi.

6.The District Educational Officer,
Thenkasi Educational District,
Thenkasi.

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-40373[F] dated
23/12/2021)

+1 CC to M/s.SPL GP (SR-40482[F] dated 27/12/2021)

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23.12.2021

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