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W.P.No.25758 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.07.2023

Pronounced on : 01.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.25758 of 2014

V.Gopinathan

... Petitioner

Vs.

- 1.M/s.Repco Home Financial Limited,
Rep. by its Chairman,
Corporate Office: Alexander Square
No.2, (Old No.34 & 35) 3rd Floor,
Sardar Patel Road, Guindy,
Chennai 600 032
- 2.M/s.Repco Home Financial Limited,
Rep. by its Managing Director,
Corporate Office: Alexander Square
No.2, (Old No.34 & 35) 3rd Floor,
Sardar Patel Road, Guindy,
Chennai 600 032
- 3.M/s.Repco Home Financial Limited,
Rep. by its Executive Director,
Corporate Office: Alexander Square
No.2, (Old No.34 & 35) 3rd Floor,
Sardar Patel Road, Guindy,
Chennai 600 032

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the



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proceedings on the file of the first respondent in Ref.No.20/Emp.No.88/2013/HR/R1 dated 04.12.2013 which confirmed the second respondent's order vide Ref.No.1/Emp.No.88/2012/HR/AA3 dated 27.08.2012 rejecting the petitioner's appeal against the third respondent's order of dismissal vide Ref.No.1/Emp.No.88/2012/HR/DA2 dated 04.04.2012 and quash the same and consequently direct the first respondent to reinstate the petitioner in service with all attendant service and monetary benefits.

For Petitioner : Mr.V.Perumal

For Respondents : Mr.E.Om Prakash,
Senior Counsel
for Mr.A.Ilangovan

ORDER

A.Petition:

This writ petition has been filed challenging the order passed by the first respondent dated 04.12.2013 thereby confirmed the order passed by the second respondent dated 27.08.2012 thereby rejected the appeal filed by the petitioner and confirmed the order of dismissal passed by the third respondent dated 04.04.2012.



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B. The Brief Facts:

2. The petitioner joined in the services of Repatriates Cooperative and Finance and Development (REPCO) Home Finance Limited in the month of July 2004. He had worked in various branches upto 04.04.2012. While he was holding the post of Chief Manager in Adyar Branch between 26.05.2008 and 20.11.2010, one, Mr.George Fernandez and Mrs.Vennila Fernandez approached for housing loan for construction of building in Anbalagan Nagar, Perambur and Dharma Nagar, Ayyapakkam. After having been satisfied with the viability of the loan applications and after following all the norms and guidelines, the petitioner had recommended for sanction of loan aggregating Rs.1.60 crores. On the basis of his recommendation, the Head Office had sanctioned loan to them to the tune of Rs.63,00,000/- for the property located at Anbalagan Nagar, Perambur, Chennai and to the tune of Rs.68,00,000/- for the property located at Dharma Nagar, Ayyapakkam, Chennai. Further, in order to purchase a flat by one Kumar, sanctioned loan to the tune of Rs.25,00,000/-. They committed default and as such, the third respondent initiated disciplinary proceedings and framed



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charges against the petitioner under Regulation 7 of Repco Home Finance Limited Employees' (Conduct) Regulations, 2011 (hereinafter called as RHFL Regulations. The charge sheet dated 10.10.2011 was served on the petitioner and the charges are as follows:

"That you were functioning as Chief Manager at our Adyar Branch during the period between 26.05.2008 and 20.11.2010 and while functioning in your position as such you showed undue official favour to Mr. George Fernandes and his wife Mrs. Venila Fernandes by sanctioning four different loans in their names for construction purposes and also an accommodation loan in the name of the V. Kumar for Purchase of Flat by committing various irregularities more fully described in the Statement Imputation of Misconduct here below:

"In the process you disbursed RHFL Funds to the tune of Rs. 1.60 crores to Mr. George Fernandes and his wife Mrs. Venila Fernandes exceeding the security value by Rs. 40 lakhs and thus exposed the fund to the risk of Financial Loss

"Thus by your above acts you failed to discharge your duties with utmost integrity, honesty, devotion and diligence and protect the interest of RHFL and thus



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acted in a manner unbecoming of an employee of the RHFL and thereby deemed to have contravened Regulation 3(1) read with Regulation No. 24 of the RHFL Employees' (Conduct) Regulations, 2011."

3. On receipt of the charge memo, the petitioner submitted his explanation. However without satisfying with the explanation submitted by the petitioner, the third respondent appointed an enquiry officer to conduct enquiry. In the meanwhile, the petitioner was suspended from service. The enquiry officer conducted enquiry and concluded as follows:

"Findings:

"By weighing the oral as well as documentary evidence adduced by both the parties and analyzing the evidence as discussed in the previous pages all the components of allegation are proved beyond any shadow of doubt.

"Therefore the charge that Mr. V. Gopinathan has showed under official favour Mr. George Fernandes and his wife Mrs. Venila Fernandes by

1. Sanctioning 4 different loans in their names for construction purpose and released 2 loans amounting to



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Rs. 68 lakhs without any construction being made by commuting various other irregularities.

2. Sanctioned a loan in the nature of Mr. V. Kumar just to accommodate Mr. George Fernandes is proved conclusively.

"Thus total loans amounting to Rs 169.79 Lakhs is released against the security of Rs. 101 lakhs. The property for which loan sanctioned in the name of Mr. V. Kumar has been attached by the Enforcement Directorate. Hence the funds to the extent of Rs. 69 Lakhs is exposed to risk of financial loss.

"Therefore the charge vide charge sheet no. 5/EMP No. 88/2011/HR/DA-I dated 10.10.2011 is proved beyond any shadow of doubt against Mr. V. Gopinathan."

4. The enquiry report dated 01.03.2012 was forwarded to the petitioner calling upon him to submit his explanation within a period of 10 days. However on receipt of the same, the petitioner failed to submit any explanation on the enquiry report. Therefore, the third respondent passed order thereby dismissed the petitioner from service with effect from 04.04.2012 for breach of Regulation 3(1) r/w Regulation 24 RHFL



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Regulations. Aggrieved by the order of dismissal, the petitioner preferred appeal before the second respondent and the same was also dismissed. Again, the petitioner filed review before the first respondent and the same was also dismissed and confirmed the order passed by the second and third respondents herein.

5. Heard, Mr.V.Perumal, learned counsel appearing for the petitioner and Mr.E.Om Prakash, the learned Senior Counsel for the respondents. This Court perused the materials placed on record.

6. Mr.V.Perumal, learned counsel appearing for the petitioner submitted that enquiry officer itself submitted the report dated 01.03.2012. However, the disciplinary authority by the communication dated 29.02.2012 enclosed the report submitted by the enquiry officer dated 01.03.2012 thereby called upon the petitioner to submit explanation for the enquiry report. Therefore, the disciplinary authority pre-determined the conclusion of the enquiry officer and called upon the petitioner to submit his explanation. In this regard, the learned counsel



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for the petitioner relied upon the judgment in the case of ***Siemens Ltd. Vs. State of Maharashtra and Others*** reported in ***(2006) 12 SCC 33***, in which the Hon'ble Supreme Court of India held that when a show cause notice is issued with pre-determination, therefore a writ petition is 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. The disciplinary authority already made up its mind to impose the punishment of dismissal on the delinquent.

6.1 He further submitted that the enquiry report was sent only on 09.03.2012 and the same was received on 20.03.2012. Therefore, the petitioner was not given opportunity to submit his explanation in time. Final order was passed on 04.04.2012. Final order was passed only for the reason that non submission of reply to the second show cause notice. The entire charges amount to negligence. Even according to the disciplinary authority, the petitioner failed to verify the documents submitted by the borrowers and recommended for sanction. Therefore, the petitioner never sanctioned any loan and he had forwarded his



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recommendation for sanction. On receipt of the said recommendation, Head Office only sanctioned loan. Even then, the officials who sanctioned loan were not charged for any charges. The petitioner alone was charged and punished with capital punishment. Therefore, it is violation of Article 14 of Constitution of India.

6.2 He further submitted that there was huge delay of 1 ½ years to serve charge memo to the petitioner. The alleged loan transaction happened in the year 2010 whereas charge memo was served only in the year 2011. Therefore, prejudice caused to the petitioner and he ought not to have been punished with capital punishment. With regard to delay in serving charge memo, the learned counsel for the petitioner relied upon the judgment in the case of *A.Sundaraganesan Vs. The Principal Secretary/Transport Commissioner* reported in *MANU/TN/1431/2011*, wherein it is held that the nature of the allegations raised in the charge and the delay in which the same is issued, constrained to hold that same do not stand the test of reasonableness and if the disciplinary proceedings into such charge is allowed to go on, it is only a futile exercise



prejudicial to the interest of the petitioner.

6.3 In this regard, he also relied upon the judgment of this Court in the case of *Union of India and others Vs. T.K.Choudhuri in WA.Nos.767 to 769 of 1998*), wherein it is held that for delay, no explanation has been given. In the absence of any explanation, concluded that the charge memo came to be issued with bad intention to harass the delinquent. Inordinate delay would certainly be cause hardship and irreparable loss to the delinquent. He also relied upon the judgment in the case of *Commissioner, Sankarapuram Panchayat Union Vs. S.A.Abdul Wahab and Others* reported in *1996 SCC Online Mad 1224*, wherein it is held that there is unnecessary, unexplained and unjustifiable long delay in initiating departmental proceedings, it will result in causing great prejudice to the person against whom such a proceedings is initiated and it will be a ground for quashing the proceedings.

6.4 He further submitted that even as per the charges, it would



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not amount to any misconduct as per the Rule 4 to 23 of RHFL Employees' (Conduct) Regulations. Therefore, as per the Rule 24, a breach of any of the provisions of these regulations shall be deemed to constitute 'misconduct'. As far as the petitioner is concerned, even according to the respondent, he committed only negligence and it would not amount to any misconduct. The charge itself is not coming under the Rule 4 to 23 of RHFL Employees' (Conduct) Regulations. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of *Union of India and Others Vs. J.Ahmed* reported in **(1979) 2 SCC 286**, wherein the Hon'ble Supreme Court of India held that charges in that case indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the delinquent. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings. Misconduct means, misconduct arising from ill motive, acts of negligence, errors of judgment or innocent mistake, do not constitute such misconduct. Further held that a single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in



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serious or atrocious consequences the same may amount to misconduct It is difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would *ipso facto* constitute misconduct. There may be negligence in discharge of duty and a lapse in performance of duty or error or judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless consequences directly attributable to negligence would be such as irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. In any case, failure to attend the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of Conduct Rules as it would indicate lack of devotion to duty.

6.5 He further submitted that though Head Office only sanctioned loan, they were not charged for anything and the petitioner alone was charged for the contravention of Rule 3(1) r/w Rule 24 RHFL Employees' (Conduct) Regulations. In this regard, the learned counsel for



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the petitioner relied upon the judgment in the case of ***M.L.Kalra Vs. Union of India and Anr.*** reported in ***2008 SCC Online Del 1210***, wherein the Hon'ble Division Bench of Delhi High Court held that loan proposal was sanctioned by the Board of Directors. Primary liability was of the sanctioning authority and without proceeding against the Directors, no action could be taken against the appellant. The appellant was only a recommending authority and his responsibility was therefore subjected to the decision of the immediate specified superior authority. The appellant's immediate superior authority made no complaint against him and therefore, no proceedings could be initiated against the appellant. He also relied upon the judgment in the case of ***Dipankar Sengupta and another Vs. United Bank of India and others*** reported in ***1999 (1) LLN 728***, wherein the Hon'ble Division Bench of Calcutta High Court held that the delinquent was only recommending authority. The sanctioning authority was a higher authority and the authority was required to sanction the amount of loan to the companies or the parties. Without framing any charges as against the sanctioning authority, they charged the delinquent. It is nothing but non application of mind. In this



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regard, the learned counsel for the petitioner also relied upon the judgment in the case of ***Ganpati Singh Vs. The Board of Directors and Appellate Authority and Ors.*** reported in ***MANU/BH/0103/2013***, in which the Hon'ble High Court of Patna held that the recommending authority is for sanctioning loan cannot be legally termed as misconduct as it is for the sanctioning authority whether on the basis of earlier recommendation any sanction had been made.

7. The respondent filed counter and Mr.E.Om Prakash, learned Senior Counsel appearing for the respondents stated that the petitioner had shown undue official favour to Mr.George Fernandas and his wife Mrs.Vennila Fernandas by sanctioning four different loans in their names for construction purpose. The petitioner also disbursed loan amount in favour of one, V.Kumar for purchase of flat by committing various irregularities. The petitioner disbursed loan to the tune of Rs.1,60,00,000/- to them exceeding the security value by Rs.40,00,000/-. Thus, he failed to discharge his duties with utmost integrity, honesty, devotion and diligence and protect the interest of the respondents Bank



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and thus acted in a manner unbecoming of an employee of Repco Home Finance Limited thereby he deemed to have contravened Regulation 3(1) r/w 24 of RHFL Regulations. During the enquiry, the respondents produced 134 documents and 4 witnesses. Though the petitioner was provided with an opportunity to cross examine the witnesses and to adduce evidence on his behalf, no defence witness was examined by the petitioner and no documents were produced on his behalf. The total loans amounting to Rs.169.79 lakhs in the name of the borrowers under the security only to the tune of Rs.101 lakhs. In fact, the Enforcement Directorate has attached the said property for which loan sanctioned in the name of another person V.Kumar. After completion of enquiry, enquiry report was communicated to the petitioner only on 09.03.2012. Though the communication was dated 29.02.2012, it was discharged only on 09.03.2012 by Registered Post with acknowledgement due. It was received by the petitioner on 20.03.2012. Even then, the petitioner failed to submit his explanation for the second show cause notice.



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C.Findings:

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8. During the enquiry, the respondents produced 134 documents and marked as MEX-1 to MEX-134 and had examined 4 witnesses as MW-1 to MW-4. However, the petitioner did not examine any witness and also did not mark any document on his behalf. In fact, he did not even cross examine the respondents witnesses. The petitioner had entertained the borrowers who were residing beyond 25 km radius as prescribed under the RHFL guidelines. The petitioner failed to enquire about the criminal antecedents of the borrowers. Already they were facing prosecution instituted by M/s.Catholic Syrian Bank. Further, the petitioner disbursed the loan amounts without ensuring the progress of construction works. Without any construction, the petitioner disbursed the entire loan amount to the borrowers. The petitioner valued the property for the loan at Rs.1,07,80,500/-. Whereas the actual market value is reported less than Rs.30,00,000/- thereby banker may incur financial loss. One V.Kumar was sanctioned loan on accommodation for the benefit of the said George Fernandes and his wife. Thus, by these acts, the petitioner failed to discharge his duties with utmost integrity,



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honesty, devotion and diligence and protect the interest of the respondents. Thus, he was rightly charged for the contravention of Rule 3(1) r/w 24 of RHFL Employees' (Conduct) Regulations.

9. Under loan ADR01276, the petitioner disbursed loan on 25.03.2010 to the tune of Rs.10,00,000/- and Rs.5,00,000/-. Thereafter, under loan ADR 01277 disbursed loan on 26.03.2010 to the tune of Rs.7,23,310/- and Rs.15,00,000/-. The petitioner disbursed the said loan amount without even verifying the stages of construction. Moreover within a span of 35 days, the entire loan amount was released in favour of the borrower. He also did not permit other employees to inspect the construction. It is also evident that no construction had taken place in the building. Thus, the petitioner disbursed loan amount to the tune of Rs.169.79 lakhs against the security of Rs.101 lakhs. The property, for which loan sanctioned in the name of one, V.Kumar, already had been attached by Enforcement Directorate.



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10. Insofar as delay in serving the charge memo is concerned, last part of the loan was disbursed on 30.04.2010. Later, borrowers committed default and on verification, the respondents found that the petitioner violated the regulations and he was served with charge memo on 10.10.2011. Therefore, there was no delay in serving the charge memo to the petitioner. It was served on the petitioner within reasonable time. Hence, the judgments cited by the petitioner are not helpful to the case on hand. In this regard, it is relevant to rely upon the judgment in the case of *Additional Superintendent of Police Vs. T.Natarajan* reported in *MANU/SC/2089/1998*, in which it is settled that mere delay in initiating proceedings would not vitiate the enquiry unless the delay results in prejudice to the delinquent officer. In the case on hand, the petitioner failed to substantiate that the prejudice caused to him due to 1 ½ years delay in serving the charge memo.

11. Insofar as pre-determination is concerned, after completion of enquiry, the enquiry officer submitted his report dated 01.03.2012. Though the disciplinary authority by the communication dated



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29.02.2012 annexing the enquiry report dated 01.03.2012, it was communicated to the petitioner only on 09.03.2012 by the registered post. Therefore, enquiry officer would have informed about the enquiry report and immediately the disciplinary authority prepared the communication in order to seek explanation. However, it was dispatched only on 09.03.2012. Though it was received by the petitioner on 20.03.2012, the petitioner failed to submit his explanation within a period of 10 days. The disciplinary authority passed final order only on 04.04.2012. Therefore, the petitioner was given sufficient opportunity and it would not amount to pre-determination, determining the punishment. The petitioner was being Chief Manager of the Bank, he received loan application from the borrowers. On verification of the documents for the purpose of security and recommended for the loan to the tune of Rs.169.79 lakhs.

12. Though the head office was the sanctioning authority, it sanctioned the loan only on the recommendation of the petitioner. He was in charge of Chief Manager and he was the competent person for



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recommending to sanction the loan. That apart, the petitioner valued the property more than the original value and recommended for sanctioning of the loan. Hence, the petitioner only contravened the regulations and he was rightly charged by the disciplinary authority. That apart, though the head office sanctioned the loan, the petitioner without even making any inspection, with regards to the stages of construction, he disbursed the entire loan amount within a span of 35 days. No prudent man disburse the entire loan amount within a span of 35 days, that too sanctioned for construction. Further he disbursed the loan in favour of one V.Kumar just to accommodate the other borrowers i.e. George Fernandes and his wife. The property which was deposited as security for the said loan, was already attached by Enforcement Directorate. Therefore, the disbursal of the entire loan would amount to misconduct and clear contravention of Rule 3 (1) r/w 24 of RHFL Employees' (Conduct) Regulations. Therefore, the judgments cited by the learned counsel appearing for the petitioner are not helpful to the case on hand.

13. That apart already the appellate authority and revisional



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authority confirmed the order of the disciplinary proceedings and dismissed the appeal and revision filed by the petitioner as against the order of dismissal. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***State Bank of India and others Vs. K.S.Vishwanath*** reported in ***AIR 2022 SC 2531***, in which the Hon'ble Supreme Court of India held that the disciplinary authority agreed with the findings of the enquiry officer and it passed order of punishment. Once the evidence has been accepted by the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if the courts are the appellate authority. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***The State of Karnataka and Ors. Vs. N.Gangaraj*** reported in ***2020 3 SCC 423***, wherein it is held that The power of judicial review is confined to the decision-making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority. In the case of ***Union of India Vs. P.Gunasekaran*** reported in ***(2015) 2 SCC 610***, the Hon'ble Supreme



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Court of India have given parameters as to when the High Court shall not interfere in the disciplinary proceedings:

- (i) re-appreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.*

14. Therefore, the writ petition is filed seeking for a remedy by exercising judicial review of the orders of the authorities under domestic enquiry without any basis. The scope of judicial review in service matters is limited only to breach of a mandatory obligation imposed on a statute and correct errors of law and cannot interfere with the conclusions in the enquiry when the same is in accordance with law, cannot re-appreciate or go into the inadequacy or reliability of evidence, cannot correct the error



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of fact and cannot go into the proportionality of the punishment unless it shocks its conscience.

D.Conclusion:

15. In view of the above discussions, this Court finds no infirmity or illegality in the orders passed by the respondents and the writ petition itself is devoid of merits. Accordingly, this writ petition is dismissed. There shall be no order as to costs.

01.08.2023

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Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The Chairman
M/s.Repco Home Financial Limited,
Corporate Office: Alexander Square
No.2, (Old No.34 & 35) 3rd Floor,
Sardar Patel Road, Guindy,
Chennai 600 032
- 2.The Managing Director,
M/s.Repco Home Financial Limited,
Corporate Office: Alexander Square
No.2, (Old No.34 & 35) 3rd Floor,
Sardar Patel Road, Guindy,
Chennai 600 032
- 3.The Executive Director
M/s.Repco Home Financial Limited,
Corporate Office: Alexander Square
No.2, (Old No.34 & 35) 3rd Floor,
Sardar Patel Road, Guindy,
Chennai 600 032
4. The Government Advocate
High Court, Madras.

Order made in
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01.08.2023