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Cont.P.Nos.593 & 594 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.01.2023

PRONOUNCED ON: 28.02.2023

CORAM

THE HONOURABLE MR. JUSTICE **S.VAIDYANATHAN**

AND

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

Cont.P.Nos.593 & 594 of 2019

Cont.P.No.593 of 2019

K.Madalaimuthu

.. Petitioner

Vs.

1. Dr.P.Senthilkumar, I.A.S.,
Principal Secretary to
Government of Tamil Nadu (FAC)
Public (Special.A) Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2. Dr.Girija Vaidyanathan, I.A.S.,
Chief Secretary to Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai – 600 009.

.. Respondents

Cont.P.No.594 of 2019

K.Madalaimuthu

.. Petitioner

Vs.

1. Shri R.K.Gupta, I.A.S.,
Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi – 110 011.



2. Shri Kumar Vaibhav Gaur,
Joint Secretary and
The Selection Committee for Selection of IAS,
UPSC, Dholpur House, Shahjahan Road,
New Delhi – 110 011.

.. Respondents

Common Prayer: Contempt Petitions filed under Section 11 of Contempt of Courts Act, to punish the respondent for committing Contempt of Court by their deliberate failure to comply with the directions of this Court vide common order dated 07.11.2017 made in WP Nos.17447 and 16433 of 2017 dated 07.11.2017.

For Petitioner : Mr.N.L.Rajah, Sr. Counsel
in both Cont.Ps. for Dr.P.S.Vijayakumar

For Respondents
in Cont.P.No.593/19 : Mr.V.Arun, AAG,
Assisted by Mr.T.Arunkumar, AGP
in Cont.P.No.594/19 : Mr.R.Priyakumar
Standing Counsel for UPSC

COMMON ORDER

RMT.TEEKAA RAMAN, J.

The petitioner in WP Nos.17447 and 16433 of 2017 has filed the above two contempt petitions wherein, Cont.P.No.593 of 2019, is against the Chief Secretary and Principal Secretary (Public) Department, Government of Tamil Nadu, while Cont.P.No.594 of 2019, is against Secretary-UPSC and Joint Secretary-UPSC, alleging, non compliance of directions issued by the Division Bench of this Court in WP Nos.17447 and 16433 of 2017. The



above contempt petitions have been placed before us, as one of us is party, to the order in the above said common order dated 07.11.2017. The operative portion of the said order runs as under:

“16.In fine, as already observed, ends of justice would be met only if the ACRs of the first respondent other than those written by his Juniors and to be decided by the UPSC alone has to be taken into consideration, for consideration of the first respondent for appointment to Indian Administrative Service. If the recommendations made by the Committee to be considered by the UPSC and the first respondent is found eligible to be conferred with IAS, he be conferred with IAS. Since he has already retired on attaining the age of superannuation, he would be entitled for the retirement benefits as that of the IAS Officer. Thus, the authorities concerned are directed to carry out the exercise as directed by the UPSC for consideration of the first respondent to Indian Administrative Service, within a period of three months from the date of receipt of a copy of this order, if he is found eligible.”

2. The learned Senior Advocate Mr.N.L.Rajah, appearing on behalf of the petitioner could contend that no fresh interview or personal *viva-voce* was conducted by the Review Selection Committee and in respect of ACR, it was not properly evaluated and re-assessed in tune with the order passed in the above stated writ petitions.

3. The learned Additional Advocate General appearing for the Chief Secretary and Secretary to Government of Tamilnadu, by relying upon the



counter affidavit submitted that there is no violation or deviation in the action taken on behalf of the Government of Tamil Nadu and prayed for closure of the Cont.P.No.593 of 2019.

4. Based on the counter filed by the 2nd respondent on behalf of UPSC, Mr.R.Priyakumar, learned Standing counsel submitted that the order passed by this Court in W.P.No.17447 and 16433 of 2017, has been scrupulously followed in letter and spirit and prayed for closure of Cont.P.No.594 of 2019.

5. The main grievance of the Contempt Petitions is, non inclusion of his name under the category of non State Civil Service officers, Select List for the year 2007.

6. The Chequered history of this litigation by the Contempt Petitioner, shun unnecessary facts as could been seen from the order passed in the writ petitions and from the records, are as under.

7. (a) The Selection Committee Meeting for selection of Non-State Civil Service officers for appointment to the IAS of Tamil Nadu Cadre, during the year 2007, was held on 30th and 31st December 2007.



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(b) Aggrieved by non-sponsoring of petitioner's name by the State Government for consideration for appointment by selection to the IAS of Tamil Nadu Cadre during the year 2007, Shri K.Madalaimuthu, petitioner herein has filed OA No.565/2011 before the Central Administrative Tribunal, Madras Bench. The Tribunal vide their order dated 31.05.2011 allowed the OA and directed as follows:

(a) There will be a direction to the respondents to consider and appoint the applicant to the IAS by selection in terms of the IAS (Appointment by Selection) Regulation 1997 against the vacancies notified for the year 2007 in the light of the judgment of the High Court in WP No.29573/2010 dated 22.02.2011 with all consequential and attendant benefits of seniority, pay fixation etc.

(b) While appointing the applicant in respect of the vacancy of the year 2007, the said appointment should be adjusted in the future vacancy as per the sanctioned strength.

(c) In the event of selection and appointment of the applicant, the selection of the persons for the year 2007 should not be disturbed except fixation of their seniority with the applicant.

(d) The above exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.”

(c) The said order of the tribunal was challenged by the State Government in WP No.16147 of 2011, and the same was dismissed on 12.01.2012, and on appeal, it was confirmed by the Hon'ble Supreme Court



in SLP on 16.04.2012 and thereafter, in view of the directions of the Central Administrative Tribunal, Madras Bench dated 31.05.2011 in OA No.565/2011, a Review Selection Committee Meeting (in short 'RSCM') was held on 17.09.2012 to consider the name of Shri K.Madalaimuthu [petitioner herein] for the Select List of 2007 for appointment to the IAS of Tamil Nadu Cadre.

(d) As the ACRs of only two year i.e. 1999-2000 and 2005-06 were certified as valid by the State Government, the ACRs for these two years only were taken into account by the RSCM held on 17.09.2012. Based on the average quantitative assessment made on the basis of the two valid ACRs and multiplying the same by 5, the RSCM assigned him 35 marks for service records. Further, he was also interviewed by the Selection Committee and based upon his performance in the interview, he was awarded 25 marks in the interview. Thus, he obtained a total of 60 marks.

(e). As marks obtained by Shri K.Madalimuthu (Contempt Petitioner) were less than those obtained by the last person recommended for appointment by the SCM held on 30th /31st December, 2007 (a total of 71 marks were awarded to Shri P.Muthuveerran based upon assessment of his



service records and interview), the RSCM did not recommend inclusion of the name of Shri K.Madalimuthu (Contempt Petitioner) in the Select List of 2007.

(f) Aggrieved by his non inclusion in the Select List of 2007, by the RSCM held on 17.09.2012, Shri K.Madalaimuthu filed OA No.1669/2013 before the Central Administrative Tribunal, Madras Bench. The Tribunal vide order dated 10.02.2015 directed to reconsider the case of the applicant by convening fresh RSCM and observed as under:

“28. In the aforesaid, this Tribunal is of the view that a direction should be given to the UPSC to reconsider applicant's case notwithstanding the fact that he has retired from service on superannuation. Accordingly, this Tribunal issues the following directions:-

(a) Respondent No.1 & 2 shall reconsider the case of the applicant by convening a fresh Review Selection Committee Meeting for the vacancies of 2007 by considering the legally acceptable ACRs of previous five years and if necessary, in view of the special circumstances of the case, even ignoring the necessity of such unreliable ACRs altogether. If the applicant is selected, the respondents shall make necessary adjustments in the vacancies of the forthcoming years.

(b) Respondent No.4 & 5 are directed to send all the ACRs of the applicant for the period of five years preceding the vacancy year i.e. 2007 to the UPSC within two months from the date of receipt of a copy of this order. The UPSC shall deal with such ACRs keeping in view of the legal position as discussed above.



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(C) Respondent No.1 & 2 shall convene a fresh Review Selection Committee Meeting for the year 2007 within two months from the date of receipt of the aforesaid ACRs from the State Government. If no ACRs are received from the State Government, the UPSC may take appropriate decision regarding the admissibility of the available ACRs in view of the adversarial disposition of the writers of such ACRs towards the applicant. The UPSC shall also consider the other reports sent by the State Government regarding the meritorious services rendered by the applicant for the purpose of evaluation envisaged in Regulation 5 of the IAS (Appointment by Selection) Regulations 1997.

(g) In compliance of the order dated 10.02.2015 of the Central Administrative Tribunal, Madras Bench, a fresh Review Selection Committee Meeting was convened on 10.07.2015 to reconsider the name of Shri K.Madalaimuthu (Contempt Petitioner) for inclusion in the Select List of 2007 for appointment to IAS of Tamil Nadu Cadre.

(h) The prime direction of the Tribunal was with regard to consideration of legally acceptable ACRs of relevant 5 years period, the RSCM held on 10.07.2015 had re-assessed only the service records, including the ACRs for the period 2001-02 to 2005-06 and the records of meritorious service rendered by him as furnished by the State Government in pursuance of the Tribunal's order dated 10.02.2015. **The Committee also decided to adopt the marks for interview in respect of**



Shri.K.Madalaimuthu (Contempt Petitioner) assigned by the Review

Selection Committee convened on 17.09.2012, as he was already given a chance to appear in the interview. (emphasis supplied)

(i) The Review Selection Committee of 10.07.2015 awarded total 61 marks on the basis of fresh assessment of service records (36 marks) and interview (25 marks). The said Review Selection Committee adopted the 25 marks given in interview by the previous RSCM held on 17.09.2012. The total marks (61 marks) awarded to Shri K.Madalaimuthu (Contempt Petitioner) were less than Shri P.Muthuveerran (71 marks), the last person recommended for appointment by the Selection committee in its meeting held on 30th and 31st December, 2007. The RSCM did not recommend the inclusion of the name of Shri K.Madalaimuthu in the Select List of 2007 for appointment by selection to the IAS of Tamil Nadu Cadre.

(j) Aggrieved by the non selection, again the petitioner has filed Contempt Petition No.13 of 2016 in OA No.1669 of 2013 alleging non compliance of the order dated 10.02.2015 before the Administrative Tribunal. In the said Contempt Petition, following order has been passed.

“Thus it is clear that the respondents have not complied with the



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directions of the Tribunal dated 10.02.2015 in its spirit and letter even after sufficient time and accordingly, Registry is directed to issue Statutory Notice to all the Respondents R1 to R5 under CAT (Contempt of Courts) Rules.

Post the matter on 20.06.2017 for appearance of all the respondents 1 to 5. Enclose copy of this order a/w the notice to all the respondents.”

(k) The above orders of the tribunal was challenged by the UPSC in WP No.16433 of 2017 and another Writ Petition was filed by the State Government in WP No.17447 of 2017. By a common order dated 07.11.2017, this Court has disposed of the matter. Paragraph No.16 of the order, which is already extracted supra, is reproduced herein for a comprehensive analysis

“16.In fine, as already observed, ends of justice would be met only if the ACRs of the first respondent other than those written by his Juniors and to be decided by the UPSC alone has to be taken into consideration, for consideration of the first respondent for appointment to Indian Administrative Service. If the recommendations made by the Committee to be considered by the UPSC and the first respondent is found eligible to be conferred with IAS, he be conferred with IAS. Since he has already retired on attaining the age of superannuation, he would be entitled for the retirement benefits as that of the IAS Officer. Thus, the authorities concerned are directed to carry out the exercise as directed by the UPSC for consideration of the first respondent to Indian Administrative Service, within a period of three months from the date of receipt of a copy of this order, if he is found eligible.”



Alleging non compliance of the order made in the above paragraph, the present contempt petitions have been filed.

8. The core contention of the learned Senior Advocate Mr.N.L.Rajah, appearing for the Contempt Petitioner is that fresh interview was not conducted and no *viva-voce* was conducted by the UPSC and the list of ACRs sent by the State Government to the Review Selection Committee Meeting was not in accordance with the directions of this Court.

9. We have perused the counter affidavit filed by the 1st respondent and 2nd respondent in Cont.P.No.594 of 2019 and counter affidavit filed by the officers on behalf of the Chief Secretary and Secretary to the Government of Tamil Nadu, respondents 1 and 2 in Cont.P.No.593 of 2019.

10. In the counter affidavit filed by the respondents 1 and 2 in Contempt Petition No.593 of 2019, the Chief Secretary and Secretary to State Government have narrated the procedures contemplated by them at paragraph Nos.14 and 15, which is reproduced hereunder.

“14. In view of the above order of the High Court of Madras, a fresh proposal was sent to the Union Public Service Commission to consider Thiru.K.Madalaimthu, Additional Inspector General of Registration, (Retd.,) for selection to IAS for the year 2007. The Madras High Court in



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its order dated 07.11.2017 has observed that ends of justice would be met only if the ACRs of the first respondent other than those written by his juniors and to be decided by the UPSC alone has to be taken into consideration, for consideration of the first respondent for appointment to Indian Administrative Service. Accordingly, the whole personal file of Thiru K.Madalaimuthu, Additional Inspector General of Registration (Retd.) was forwarded to the Union Public Service Commission and it was indicated that the following periods of ACRs of Thiru K.Madalaimuthu which were written by his seniors for consideration for Review Selection Committee Meeting. [Emphasis supplied]

Sl.No.	Period	R.O.Grading	S.O.	Remarks
1	22.11.1989 to 28.02.1990	Outstanding	-	Not Reviewed
2	22.10.1990 to 30.04.1991	Outstanding	-	Not Reviewed
3	01.05.1991 to 31.07.1991	Very Good	-	Not Reviewed
4	01.08.1991 to 15.06.1992	-	-	Certificate
5	01.04.1992 to 14.06.1992	Good	-	Not Reviewed
6	21.07.1992 to 07.09.1994	Outstanding	-	Not Reviewed
7	08.09.1994 to 08.03.1995	Good	Accepted	Reviewed
8	09.03.1996 to 27.09.1995	Outstanding	-	Not Reviewed
9	28.09.1995 to 31.03.1996	Very Good	-	Not Reviewed
10	01.04.1996 to 25.07.1996	Very Good	Accepted	Reviewed
11	26.07.1996 to 13.08.1996	-	-	Certificate
12	14.08.1996 to 29.12.1996	Very Good	Accepted	Reviewed
13	30.12.1996 to 31.01.1997	-	-	Certificate
14	01.02.1997 to 31.03.1997	Satisfactory	Accepted	Reviewed
15	01.04.1997 to 31.03.1998	-	-	Certificate

The Union Public Service Commission was informed that as per the orders of the Madras High Court, the UPSC will decide which ACRs has to be taken into consideration for Review Selection Committee Meeting to consider Thiru K.Madalaimuthu for selection to IAS.

15. ...the ACRs of Thiru.K.Madalamuthu which were written by his juniors are as follows:



<i>Sl.No.</i>	<i>Period</i>	<i>R.O.Grading</i>	<i>S.O.</i>	<i>Remarks</i>
1	01.04.1998 to 17.11.1998	Good	Accepted	Written by Junior
2	18.11.1998 to 31.03.1999	Good	Accepted	Written by Junior
3	01.04.1999 to 31.03.2000	Satisfactory	Upgraded by SO as Outstanding	Written by Junior
4	01.02.2000 to 31.03.2000	-	-	Certificate
5	01.04.2000 to 11.06.2000	-	-	Certificate
6	12.06.2000 to 31.03.2001	Out Standing	Accepted	Written by Junior
7	01.04.2001 to 31.03.2002	Very Good	Accepted	Written by Junior
8	01.04.2002 to 31.03.2003	Very Good	Accepted	Written by Junior
9	01.04.2003 to 31.03.2004	Very Good	Accepted	Written by Junior
10	01.04.2004 to 31.08.2004	Out Standing	Accepted	Written by Junior
11	01.09.2004 to 25.12.2004	Good	Accepted	Written by Junior
12	25.12.2004 to 31.03.2005	Good	Upgraded by SO as Very good	Written by Junior
13	01.04.2005 to 31.10.2005	Good	Accepted	Written by Junior
14	01.11.2005 to 22.05.2006	Good	Accepted	Written by Junior
15	22.05.2006 to 31.08.2006	Good	Accepted	Written by Junior
16	01.09.2006 to 30.11.2006	-	-	Certificate
17	01.12.2006 to 25.01.2007	-	-	Certificate
18	26.01.2007 to 31.03.2007	-	-	Certificate

The Union Public Service Commission was informed that the above periods of ACR should be omitted.

The Review Selection Committee Meeting was held at New Dehli on 17.08.2018 at 12.15 pm. The marks awarded therein are as under.

<i>Sl. No.</i>	<i>Name of the Officer (Thiru) Date of Birth</i>	<i>Marks in CR (Max.50 Marks)</i>	<i>Marks in Interview (Max.50 Marks)</i>	<i>Total Marks (Out of 100)</i>	<i>Remarks</i>
1	K.Madalaimuthu 20.12.1955	42	25	67	

11. The marks obtained by Thiru K.Madalaimuthu (67) are less than those obtained by Thiru P.Muthuveerran (71) who was the last person



recommended for appointment by the Selection Committee in its meeting held on 30th & 31st December, 2007. As such, the Review Selection Committee did not recommend the inclusion of the name of Thiru K.Madalaimuthu in the Select List of 2007 for appointment by selection to the Indian Administrative Service of Tamil Nadu Cadre.

12. As per the statistics furnished by the State Government, it is seen that for Non-SCS Select List 2007, 36 officers belonging to more than 12 departments of Tamil Nadu were recommended for consideration for selection through Non-SCS Select List 2007. As per regulations 4(iii) of the IAS (Appointment by Selection) Regulations, 1997, for one vacancy, 5 officers have to be recommended to the Union Public Service Commission for consideration for selection to IAS. Accordingly, the names of 25 officers were recommended to the Union Public Service Commission for consideration for selection to IAS for Non-SCS Select List 2007 and five officers were selected and appointed in IAS on merit.

13. The relevant rule regarding the role of the State Government in nominating the officers for selection of IAS for non-SCS, are under the Regulation 3(3) of the IAS (Appointment by Promotion) Regulations, 1995,



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which is as follows:-

“The absence of a member, other than the Chairman or member of the Commission, shall not invalidate the proceedings of the Committee if more than half the members of the Committee had attended its meetings.”

As per the above regulations, the above committee is statutorily valid one.

14. Thus, we find that the role of the State Government is limited to the extent of sending proposals to the Union Public Service Commission to prepare / Review the Select List. The service particulars of the officers who are in the zone of consideration such as date of birth, whether he belongs to Scheduled Caste / Scheduled Tribe, Date of Confirmation in the State Civil Service / Non-State Civil Service and number of years of service rendered in the State Civil Service / Non-State Civil Service, integrity certificate, particulars, regarding departmental proceedings, criminal proceedings, adverse remarks, penalties imposed, if any, Annual Confidential Reports (ACRs) of the officers, eligibility list and seniority list of the officers will be forwarded to the Union Public Service Commission for consideration by the Selection Committee to prepare / review the Select List.

15. Therefore, after going through the two tabular columns in para 14 and 15 of the counter filed by the officers of the State Government, that are



extracted supra, we are of the considered view that the order passed by them in respect of the role confined to / assigned to, Secretaries of the State Government have been duly complied with and there can be no second view on this issue.

16. As to the allegation made against the officers of the UPSC, we have perused the file marked 'Confidential'-UPSC File No.6/18(1)/2018 (AIS) was placed before us regarding the procedure adopted by the Review Selection Committee that met at New Delhi on 17.08.2018 and we have gone through the file. The reasons assigned by them and procedures adopted have been lucidly explained by them.

17. It is seen from the counter affidavit filed by the UPSC, the State Government, vide D.O.Letter No.964/Spl.A/2016-8 dated 14.06.2018 has submitted a proposal to convene a fresh Review Selection Committee Meeting to reconsider the name of the petitioner for the Select List 2007, in which the ACR of the petitioner which was written by the officers who became juniors to him after re-fixation of seniority and list of ACRs written by the other officers who continue to be seniors to him, as already extracted in the tabular column in the preceding paragraph, and after reconsideration of



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the ACRs that was written by the seniors for the period as mentioned in the order passed by the writ petition, the marks obtained by the Thiru.K.Madalaimuthu were less than the marks obtained by Thiru P.Muthuveerran, who was the last person recommended for appointment by the Selection Committee in the meeting held on 30th and 31st December 2007. In spite of the revision of the ACR as directed by this Court in the above said writ petitions, though the marks has been increased from 61 to 67, he could not make it over and above the last candidate viz. Shri.P.Muthuveerran, assumes significance.

18. The petitioner was already given a chance to appear in the interview held on 17.09.2012 for selection of Non-State Civil Service Officers for appointment to the IAS of Tamil Nadu Cadre for the Select List of 2007 and was interviewed accordingly. In his OA No.1669/2013, the petitioner had not challenged the marks obtained in the interview held on 17.09.2012. There was no specific direction in the Order dated 07.11.2017 passed by this Court to conduct his interview afresh. This Court had only directed to reconsider the case of petitioner by considering the ACRs other than those written by his juniors. Accordingly, the Review Selection Committee which met on 17.08.2018, had re-assessed his service ACRs only



and adopted the 25 marks awarded by the Review Selection Committee that met on 17.09.2012.

19. As stated supra, one of the prime contention of the petitioner is that no fresh interview and *viva-voce* was conducted.

20. From the records, as extracted supra and the counter affidavit filed by the 2nd respondent in Cont.P.No.594 of 2019, the duly constituted Selection Committee had interviewed each candidate as per Regulation 5 of IAS (Appointment by Selection) Regulations, 1996 and awarded marks as per their performance in the interview held on 17.09.2012. Further, it is seen that the contempt petitioner has not challenged the mark in the interview in OA No.1669 of 2013. The petitioner who filed OA No.1669 of 2013 has not challenged the mark granted in the interview. So also there is no specific direction in the order dated 07.11.2017 passed by this Court in the writ petitions to conduct interview afresh and on perusal of the operative portion of the paragraph No.16 of the impugned order, which is extracted supra, this Court has only directed to re-consider the case of the applicant by considering the ACRs other than those written by his juniors and it is demonstrated from the records that the Review Selection Committee



considered only those ACRs of the petitioner that were written by the seniors of the petitioner.

21. Thus, we find that the conduct of the UPSC in adopting 42 marks that was awarded in the said Review Selection Committee meeting held on 17.08.2018 cannot be found fault with and the same is in tune with the order passed by this Court.

22. From the records it is seen that pursuant to the order passed by this Court, the ACRs written by the seniors have been considered which has resulted in increasing the number of marks from 36 to 42 as could be seen from the counter statement filed by the State Government as extracted supra.

23. It is also seen from the counter that the Review Selection Committee that met on 17.08.2018 to review the case of the petitioner, considered the ACRs written by Officers senior to the petitioner, as provided by the State Government in pursuance of the aforesaid Order dated 07.11.2017 of this Court. Based on assessment of these ACRs, 42 marks were awarded by the said Review Committee. It may be observed that though his marks in ACRs have been increased from 36 to 42, the petitioner



still fell short of marks, than the last successful candidate, assumes significance.

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24. Therefore, from the records as well as the narration of facts in the counter affidavits, we are of the considered view that the direction issued by this Court in the above said writ petitions WP Nos.17447 and 16443 of 2017 have been duly complied with by both the State Government and UPSC. Hence, we do not find any deviation or violation of our orders and we find no merits in the Contempt Petitions.

25. Accordingly, the Contempt Petitions stand closed. No costs.

(S.V.N.,J.) (T.K.R.,J.)
28.02.2023

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Cont.P.Nos.593 & 594 of 2019

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Pre-delivery Common Order made in
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28.02.2023