



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 09.12.2021
PRONOUNCED ON : 03.01.2022
CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**
W.P.(MD)No.9838 of 2021

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and
W.M.P.(MD)Nos.7562, 8214 and 11062 of 2021

M/s.Mugavai Indane Gas Agency,
represented by its Proprietor,
K.Gurumoorthy Kamaraj,
Ramanathapuram District.

... Petitioner

vs.

The General Manager (LPG-s),
Indian Oil Corporation Limited,
Indane Area Office,
No.2, Race Course Road,
Chokkikulam, Madurai, Madurai District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the impugned order, passed by the respondent vide his proceedings in Ref.TNSO/LPG/MDU AO/MUGAVAI, dated 26.05.2021 and quash the same as illegal.

For Petitioner

:Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondent

:Mr.K.Muraleedharan

For Petitioner

:Mr.J.Bharathan

(in W.M.P.(MD)No.11062 of 2021)

O R D E R

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking interference with the impugned order, which actually is a show cause notice issued by the respondent/General Manager (LPG-s), Indian Oil Corporation Limited, Madurai, dated 26.05.2021 to the petitioner/Mugavai Indane Gas Agency, represented by its Proprietor, K.Gurumoorthy Kamaraj, Ramanathapuram District and to quash the same.

2.The sole proprietor/petitioner gas agency had been declared and selected for LPG distributorship at Ramanathapuram District by the respondent by order, dated 08.08.2016. As part of distributorship, it was necessary that the petitioner had lands for construction of godown for storing the LPG cylinders and



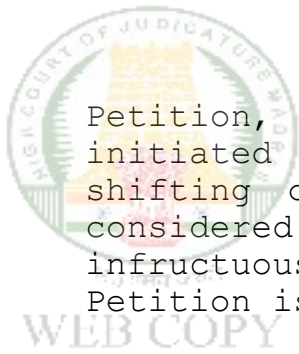
independently, further lands for construction of a show room, where the gas cylinders can be actually exhibited and sold to customers. The petitioner did not have either of the two lands.

3. In the affidavit, the petitioner had stated that he had entered into lease deeds, dated 12.08.2016 and 17.08.2016 with his relatives Mr. Muniyandi and Mrs. Subbulakshmi, respectively with respect to their lands to be utilised for the aforesaid purposes. The lease deeds were also registered in the office of the Joint Registrar, Ramanathapuram. He was permitted to put up a construction in the aforesaid lands. He had also obtained financial assistance from other relatives with condition that he would repay the monies borrowed in instalments.

4. The petitioner claimed in his affidavit that he was therefore compelled to affix his signatures in blank papers. It is claimed that on the basis of such signed blank papers, two of his relatives, G. Praveenkumar son of Ganesh and Mrs. C. Vanithamani wife of Chidambaram, had prepared a partnership deed, in which, the petitioner was shown as first party/Managing Director and the other two were shown as second and third parties and that they had commenced the partnership firm calling "Mugavai Indane Gas Agency". The nature of the business of the partnership firm was to issue new domestic LPG connections and generally do all other related activities with respect to providing LPG connections to various customers and also to maintain show room and godown with all safety norms in the place. A perusal of the partnership deed also shows that disputes should be referred to arbitration.

5. The petitioner claiming that the said partnership deed was the result of fraud being committed owing to his signatures in blank papers being utilised unauthorisedly, had filed O.S.No.81 of 2020 on the file of the District Munsif Court, Ramanathapuram District, seeking a declaration that the said partnership deed, which is incidentally unregistered and dated 22.05.2019, as null and void. The relief was sought against the parties to the partnership deed. A further relief was also sought against the other two individuals, namely, M. Muniyandi and G. Subbulakshmi, with whom he had entered into lease deeds, seeking to restrain them from interfering with his possession of the properties, which had been leased out to him, except by due process of law and a further permanent injunction was also sought against the signatories in the partnership deed, restraining them from interfering with the business, "Mugavai Indane Gas Agency". The said suit is pending.

6. The petitioner, to continue with his licence with the respondent, had submitted an application on 02.12.2020 to shift the show room to some other place. He also sought to shift the godown to another place and had submitted an application in this regard on 30.03.2021. The petitioner filed W.P.(MD)No.7785 of 2021 seeking a



Petition, the respondent herein had stated that actions are being initiated against the petitioner for irregularities and therefore, shifting or re-location of the show room and godown cannot be considered. That information rendered the Writ Petition infructuous. The petitioner had not disclosed whether the Writ Petition is pending or not as on date.

7.The impugned order, dated 26.05.2021 had been then issued by the respondent calling for explanation from the petitioner as to why the distributorship should not be terminated for violation of a specific clause, namely, that the distributorship was granted to the petitioner in his individual capacity as proprietor, but that he had entered into a partnership deed sharing profits and losses and it was the partnership, which in effect was the distributor/licensee and this was a violation of the terms of the agreement originally entered into since the licence was granted only to the petitioner.

8.The petitioner claims that this Court should interfere with the impugned order on the ground that a reading of the impugned order would show that the respondent had already formed an opinion that there has been violation of the terms and condition of the distributorship agreement and it was therefore, urged that giving an answer or explanation to the same would only be an exercise of futility. It was under these circumstances that the petitioner had come to Court seeking the reliefs as stated above.

9.A counter had been filed on behalf of the respondent questioning their description in the cause title. It was stated that the sole proprietor of the petitioner, K.Gurumoorthy Kamaraj was declared as a successful candidate for LPG distributorship. However, the respondent had received complaints from G.Subbulakshmi claiming that the petitioner had constructed the show room for the distributorship in a land not owned by him. A similar complaint was received from M.Muniyandi again complaining that the petitioner had constructed godown for the distributorship in a part of land, which was not leased to him. Further, the access road to the godown was not owned by the petitioner. These complaints compelled the respondent to examine whether the petitioner had violated the terms of the distributorship agreement. The petitioner was not permitted to re-locate the show room and the LPG godown and action was contemplated against the petitioner for violation of the terms of the distributorship agreement.

10.It was also claimed in the counter that the petitioner in his explanation to the two complaints by G.Subbulakshmi and M.Muniyandi had admitted that some part of the godown had been constructed by him in an area which was not leased to him. He also admitted that the truck parking area and the show room was also partially on lands which were not leased to him.

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the partnership deed stated that the other two parties, G.Praveen Kumar and C.Vanithamani who were shown as signatories in the partnership deed had actually visited his office and had signed in his presence on 11.07.2019. It was therefore, claimed that the petitioner had violated the distributorship terms and his own declaration which he had given at the time when he was granted LPG distributorship licence. It was stated that an obligation had been placed on the petitioner not to transfer his interest by an agreement to any other persons/entity.

12.It was stated that by entering into a partnership and agreeing to share the profit and loss of the distributorship business, the petitioner had directly violated such condition. It was also stated that the Notary Public had also confirmed that the three signatories to the partnership appeared in his office and signed the partnership deed in his presence. It was, therefore, stated that the impugned show cause notice had been issued after coming to a *prima facie* opinion and that it had been issued in accordance with law. It was categorically stated that there was no pre determination.

13.It was also claimed that the interim order of stay granted on 07.06.2021 should be vacated. In this connection, the respondent had filed W.M.P.(MD)No.8214 of 2021 seeking to vacate the order of interim stay.

14.One of the lessess, Subbulakshmi wife of Ganesh had also filed W.M.P.(MD)No.11062 of 2021 seeking permission to implead her as second respondent in the Writ Petition.

15.Heard arguments advanced by Mr.M.Ajmal Khan, learned Senior Counsel for the Writ Petitioner, Mr.K.Muraleedharan, learned Counsel for the respondent. Mr.J.Bharathan, learned Counsel also sought to advance his arguments in W.M.P.(MD)No.11062 of 2021, but since an order had not been passed and it was stated that the impleading petition will be considered along with the Writ Petition, it was so informed to the learned Counsel.

16.The issue, which arises for consideration in this Writ Petition, is whether this Court can interfere with a show cause notice issued to the petitioner.

17.The learned Senior Counsel for the petitioner insists that in the peculiar circumstances of the case, interference is warranted, particularly, because, a reading of the show cause notice would clearly indicate that the respondent had come to a conclusion that the petitioner had actually violated the terms of the distributorship agreement and therefore, any explanation given would be only rejected.

<https://hcservices.courts.gov.in/hcservices/> connection, the learned Senior Counsel placed



reliance on a judgment of the Honourable Supreme Court in the case of **Siemens Limited vs State of Maharashtra and others**, reported in **(2006) 12 SCC 33**, wherein, the Honourable Supreme Court had taking into consideration the facts of that particular case and held as follows:

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"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including *State of U.P. v. Brahm Datt Sharma* [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , *Special Director v. Mohd. Ghulam Ghouse* [(2004) 3 SCC 440 : 2004 SCC (Cri) 826] and *Union of India v. Kunisetty Satyanarayana* [(2006) 12 SCC 28 : (2006) 12 Scale 262] , but the question herein has to be considered from a different angle viz. when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See *K.I. Shephard v. Union of India* [(1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686] .) It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.

10. The said principle has been followed by this Court in *V.C., Banaras Hindu University v. Shrikant* [(2006) 11 SCC 42 : (2006) 6 Scale 66] , stating: (SCC p. 60, paras 48-49)

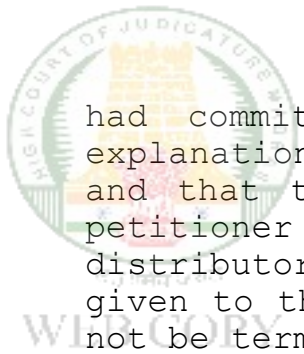
"48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case.

49. In *K.I. Shephard v. Union of India* [(1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686] this Court held: (SCC p. 449, para 16)

'It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.'

"

19. The learned Senior Counsel took the Court through the show cause notice, wherein, the allegations against the petitioner raised by Mr.M.Muniyandi, G.Subbulakshmi and G.Praveenkumar, by complaint dated 05.10.2020 had been mentioned and thereafter, it had been further stated that after enquiry and also after examining the petitioner and the complainants, it was found that the petitioner



had committed irregularities and that they had sought for an explanation and that the petitioner had given his explanation also and that the petitioner, in view of such arrangement between the petitioner and his relatives, had violated various conditions of distributorship. It had been finally stated that a reply should be given to the show cause notice as to why the distributorship should not be terminated.

20.Mr.M.Ajmal Khan, learned Senior Counsel stated that the respondent had actually given a termination notice in the form of show cause notice. He pointed out that that the petitioner had instituted a suit stating that the partnership deed, which is the basis on which the show cause notice issued, was a result of fraud. The learned Senior Counsel therefore stated that the Writ Petition should be allowed and further proceedings with respect to the show cause notice should be quashed.

21.Mr.K.Muraleedharan, learned Counsel for the respondent however pointed that the petitioner was a beneficiary of the agreement and there was an obligation that he should not transfer his rights or interest or even share the profits with anybody else. It had been on the basis of his application that distributorship was granted and if he had not been possessed of necessary lands, or financial capacity, then the distributorship could have been granted to some other deserving individual.

22.Mr.K.Muraleedharan, learned Counsel also relied on a judgment of Honourable Supreme Court in the case of **State of Orissa and others vs Mesco Steels Limited and another**, reported in (2013) 4 SCC 340. In that particular case, in the face of status-quo having been granted by the Supreme Court in earlier proceedings, the Government had issued a show cause notice calling for an explanation with respect to a mining lease. The Supreme Court had framed the following three questions for consideration:

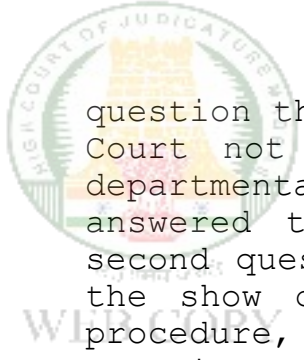
"17.We have given our anxious consideration to the submissions made at the Bar. The following questions, in our opinion, arise for determination:

"17.1.Whether the writ petition filed by the respondent Company was pre-mature, the same having been filed against an inter-departmental communication that did not finally determine any right or obligation of the parties?

17.2.Whether the show-cause notice could be ignored by the High Court simply because, it had been issued in violation of the interim order passed by it requiring the parties to maintain status quo?

17.3.Whether the show-cause notice was without jurisdiction and could, therefore, be quashed?"

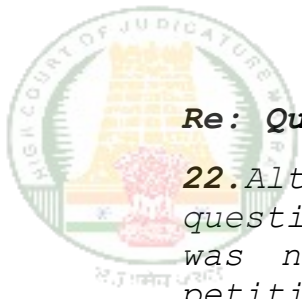
23.The Hon'ble Supreme Court held with respect to the first



question that since the Writ Petition had been filed before the High Court not against the show cause notice, but against an inter-departmental communication, the Writ Petition was pre-mature and answered the question in the affirmative. With respect to the second question, they stated that the High Court should have taken the show cause notice as a reason to relegate the parties to a procedure, which was just and fair and answered the question in the negative. With respect to the third question, they stated that the respondent should answer the allegations in the show cause notice and a reasoned order should then follow. The reasonings of the Honourable Supreme Court with respect to the questions 2 and 3 are as follows:

"Re: Question 2

21. In the light of what we have said while deciding Question 1 above, this question should not hold us for long. It is true that the High Court had by an interlocutory order directed the parties to maintain status quo, but whether the said order had the effect of preventing the State Government from issuing a show-cause notice was arguable. The issue of show-cause notice did not interfere with the status quo. It simply enabled the respondent Company to respond to the proposed action. Be that as it may, once the show-cause notice was issued, the High Court could have directed the respondent Company to respond to the same and disposed of the writ petition reserving liberty to it to take recourse to such remedy as may have been considered suitable by it depending upon the final order that the Government passed on the said notice. What was significant was that the respondent Company had not assailed the validity of the show-cause notice on the ground of jurisdiction or otherwise. If the validity of the show-cause notice was itself in question on the ground that the Government had no jurisdiction to issue the same, nothing prevented the Company from maintaining a writ petition and challenging the notice on that ground. The High Court would in that event have had an opportunity to examine the validity of the notice. In the absence of any such challenge the High Court could not simply ignore the notice even if it was issued in breach of the order passed by the Court. It was one thing to prevent further steps being taken pursuant to the notice issued by the Government but an entirely different thing to consider the notice to be non est in the eye of the law. The High Court could have taken the show-cause notice as a reason to relegate the parties to a procedure which was just and fair and in which the respondent could urge all its contentions whether on facts or in law. Our answer to Question 2 is, therefore, in the negative.

**Re: Question 3**

22. Although it is not necessary for us now to examine the question of validity of the show-cause notice as the same was not questioned before the High Court in the writ petition filed by the respondent Company, we may to the credit of Mr Dwivedi, learned Senior Counsel appearing for the respondent Company, mention that he did not seriously challenge the validity of the notice on the ground of jurisdiction. Mr Dwivedi fairly conceded that the State Government could, in appropriate situations, exercise the option of recalling or modifying its recommendations but contended that the present case did not present a situation that could justify such a recall."

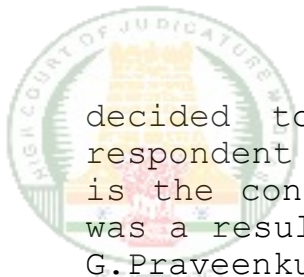
24. Pointing out the reasons above stated, Mr. Muraleedharan, learned Counsel insisted that the petitioner must be directed to answer the show cause notice issued and also stated that the respondent had not taken any decision and that it was also stated so in the counter affidavit. In the counter affidavit, it had been very categorically stated as follows:

"16..... The show cause notice issued by the General Manager LPG of IOC Tamil Nadu State Office, Chennai is legal and is in accordance with law. There is no predetermination. Hence this writ petition is liable to be dismissed."

25. Mr. J. Barathan, learned Counsel appearing for the party, who wanted to implead herself in the Writ Petition, also wanted to advance arguments. But, since it would clearly take the focus away from the core issue raised whether the petitioner should be directed to reply to the show cause notice or not, the Court held that it would be prudent that the learned Counsel advances his arguments in the suit, which is pending between the Writ Petitioner and proposed party and therefore, did not regrettably give that opportunity to the learned Counsel.

26. I have given careful consideration to the arguments advanced and the documents available on records.

27. The petitioner, Mugavai Indane Gas Agency, which is said to be a sole proprietor firm had been selected for LPD distributorship of the respondent for Ramanathapuram District. Subsequently, complaints had been received with respect to misuse of the lands which had leased out by Mr. Muniyandi and G. Subbulakshmi for construction of godown and show room. A complaint had been received that the show room and godown had been constructed in a part of land, which had not actually been leased. It had also transpired that the sole proprietor had entered into a partnership deed with two other individuals G. Praveenkumar and C. Vanithamani and they had



decided to share the profits. It is the contention of the respondent that this violates the condition of distributorship. It is the contention of the Writ Petitioner that the partnership deed was a result of a fraud utilising signed blank papers available with G.Praveenkumar and C.Vanithamani from whom the Writ Petitioner had borrowed monies. The Writ Petitioner has also contended that he had instituted a suit seeking a declaration that the partnership deed is null and void.

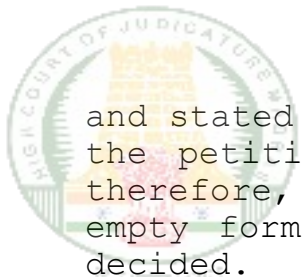
28.The petitioner appears to have got himself entangled with four of his relatives and raising a dispute against them and he had instituted O.S.No.81 of 2020 before the District Munsif Court, Ramanathapuram. This suit had been instituted in October 2020. The complaint from M.Muniyandi, G.Subbulakshmi and G.Praveenkumar had emanated on 05.10.2020. The proximity between the date of the complaint and the date of the suit is quite glaring. Whether the suit had been instituted *bona fide* or not is a question and that can be determined only on the conduct of the parties during the course of trial. Having granted distributorship, the respondent has a predominant right to examine the *bona fide* of the person to whom distributorship was granted. If complaints are received then they have duty to examine such complaints and put the licensee on notice of such complaints and seek explanation.

29.It is categorically stated by the respondent herein in their counter affidavit that the partnership deed had been signed in the presence of a Notary Public who confirmed to the respondent that the signatories to the partnership deed signed the deed in his presence. This is a significant fact stated by the respondent. It is quite damaging to the contention of the petitioner that he had signed in blank papers. Quite strangely, the petitioner had not issued any response to the said statement in the counter affidavit by filing any reply. This leaves us with a situation where an oath is stated against an oath. The fact can be resolved only during the enquiry or during the course of trial.

30.The larger interest, reputation and goodwill of the respondent is also at stake and the Court cannot turn a blind eye to that factor. While balancing the relevant rights and duties of the petitioner and the respondent, the scale certainly falls in favour of the respondent with respect to their right to seek explanation from the petitioner. The burden is heavily on the petitioner to give necessary explanation. He cannot continue to function as a licensee, when there is a cloud or suspicion raised by parties who are indirectly connected with his business venture. This can be cleared only by the petitioner by giving necessary explanations to the respondent.

31.The learned Senior Counsel for the petitioner placing reliance on a judgment in the case of **Siemens (referred to supra)**

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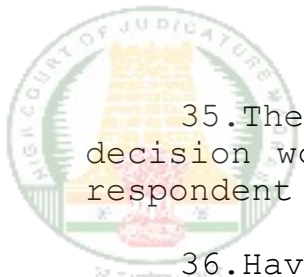
and stated that the respondent had already come to a conclusion that the petitioner had violated the terms of the distributorship and therefore, contended that giving an explanation would only be an empty formality, as the fate of the petitioner had already been decided. Whether it had already been decided or not itself is an issue to be taken and that can be determined only on the basis of the nature of enquiry proposed to be conducted by the respondent. That itself will depend on the nature of explanation which the petitioner gives. This takes us back to the fact that the burden is heavily on the petitioner, in the first place, to give an explanation. He can seek an opportunity of personal hearing. He can even seek an opportunity of documents being presented. He can even seek statements to be obtained from other individuals directly or indirectly connected with the enquiry proceedings. The respondent only seeks to ensure that the license, which they had granted, had been granted to a *bona fide* person and not to somebody, who had taken advantage of that licence to the detriment of other *bona fide* applicants. This is a duty cast on the respondent.

32. In ***Siemens (referred supra)***, the Government directed payment of cess and had issued a show cause notice. It had been observed by the Honourable Supreme Court as follows:

"5. By reason of a purported show cause notice, the appellant was directed to make payment of cess with interest immediately in respect of the purported supplies made to Navi Mumbai parties right from 1-6-1996."

33. It is thus seen that even though it had been termed as "Show Cause Notice", it was actually a demand for payment of cess. It was under those circumstances that the Honourable Supreme Court interfered with such a Show Cause Notice, claiming that it was actually a demand and therefore, that the issue had been pre-determined. There was no other option. The only option was to pay the cess demanded.

34. In the instant case, after indicating that the petitioner had re-constituted the proprietorship into a partnership without approval from the respondent, the petitioner was still given an opportunity to answer as to why the distributorship should not be terminated. The petitioner must give his explanation. He can even plead ignorance of the partnership deed. He can even say that the partnership deed was a result of fraud. He can even confirm the partnership deed and seek that it was borne out of necessity. He can even plead ignorance of necessity to obtain consent of the respondent and then seek consent. There are various options opened to the petitioner. The petitioner may even make a *bona fide* declaration of facts and circumstances before the respondent. Therefore, the judgment in ***Siemens (referred supra)*** may not be directly applicable to the facts of this case.



35.The learned Counsel for the respondent had stated that a decision would be taken only based on the explanation given by the respondent herein.

36.Having entered into a contractual relationship with the respondent, an obligation is placed on the petitioner to answer any queries raised by the respondent. It must be kept in mind that the respondent is not a third party stranger, but has a direct existing juridical relationship with the petitioner and therefore, has every right to question the petitioner, if the respondent is of the opinion that the petitioner has violated the terms of the agreement. This is an issue entirely between the petitioner and the respondent and this Court can never enter into a discussion of the same. It would be extremely inappropriate on the part of this Court to interfere when anyone of the two parties have a right to question any act of the other contracting parties.

37.The right to seek explanation is inbuilt in the very fact that the agreement had been entered into with consensus *ad idem*. When an agreement is entered into agreeing to do a particular act in a particular manner, and if it is suggested that there is act performed in any other manner, then one of the contracting parties, has every right to question the other and put the other on notice about the violation and seek for explanation. This is a right inbuilt in the terms of the agreement directly and implicitly.

38.In view of these facts, let me not enter into any further discussion on the relationship between the petitioner with his lessors or with those from whom he had borrowed money or with respect to the suit which had instituted, but rather confine myself to the show cause notice, which had been issued by the respondent and direct the petitioner to answer the show cause notice. In the show cause notice, it is mentioned that 15 days time is granted to the petitioner. The same time line is now confirmed by this Court and the petitioner is directed to give his explanation to the show cause notice within a period of fifteen days from the date on which a copy of this order is uploaded in the High Court website.

39.In view of all the reasons, the Writ Petition is dismissed. No costs. The application to vacate state, W.M.P.(MD)No.8214 of 2021 need not be considered and therefore, the same is closed. The application to implead in W.M.P(MD)No.11062 of 2021 is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)



Cmr

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-44[F] dated 03/01/2022)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-135[F] dated 04/01/2022)

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03.01.2022

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