

W.P. Nos. 1242 of 2020 & batch

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	17.02.2025, 20.02.2025, 24.02.2025
PRONOUNCED ON	07.03.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

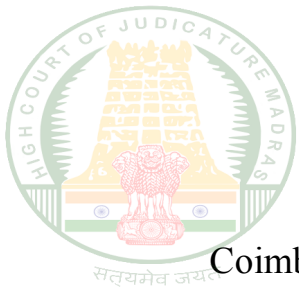
W.P. Nos.1242, 10704, 11138, 11712, 11714, 12577,
16622, 16623, 16767 of 2020
along with
W.M.P. Nos. 14399, 15507, 20622 of 2020

The Central Board of Trustees,
Employees Provident Fund,
Represented by the Assistant Provident
Fund Commissioner,
Bhavishyanidhi Bhawan, P.B.No.3875,
Dr.Balasundaram Road,
Coimbatore – 641 018.

...Petitioner in W.P.No.1242 of

The Regional Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishyanidhi Bhawan, P.B.No.3875,
Dr.Balasundaram Road,
Coimbatore – 641 018. ...Petitioner in W.P.Nos.11138, 12577,
16622 of 2020

The Assistant Provident Fund Commissioner,
Office of the Regional Provident Fund Commissioner,
Bhavishyanidhi Bhawan, P.B.No.3875,
Dr.Balasundaram Road,



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Coimbatore – 641 018.

...Petitioner in W.P.Nos.10704, 11712,
11714,16623, 16767 of 2020

Vs.

1. M/s. Coimbatore North Sarvodaya Sangh
(TN / 2901/B), No.255, Navab Hakeem Road,
Coimbatore – 641 001.Respondent in W.P.No.1242 of
2020
2. M/s. Sri Gopal Naidu Children School,
No. 8/11, MBN Street, Peelamedu,
Coimbatore – 641 001.Respondent in W.P.No.10704 of 2020
3. M/s. Patspin India Ltd,
Ponneri,
Kottamangalam,
Udumalpet.Respondent in W.P.No.11138 of 2020
4. M/s. SGP Exim (P) Ltd
New No.68, Cathedral Road,
Gopalapuram,
Chennai – 600086.Respondent in W.P.No.11712 of 2020
5. M/s. Waterfall Marketing Company
2nd Floor, “Trinity Tower” No. 30,
Conron Simith Road,
Gopalapuram
Chennai – 600086. ...Respondent in W.P.No.11714 of 2020
6. M/s. Sulochana Cotton Spinning Mills Ltd,
K.Vadamadurai,
Mettupalayam Road,
Coimbatore – 641 017. ...Respondent in W.P.No.12577 of 2020
7. M/s. Sulochana Cotton Spinning Mills
K.Vadamadurai,
Mettupalayam,
Coimbatore – 641 017. ...Respondent in W.P.No.16622 of 2020



W.P. Nos. 1242 of 2020 & batch

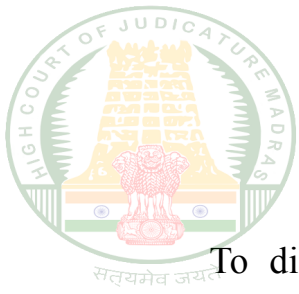
8. M/s. Reshmi Industries,
No.7, Amman Kulam Road,
P.N.Palayam,
Coimbatore – 641 037. ...Respondent in W.P.No.16623 of 2020

9. M/s. Srinivasa Theatre,
Avinashi Road,
Tirupur – 641 603 ...Respondent in W.P.No. 16767 of 2020

Relief claimed in all W.Ps:

To call for the records relating to the proceedings of the Employees Provident Fund Appellate Tribunal New Delhi dt. 4.7.2011 in ATA No. 924(13) 2005 (W.P.No.1242 of 2020), order dt. 18.11.2014 in ATA No. 1119(13) 2014 (W.P.No.10704 of 2020), order dt. 18.11.2014 in ATA no. 1019(13)2014 (W.P.No. 11138 of 2020), order dt. 4.9.2014 in ATA No. 382 (13) 2013 (W.P.No. 11712 of 2020), order dt. 4.9.2014 and subsequent order dated 25.11.2014 in ATA No. 383 (13) 2014 (W.P.No.11714 of 2020), order dt. 5.8.2013 in ATA No. 750(13) 2012 (W.P.No. 12577 of 2020), order dt. 12.12.2012 in ATA No. 280(13) 2012 (W.P.No.16622 of 2020), order dt. 19.8.2014 in ATA No.404 (13) 2014 (W.P.No. 16623 of 2020), order dt. 16.10.2014 in ATA No. 42(13) 2014 (W.P.No. 16767 of 2020) and quash the order passed therein by issue of a Writ of Certiorari or any other appropriate writ, order or direction in the nature of writ and pass such further or other orders as this Hon'ble Court deems fit.

Relief claimed in W.M.Ps.



W.P. Nos. 1242 of 2020 & batch

To dispense with the production of the original impugned order dt 4.9.2014 in ATA No. 383 (13) 2014 (W.M.P.No.14399 of 2020), order dt. 5.8.2013 in ATA No. 750(13) 2012 (W.M.P.No.15507 of 2020), order dt. 12.12.2012 in ATA No. 280(13) 2012 (W.M.P.No. 20622 of 2020) pending disposal of the writ petition.

Appearance of Parties:

For Petitioners:

M/s. C.Kulanthaivel, Advocate (in W.P.No. 1242/2020)

M/s. R.Meenakshi, V.Mohanapriya, M.Suganya, and A.Nambirajan, Advocates (in W.P.Nos. 11138, 10704, 11712, 11714, 12577, 16622, 16623, 16767 of 2020)

M/s. R.Meenakshi, V.Mohanapriya,
M.Suganya, Advocates (in W.P.No. 12577 of 2020)

For Respondents:

M/s. Vikram Ramakrishnan, Hari Radhakrishnan, G.Derrick Sam, G.Vijayabalan, N.Ahिलandeeswari, V.C.Akshaya, J.Ganesh Ram, Advocates (in W.P.No.10704 of 2020)

M/s. P.Thangaraj, R.Manoharan, Advocates
(in W.P.Nos. 11138, 11712, 11714, 12577, 16622, 16767 of 2020)

For Respondent

In W.P.Nos. 1242 & 16623 of 2020 : No appearance

J U D G M E N T

Heard.

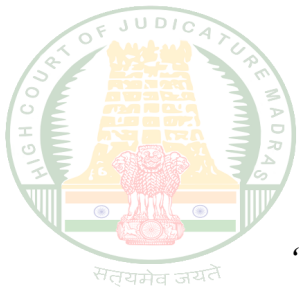


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2. All these writ petitions have been filed by the Employees Provident Fund Department, challenging various orders passed by the Employees Provident Fund Tribunal, Delhi, which granted relief to the Respondents and interfered with the orders issued by the authorities under Section 7A of the EPF Act. Notably, there has been an inordinate delay in filing these writ petitions, as illustrated in the table below:

SI. No.	Writ Petition Number	Date of Tribunal's order	Years of delay
1	W.P.No.1242/2020	070411	9 years
2	W.P.No.10704/2020	111814	6 years
3	W.P.No.11138/2020	111814	6 years
4	W.P.No.11712/2020	090414	6 years
5	W.P.No.11714/2020	090414	6 years
6	W.P.No.12577/2020	080513	7 years
7	W.P.No.16622/2020	121212	8 years
8	W.P.No.16623/2020	081914	6 years
9	W.P.No.16767/2020	101614	6 years

3. Although the duration of delay varies, the deponent of the affidavit, namely the Regional Provident Fund Commissioner, Coimbatore, has provided a standardized explanation for the delay in all affidavits. In W.P. No. 12577 of 2020, he stated in Paragraph 12 as follows:



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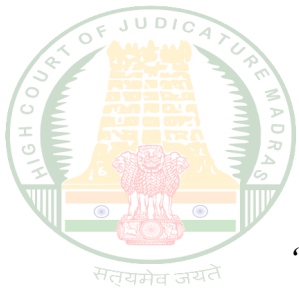
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“It is submitted that the documents were handed over to the earlier panel counsel for the petitioner. Due to ill health, he did not file the writ petition challenging the order of tribunal in time. The same was come to know recently, immediately. The petitioner received the back bundle and entrusted the case to the present counsel. The delay in filing the writ petition is neither willful nor wanton. The delay is not condoned the poor employees will be put irreparable loss and hardship.”

4. Although notices were ordered in all the writ petitions by the respective learned judges, it was only in W.P. No. 12577 of 2020 that the learned judge, Justice P.D. Audikesavalu, upon its admission on 11.09.2020, passed the following order:

“ The order in ATA No. 750(13)12 passed by the Appellate Tribunal, which is impugned in this Writ Petition, has been passed on 05.08.2013, but the instant Writ Petition has been presented before the Registry of this Court on 11.02.2020. There is conspicuously no explanation in the affidavit for that inordinate delay in filling the Writ Petition. The Petitioner is required to file a supplementary affidavit explaining the reasons for the same by 18.09.2020 without fail.”

5. In compliance with the said direction, the same deponent filed an affidavit dated Nil, September 2020, further elaborating on the reason extracted above:



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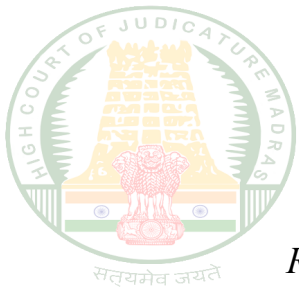
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"It is submitted that the Employees Provident Fund Tribunal, New Delhi set aside the 7A order on 05.08.2013. The order was received on 19.09.2013. The Authorized Officer directed to file writ petition before the Hon'ble High Court of Madras. Therefore, the case was entrusted to then Panel Counsel, Mr.Gunasekaran and the documents pertaining to the case were handed over to the counsel vide letter dated 04.11.2013. However, the Panel Counsel forwarded the draft affidavit only on 18.12.2015.

Subsequently new advocates were empanelled and the case was entrusted case to the newly appointed Counsel. This counsel due to ill health could not pursue the cases pertaining to Coimbatore Region to the best of his ability. The Counsel was bed ridden and consequently expired and this case was not presented / filed before the Hon'ble High Court. On learning about the above facts the office staff of the petitioner organization made in several attempts to collect the bundle from his office but the results were futile.

Thereafter, the selection committee selected a Coimbatore based advocate for the block period of 2017-2019 who subsequently resigned the post of EPF Counsel for the Coimbatore Region due to personal reasons.

It is submitted that a case was moved to our higher authority for appointing another counsel for Coimbatore Region. It was a very intricate period for this office to pursue the cases filed and pending before the Hon'ble High Court of Madras until the Panel Counsel of Salem Region was empanelled to represent cases pertaining to Coimbatore Regional (additional charge) before the Hon'ble High Court of Madras. This Counsel was too busy with the ongoing cases of both the



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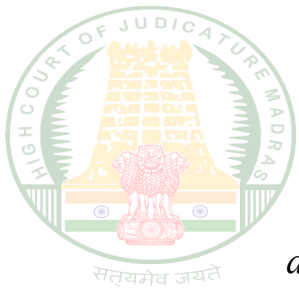
Regions could only make a marginal progress with the type of cases in hand.

Fresh panel counsels were selected during the month of July 2019 for the block year 2019-21 and Smt.R.Meenakshi the Present Counsel along with staff of this office made on all out effort to retrieve the documents / files from the office of late Panel Counsel.

It is submitted that despite the efforts put in by the present Panel Counsel and the staff of EPF organization, the case bundles could not be recovered from the previous Counsel. Therefore, copies of the documents available on records were provided to the present panel counsel for filing the writ petition before the Hon'ble High Court of Madras."

6. Following the submission of this affidavit, the learned judge ordered notice in that writ petition on 21.09.2020. However, the mere issuance of notices in all the writ petitions does not imply that the court has condoned the significant delay in filing them. Notably, after notice was issued in W.P. No. 12577 of 2020, the Respondent entered an appearance and contested the statements made by the writ petitioner. In Paragraph 12 of the counter affidavit dated 19.02.2024, the Respondent stated as follows:

"This writ petition was filed with a deliberate and excessive



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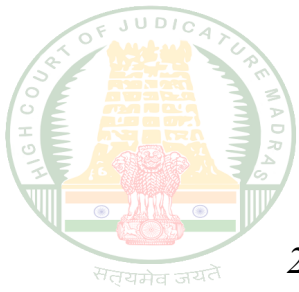
delay of 7 years (2,591 days) after Impugned order was issued by the Appellate Tribunal on 05.08.2013. The Petitioner has filed to provide any justification for this extensive delay of 2,591 days, which is unacceptable, improper and irregular. This Hon'ble High Court has previously dismissed a batch of several writ petitions in a case that was similarly filed by this same Petitioner with excessive delay."

7. The Respondent also referred to an earlier batch of cases where similar writ petitions had been dismissed due to a delay of three years. In

Paragraph 2, the Respondent stated as follows:

"I respectfully submit that, at the outset, there was an intentional inordinate delay of 7 years (2,591 days) in filing this writ petition since the impugned order was passed by the Appellate Tribunal on 05.08.2013. The Petitioner has given no explanation for the delay of 2,591 days which is unacceptable. This Hon'ble High Court dismissed a batch of 11 writ petitions in a similar case filed by this Petitioner. By its order dated 08.01.2018 in W.P.No.34447 to 34457 of 2017, this Hon'ble High Court held as follows:-

"These writ petitions have been filed challenging the very old orders dated 18.9.2014 passed by the Employees Provident Fund Appellate Tribunal, New Delhi in ATA Nos. 472(13)2011, 489(13)2011, 692(13)2011, 681(13)2011, 349(13)2011, 679(13)2011 & 470(13)11 respectively, rejecting the case of the petitioner that the employer shall deduct / pay the provident fund contributions on various allowances.



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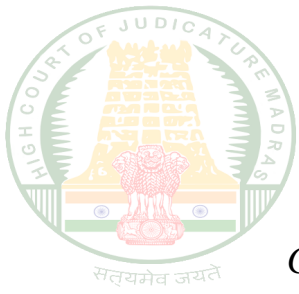


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2. *When the employer – second respondent in each of the writ petitions had admittedly made the provident fund contribution, except the terrain allowance, production bonus and special job incentive on the ground that these allowances do not form part of the wages, accepting the said payment, the petitioner – Assistant Provident Fund Commissioner, Employees Provident Fund Organisation, Coimbatore has conveniently slept over this issue for more than three years. Hence, this Court also finds no reasonable cause, leave alone sufficient cause, to entertain the writ petitions. Accordingly, these writ petitions filed after three years delay are dismissed, on the ground of laches. Consequently, W.M.P.Nos.38288 to 38298 of 2017 are also dismissed.”*

8. Dismissing such justifications, the Supreme Court, in its decision in *Office of the Chief Post Master & Ors. vs. Living Media India Ltd. & Anr.*, reported in 2012 (3) SCC 563, held as follows:

“13. it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.



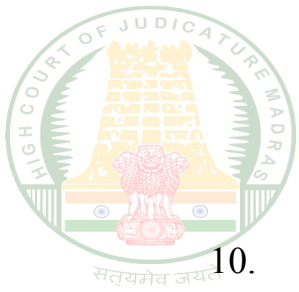
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Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

9. In its decision in *P.S. Sadasivaswamy v. State of Tamil Nadu*, reported in 1975 (1) SCC 152, the Supreme Court held that petitions under Article 226 are not liable to be admitted in cases of delay and laches. The Court observed as follows:

“It is not that 'here is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters- The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant's petition as well as the appeal.”



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10. Similarly, in *State of Madhya Pradesh v. Nandlal Jaiswal & Ors.*, reported in 1986 (4) SCC 566, the Supreme Court held as follows:

“...6. It is well settled that the power of the High Court to issue an appropriate writ under Art. 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactory explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extra ordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and brings in its train new injustices. The lights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

11. Furthermore, in *Karnataka Power Corporation Ltd. through its Chairman & Managing Director & Anr. v. K. Thangappan*, reported in 2006 (4) SCC 322, the Supreme Court held as follows:

“Delay or laches is one of the factors which is to be



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borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Chief Controller of Imports and Exports (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.”

12. Even in cases where the cause of action continues on a month-to-month basis, such as the denial of pension, the Supreme Court in *Shiv Dass v. Union of India*, reported in 2007 (9) SCC 274, held that a writ petition should not be entertained beyond three years. The Court observed as follows:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”



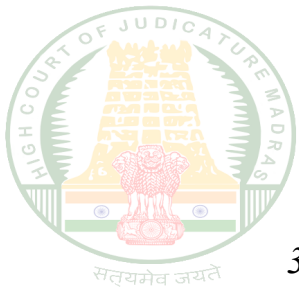
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13. When the same petitioners previously filed a batch of writ petitions in 2017 challenging the orders of the Tribunal concerning another tea estate, with a delay of 3½ years, the petitions were dismissed by T. Raja, J., in *W.P. Nos. 33079 to 33082 of 2017* by order dated 19.12.2017. The learned judge held as follows:

“Challenging the impugned orders dated 18.09.2014 and 26.05.2014 passed by the first respondent / the Presiding Officer, the Employees Provident Fund Appellate Tribunal, New Delhi, the petitioners have filed these writ petitions, after a lapse of 3 ½ years. In the impugned orders, the first respondent Tribunal had refused to recover the interest and damages on the remittance made by the second respondent herein. Since the orders were passed as early as on 18.09.2014 and 26.05.2014, the present writ petitions filed after a lapse of 3 ½ years by the petitioners who are serving as Assistant Provident Fund Commissioner and the Regional Provident Fund Commissioner, deserve to be dismissed on the ground of laches.

2. Besides, it is well settled law that the delay defeats justice and equities. Equity favours a vigilant rather than an indolent litigant and this being the basic tenet of law, the question of entertaining the prayer of the petitioners, who are serving as Assistant Provident Fund Commissioner and Regional Provident Fund Commissioner, challenging the impugned orders dated 18.09.2014 and 26.05.2014 passed by the first respondent Tribunal, after a lapse of 3 ½ years, does not arise in this matter.



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3. Thus, on the ground of laches, the writ petitions are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.”

14. The reasons cited by the Petitioner for the delay, both in the affidavits filed in support of the writ petitions and in the supplementary affidavit submitted in *W.P. No. 12577 of 2020*, are unacceptable. As indicated in the tabular column at the beginning of this order, the delay was not uniform, ranging from 6 to 9 years. Therefore, the explanation that the panel counsel was unwell and failed to file the cases is untenable. Notably, during this period, the department continued to file several other writ petitions challenging the Tribunal's orders.

15. The same reasoning provided by the same deponent in several other writ petitions was previously rejected by this Court in a batch of cases, beginning with *W.P. No. 10027 of 2020* and its connected matters. Given that the present batch of cases is identical to those previously dismissed, there is no justification for taking a different view.



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16. Accordingly, all the above writ petitions are dismissed. No costs.

Consequently, W.M.P. Nos. 14399, 15507 and 20622 of 2020 are also closed.

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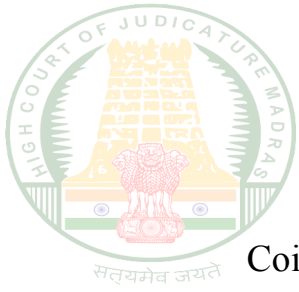
Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

Copy to:

1. The Central Board of Trustees,
Employees Provident Fund,
Represented by the Regional Provident
Fund Commissioner-II,
Bhavishyanidhi Bhawan, P.B.No.3875,
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3. The Assistant Provident Fund Commissioner,
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Coimbatore – 641 018.

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DR. A.D. MARIA CLETE, J

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Pre-Delivery Judgment made in
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