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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.2268 & 3182 of 2022

&

W.M.P.Nos.2241, 2242, 3336 & 3337 of 2022

Minor S.Sahana

...Petitioner in both W.Ps

Vs.

1. The Selection Committee,
Directorate of Medical Educational
Rep.by its Secretary,
162, Periyar EVR high Road
Kilpauk, Chennai - 600 010. ...R1 in both WPs
2. The Additional Director,
Ex-Servicemen's Welfare Board,
Directorate of Ex-Servicemen's Welfare.
22, RajaMuthiah Salai Chennai - 600 003.
3. The Assistant Director,
District Ex-servicemen's Welfare,
Ex-servicemen's Centre, Collectorate,
Ramanathapuram - 623 503.
4. National Medical Commission,
Pocket-14, Dwarka Phase-I, New Delhi-110 077
...R2 to R3 in WP.No.3182 of 2022
5. The Director,
Ex-Servicemen's Welfare Board,
Directorate of Ex-Servicemen's Welfare.
22, Choolai, Chennai - 600 003.
...R2 in W.P.No.2268 of 2022

Prayer in W.P.No.2268 of 2022: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the merit list published under the Ex-servicemen Category for MBBS/BDS 2021/2022 Session uploaded on 25.01.2022 on the official website on the 1st respondent and to quash the same as being illegal insofar as it does not include the name of the petitioner under Priority -II category, and for a consequential direction to the



1st respondent to consider the petitioner for Tamil Nadu MBBS/BDS counselling 2021-2022 Session under the category of Ex-servicemen. Priority-II and allot a seat accordingly under the said category.

Prayer in W.P.No.3182 of 2022: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent in his proceedings in Rc.No.650/2022 S4 dated 27.01.2022 and to quash the same as being illegal and unsustainable in law and for a consequential direction to the respondents that the petitioner is eligible to be considered under the category of Ex-servicemen Priority-II for the admission to MBBS/BDS courses.

In both W.P.s

For Petitioner : Mrs.N.Kavitha Rameshwar

For Respondents : Mr.D.Ravichander
1 to 3 Special Government Pleader in
WP.Nos.3182 & 2268 of 2022

R4 : Ms.Shubharanjani Ananth,
Standing Counsel for R4 in
WP 3182 of 2022

COMMON ORDER

These two writ petitions have been filed by an aspirant for the MBBS Course for the academic year 2021-22. The petitioner appeared for the NEET examination, securing 249 marks as per the result declared on 01.11.2021. She belongs to the backward class community under the State Reservation category.

2. Since a preliminary objection has been raised to the maintainability of the writ petition on the ground that the petitioner's application was not submitted in time, I will deal with this aspect of the matter first as it would be critical to determine eligibility of the petitioner to approach this Court in terms of Article 226 of the Constitution of India.

3.The prospectus in response to which the petitioner had applied prescribed cut-off dates for the receipt of applications. As far as the general category of applicants is concerned, sub-clause (e) of clause-1 relating to 'general instructions' states that the last date of submission of on-line applications would be up to 5 PM, 07.01.2022. There is, thereafter, no provision for the candidate to submit an application online.



4. Contrasted therewith, the counseling procedure for special categories such as students falling under eminent sports persons category, children of ex-servicemen and persons with benchmark disability, under clause (e) of point 11 thereof, provides that the last date for submission of online application and of a physical copy of the same before the Secretary, Selection Committee Directorate of Medical Education Chennai would be 10.01.2022.

5. The petitioner has admittedly, submitted the application on 28.12.2021. According to her, while uploading the application, she was unable to upload certification for availing benefit of special category, being the ex-servicemen certificate as well as other supporting documents. As a result, the documents had been uploaded subsequently, on 04.01.2022.

6. The application in entirety had been downloaded thereafter, that is, and for the sake of clarity, the application submitted on 22.12.2021 and the supporting annexures submitted on 04.01.2022 had been downloaded, and forwarded by post on the same date. There is a receipt of acknowledgment of the aforesaid by the respondent on 06.01.2022.

7. Thus, and to summarize, (i) the application, in part, had been uploaded on 28.12.2021, (ii) the annexures uploaded thereafter on 04.01.2022 (iii) the composite application and the annexures had been downloaded on 04.01.2022 and sent via post on 04.01.2022 and (iv) received by the respondent on 06.01.2022. This is, admittedly, the modus operandi that has been adopted by the petitioner and that this procedure had been followed by the petitioner is not in dispute.

8. Learned Special Government Pleader would point out the discrepancy in explanation set out by the petitioner in her representation dated 28.12.2021, wherein she states that she was unable to upload the forms on account of technical glitches and her subsequent representation filed on 26.01.2022 wherein she states that she 'forgot' to upload the forms.

9. In my considered view, this variation in explanation can be well attributed to the general anxiety that a student is subject to at this juncture in their lives, and I would condone the same. What is important is to verify whether there has been strict compliance with the procedure and timeframe as set out in the prospectus and in this case there is no doubt that there has been complete compliance in this regard. Hence, in my view there is no defect in the application and the same has been received well within the timelines as set out in the prospectus.

10. Coming to the merits of the case, I had on 08.02.2022



passed the following order when W.P.No. 2268 of 2022 had been listed for admission.

Mr.D.Ravichander, learned Special Government Pleader and Mr.C.Jayapraksh, learned Government Advocate accept notice for the respondents and seek some time to obtain instructions and file a counter.

2. Briefly put, the petitioner had filed an application in December 2021 to appear for the NEET examination. She belongs to the backward class community and had claimed entitlement for reservation/preference to the 'Wards of Armed Forces Personnel' for admission in the medical courses. The entitlement is based upon G.O.(D) No.977, Health and Family Welfare (MCA1) Department dated 01.06.2018 that categorises ex-servicemen based upon various parametres for benefits to be extended to their wards.

3. The categories as per the aforesaid Government Order are as follows:

Priority - I Widows/Wards of Defence personnel killed in action.

Priority - II Wards of disabled in action and boarded

out from service.

Priority-III Widows/Wards of Defence personnel who

died while in service with death attributable to military service.

Priority - IV Wards of disabled in service and boarded out with disability attributable to military service.

Priority - V Wards of Ex-serviceman who are in receipt of Gallantry Awards.

.....

Priority - VI Wards of Ex-servicemen

4. The petitioner claims Priority-II as above and had enclosed with the application various documents in support of her claim. The first is an Entitlement Card, that provides for a concession for education provided for children of armed forces personnel killed/missing/disabled in action. This card, bearing no.0032/2020/NE states that she is the daughter of one Mr.S.Sakthivel, who was disabled in Action during OP RHINO declared vide Authority 1/0004/0004/1993.

5. Thirdly, she produced a Certificate of Dependency on ex-servicemen dated 23.12.2021 to the effect that she is solely dependent upon the exserviceman, who came under Priority-II described as 'Wards of Disabled in Action and boarded out from service'. The aforesaid documents, in my



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view, prima facie settle the position that the petitioner comes within the beneficial sweep of Priority-II.

6. She has secured 249 marks in the examination. While so, when the list of selected candidates falling under category of children of ex-servicemen was uploaded on 25.01.2022, the name of the petitioner had not figured therein. Aggrieved by the same, she has approached this Court with the present writ petition

7. It is relevant to note that the aforesaid three certificates have been issued by the Assistant Director, Ex-servicemen's welfare, Ramanathapuram who, as per prospectus, is the proper officer to issue the same. The note appended to annexure-6, being the Format of Certificate of Dependency on Exservicemen, is extracted below: Note: This certificate shall be issued by an Officer of the Department of Ex-Servicemen's Welfare of Tamil Nadu not below the rank of Assistant Director of Ex-Servicemen's Welfare Board of the District in which the dependent is a native. This reservation is applicable only to Tamil Nadu Native Candidates.

8. Learned counsel for the respondents circulates proceedings in R.C.No.650/2022/S4 dated 27.01.2022 as per which the petitioner stands disentitled as Mr.S.Sakthivel is stated to come under Priority-IV, which as per G.O.(D) No.33 Health and Family Welfare (MCA-1) Department dated 10.01.2022 relates to 'Ward of Disabled in service and boarded out with disability attributable to military service' as compared with those falling under the description under Priority - II being 'Wards of disabled in action and boarded out from service'. To my mind, there is no dispute on the position that Mr.Sakthivel was disabled in action as revealed in the disability certificate referred to supra.

9. Though proceedings dated 27.01.2022 have been issued by the Additional Director, the Assistant Director who has issued the three certificates as aforesaid is equally competent. The necessity for a reference to have been made to the Additional Director in the case of the petitioner is thus itself unclear and learned counsel for the respondents are unable to throw any light in this regard.

10. In the light of the aforesaid, a prima facie case is categorically made out in favour of the petitioner. A seat shall be reserved for the petitioner who is permitted to appear for the counselling day after tomorrow i.e. 10.02.2022. Both the reservation of the seat and the selection made pursuant to the counselling, shall be subject



to the result of this writ petition.

11. At request of learned counsel for the respondents to file a counter, list on 15.02.2022.

11. Pursuant thereto, the petitioner had appeared before the authorities, though, the process of counselling has not been undertaken by them as specifically directed by this Court. A seat is stated to have been reserved for her. On account of non-compliance with the specific direction as aforesaid, the petitioner has come up with a contempt application in Cont.P.No.146 of 2022.

12. Pursuant to the aforesaid order, counter affidavits have been filed by the respondents in both the writ petitions that is in W.P.No.2268 of 2022, seeking a Certiorarified Mandamus challenging admission list dated 25.01.2022 wherein the name of the petitioner does not figure and W.P.No. 3182 of 2022 challenging letter dated 27.01.2022 issued by the Directorate of Ex-servicemen's Welfare categorizing the petitioner as coming under Priority IV, on the basis of which she was denied admission as sought for. The dispute in the present matter thus revolves around whether the petitioner would be categorized under Priority II or Priority IV of G.O.(D).No.33 dated 10.01.2022. The admitted position is that if her claim as priority II comes to be accepted, the petitioner will be entitled for the admission as sought.

13. In the counter filed by the R2 the defence revolves around letter dated 01.07.2020 and an annexed Standard Operating Procedure (SOP) that has been issued by the Kendriya Sainik Board (KSB/Board) New Delhi. The SOP has been formulated specifically referring to Central/State Universities/Institutions/Colleges that were requested to make provision for reservation in admission for widows, wives and wards of Armed Forces Personnel.

14. The SOP categorises various groups of persons under differing priorities between Priorities I and IX for the grant of benefit in the admission process. The categories are as follows and are identical to the heads of priority under G.O.(D) No.33:

Priority-I Widows/Wards of Defence Personnel killed in action.

Priority-II Wards of disabled in action and boarded out from service.

Priority-III Wards/Widows of Defence Personnel who died while in service with death attributable to Military Service.



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PRIORITY-IV Wards of Disabled in Service and Boarded out with Disability Attributable to Military Service.

PRIORITY-V Wards of Ex-Servicemen and serving personnel who are in receipt of Gallantry Awards.

Priority-VI Wards of Ex-Servicemen.

Priority-VII Wives of.

Priority-VIII : Wards of Serving Personnel.

Priority-IX : Wives of Serving Personnel

15. The Board states that there was ambiguity and some difficulty in according the priorities laid down by the Ministry of Defence and it is bearing in mind these difficulties and for the purpose of transparency that the SOP has been formulated. The SOP contains an explanatory passage interpreting each head of priority and how it is to be understood and applied.

16. For this purpose a closer look at the SOP itself would be warranted and I had extract below the explanation and eligibility criteria set out under Priorities II and IV in the SOP. The explanation below Priority II reads as follows:-

Priority-II Wards of disabled in action and boarded out from service

Eligible

All the Armed Forces Personnel who are injured/disabled in action under the circumstances mentioned in AO/1/2002/MP and declared Battle casualty and are invalided out of service on account of disability under AR 13,3,III (iii) after having undergone IMB and are entitled to War Injury Pension consisting of service element and war injury element or liberalized disability pension consisting of service element and disability element as per Para 6.1 of MoD (GOI) letter 1(2)/97/1/D(Pen-C) dated 31st Jan 2001 (Appex 'C') and its subsequent amendment letter then their wards are eligible for claiming Priority-II.

Documents to be checked:-

- (a) Service book issued by records to check
 - (i) Length of service.
 - (ii) Clauses of Army Rule under which he/she Is invalided out from service. (Armed Forces Personnel should be invalidated after having IMB under AR 13,3,III(iii)).
 - (iii) Family details.
- (b) Battle Casualty Certificate issued by



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records/MP 5&6/service HQ.

(c) Invalidment Medical Board proceedings documents for checking reason for invalidment and attribubability.

(d) PPO initial and subsequent PPO to check Individual (invalided out of service) granted War Injury Pension consisting of Service Element and War Injury Element or Liberlized Disability pension consisting of Service Element and Disability Element.

(e) Widow I-card issued by RSB/ZSB, to know particulars of widow (In cases where indl died after being invalid out from service).

(f) ECHS Card, Aadhaar Card, 10th Class certificate (of children) and Dependent card.

Non-Eligible

All Armed Forces Personnel who are injured in action or circumstances mentioned in AO/1/2003/MP and declared Battle casualty, despite having disability being retained in service and retired subsequently under Army Rule 13 3 III (i), 13 3 III (ii) or took premature retirement under own request under Army Rule 13 3 III (iv) and are in receipt of war injury element or liberalized disability element their wards are not entitled for P-II as per Para 11 (Appx 'C') but will only be considered as ESM hence can apply under P-VI.

17. The priority head remains the same as in G.O. As far as the eligibility criteria is concerned, reference is made to the Army Rule (AR) stating that only those who have been invalidated out of service on account of disability under AR 13 (3) III (ii), (iii) or (iv) along with other entitlements would be so eligible. The list of documents to be produced for entitlement includes a Battle Causality Certificate issued by the competent authority.

18. The explanation under Priority IV reads as follows:-

PRIORITY-IV Wards of Disabled in Service and Boarded out with Disability Attributable to Military Service

Eligible

(i) All Armed Forces Personnel who were found medically unfit for further service due to disability occurred in service conditions (as mentioned in category 'B' and 'C' of para 4.1 of Ministry of Defence, Govt of India letter No 1 (2) 97/1/D (Pen-C) dated 31 Jan 2001 (Appx 'C') and subsequent amendments) and are invalid out from service as per Army Rule 13 3 III (iii) after having invalid Medical Board and are in receipt of Disability Pension consisting of Service Element and Dis-



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ability Element as per Para 7 (Appx 'C') are eligible for Priority-IV.

(ii) All Armed Forces Personnel who were found medically unfit for certain duties due to disability occurred in service conditions (as mentioned in category 'B' and 'C' of para 4.1 of Ministry of Defence, Govt of India letter No 1 (2) 97/I/D (Pen-C) dated 31 Jan 2001 (Appx 'C') and subsequent amendments) and are retained in service after being downgraded as (LMC) due to disability by the competent medical authorities and subsequently invalidated out of service under Army Rule:

(aa) 13 3 III (iii) (a) (i)- no sheltered appointment is available in the unit (LMC cases only).

(ab) 13 3 III (v) - only on LMC ground which is attributable to or aggravated by military service.

(ac) Are in receipt of Disability Pension consisting of Service Element and Disability Element are eligible for Priority-IV.

(iii) All Armed Forces Recruits who were invalid out from service as per Army Rule 13 3 IV after having Invalid Medical Board and are granted Medical/Disability Pension and ESM status as per DESW, Ministry of Defence letter 12/1/2005/D(Res) dated 01 Feb 2006 (Appx 'D') are eligible for Priority-IV.

Documents to be checked:-

(a) Service book issued by Records to check

(i) Service Particulars of Armed Forces Personnel

(ii) Length of service

(iii) Clauses of Army Rule under which he/she is invalidated out from service.

(iv) Details of family

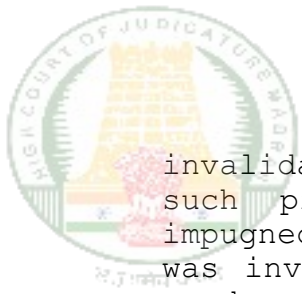
(b) Invalidment Medical Board proceedings documents for checking reason for invalidment and attributability of disability

(c) PPO initial and subsequent PPO to check whether individual is getting disability pension consisting of service element and disability element. (Service element will be granted only if his/her disability is attributable/aggravated to military service).

(d) ESM I-card issued by RSBs/ZSBs to check ESM status.

(e) ECHS Card, Aadhaar Card, 10th class certificate (of children) and Dependent card.

19. Priority IV states that those officers who were



invalidated on account of AR 13 (3) III (v) would be eligible to such priority. According to the Additional Director under impugned order dated 27.01.2022, the father of the petitioner was invalidated on account of the aforesaid Rule and thus, his ward would be entitled to claim priority only under this category. The relevant documents to be produced for establishing entitlement under Priority IV make no reference to a Battle Causality Certificate evidently for the reason that Priority IV does not deal with servicemen who have been wounded in action.

20. This, in my view, is the critical, distinguishing factor between Priorities II & IV. At the risk of reputation, and in the interest of clarity, I would state that Priority II applies to the wards of those who have been 'disabled in military action' and Priority IV applies to those who have been 'disabled on account of military service'.

21. My attention is drawn to the Army Rule to point out certain distinctions therein and to say that 13(3) only addresses the issue of who the competent officers will be to certify disability in different cases. In view of the critical distinction noted between the language and intendment of Priorities II & IV, I see no reason to examine the differences in the Rules.

22. One question that arises is as to whether the SOP issued by the Board would at all be material in dealing with or resolving the question that arises before me. The respondents fall entirely within the control of the State and are thus bound by G.O.(D) No.33 and the contents thereof. It is relevant to note that the aforesaid G.O has been issued in January 2022, nearly two years after the SOP was issued.

23. The State is thus well aware of the same, seeing as the SOP has been the subject matter of reference and deliberations by High Courts including the Madras High Court in The Chief Secretary, Tamil Nadu State and Others Vs. D.Kuralarasan and Others [Manu/TN/6162/2021] referring to the decision of the Delhi High Court in Harshil Anand and Others Vs. UOI and Others [Manu/DE/2892/2016]. Reference has been made in the latter to the SOP issued by the Board notwithstanding which the conclusion was in favour of the candidates.

24. The G.O. is unambiguous, makes no reference to the SOP nor to the explanation set out thereunder and hence, it is my considered view that in according priority as per G.O.(D) No.33, one must restrict ourselves to the language, letter, spirit and intention of the Government order issued by the State. I see no necessity to advert to any other document for this purpose, including the SOP. After all, a Government Order is not in the



nature of a statute in the interpretation of which one might call into assistance an external aid or document.

25. Coming to the G.O. itself, Priority II clearly and unambiguously refers to wards of those 'disabled in action and boarded out from service' whereas Priority IV refers to wards of 'disabled in service and boarded out with disability attributed to the military service'.

26. The phrases 'in action' and 'in service' connote different events and I see no reason to merge or confuse between the two categories. Those sought to be addressed under Priority II are the wards of those servicemen who have seen action and have been disabled as a result thereof. Priority IV turns on an entirely different premise, and addresses those who have been disabled in service and boarded out on account of the disability attributed to such military service.

27. Thus, the reference to the SOP issued by the Board, which categorizes the priorities with reference to the Army Rules would not be material in this case. The impugned order passed by R2 rejects the entitlement of the petitioner with the following remarks:

S.No.	Appl No.	Name	Eligibility	Priority	Remarks
1	810971	Sahana	Yes	IV	The individual was discharged under AR 13 (3) III (v) and in receipt of both Services and Disability element.

28. The Additional Director has, in my view, erred in placing reliance upon the SOP issued by the Board. In fact, the Assistant Director, in issuing the Dependency Certificate dated 23.12.2021 has taken note of the disability suffered by the petitioner as noted in the Service Records. The certificate reads thus:

OFFICE OF THE ASSISTANT DIRECTOR, RAMANATHAPURAM
CERTIFICATE OF DEPENDENCY ON EX-SERVICEMEN
ACADEMIC YEAR 2021-22

No.RMD/2021/MBBS/BDS/0034

Dated.23-12-2021

This is to certify that Sahana S is the Daughter of and is solely dependant on the Ex-Servicemen whose particulars are furnished below. He/she is eligible for consideration for admission to professional/Academic/Technical/Law/Others course in MBBS/BDS against the reservation of seats for Wards of



Ex-Servicemen:

Priority Two-(II): Wards of Disabled in Action and boarded out from service.

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Signature of the Candidate Thiru S Mathiyalagan
Assistant Director
Ramanathapuram

SERVICE PARTICULARS OF EX-SERVICEMAN
Regimental No -2595404-A
Name - S.Sakthivel
Rank - Sep
Regiment/Corps - MADRAS REGIMENT
Date of Enrollment - 1990-12-30
Date of Discharge/Death - 2008-08-01
Cause of Discharge - AR13 3 ITEM III V

ON MEDICAL GROUND

Whether died/disabled in war/Peace

- Yes/ OP RHINO

Character assessed at the time of discharge -
EXEMPLARY

Office Seal:

Dated:23-12-2021

Thiru S Mathiyalagan
Assistant Director
Ramanathapuram

29. The reference to the relevant Army Rule convinces me that the Assistant Director has not lost sight of the same or the consequences thereof. He has however, and despite the AR, proceeded strictly and consciously upon the priority as accorded under the Government Order.

30. Learned Special Government Pleader would take pains to explain the procedure followed by the respondents, pointing out that the entirety of the applications received from candidates seeking priority under the ex-servicemen category, were forwarded to the Additional Director for verification.

31. This Court sees absolutely no flaw in the procedure followed by the respondents. It is perfectly in order that they would wish to and, they must, in fact, verify the claim in each and every case in order to ascertain that the claims of reservation put forth by the candidates are in line with applicable Government Orders. The flaw arises at the end of the Additional Director by virtue of his reference to the contents of the SOP issued by the Board that, in my view, was unnecessary.



32. In the light of the discussion as aforesaid, I am of the categoric view that the petitioner would fall only under Priority II. These writ petitions are allowed and impugned order dated 27.01.2022 of the Additional Director is set aside. The Authorities are directed to grant the petitioner admission forthwith in a seat created for the purpose as all ten seats earmarked in this category are stated to have been filled in. Connected writ miscellaneous petitions are also closed. There shall be no order as to costs.

33. List Cont.P.No.146 of 2022 on 10.03.2022.

Sd/-

Assistant Registrar (CS-III)

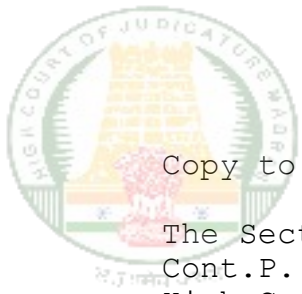
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Sub Assistant Registrar

nst/ska

To

1. The Secretary,
The Selection Committee,
Directorate of Medical Educational
62, Periyar EVR high Road
Kilpauk, Chennai - 600 010.
2. The Director,
Ex-Servicemen's Welfare Board,
Directorate of Ex-Servicemen's Welfare.
22, RajaMuthiah Salai Chennai - 600 003.
3. The Assistant Director,
District Ex-servicemen's Welfare,
Ex-servicemen's Centre, Collectorate,
Ramanathapuram - 623 503.
4. National Medical Commission,
Pocket-14, Dwarka Phase-I,
New Delhi-110 077
5. The Director,
Ex-Servicemen's Welfare Board,
Directorate of Ex-Servicemen's Welfare.
22, Choolai, Chennai - 600 003.



Copy to:

The Section Officer,
Cont.P. Section,
High Court,
Madras.

+1cc to M/s. N.Kavitha Rameshwar, Advocate SR. No.12482

W.P.Nos.2268 & 3182 of 2022 &
W.M.P.Nos.2241, 2242, 3336 & 3337

SRA (CO)
PR (04/03/2022)