



S.A.No.1159 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	04.08.2025
Pronounced on	10.10 .2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.1159 of 2019

1.The Chairman (URC)

Embarkation Headquarters,
Fort St. George, Chennai-600 009

2. The Commandant,

Embarkation Headquarters
Fort St. George, Chennai-600 009.

...Appellants

Vs.

S.Thomas

...Respondent

Prayer: Second Appeal filed under Section 100 CPC, to set aside the decree and judgment dated 05.10.2016 passed in A.S. Nos.34 of 2016 on the file of the VII Additional City Civil Judge, Chennai, reversing the judgment and decree dated 23.11.2015 in O.S. No.4650 of 2015 on the file of the XVII Assistant City Civil Judge, Chennai.



S.A.No.1159 of 2019

WEB COPY For Appellant

: Mr.AR.L.Sundaresan,
Additional Solicitor General
for Mr.Venkataswamy Babu

For Respondent

: Mr.S.Sadasharam

JUDGMENT

This second appeal arises out of the judgment and decree dated 05.10.2016 passed in A.S. No.34 of 2016 on the file of the VII Additional City Civil Judge, Chennai, reversing the judgment and decree dated 23.11.2015 in O.S. No.4650 of 2015 on the file of the XVII Assistant City Civil Judge, Chennai.

2.This second appeal has been preferred by the appellants/defendants in O.S.No.4650 of 2015. The suit was filed by the plaintiff for declaring that the impugned order of termination dated 28.07.2015 is illegal and non-est in law and for mandatory injunction directing the 1st respondent (appellant herein) to reinstate the plaintiff into service with service benefits like seniority, pay protection with arrears of salary and allowances from 28.07.2015 and for cost. The suit was dismissed on



S.A.No.1159 of 2019

23.11.2015. Challenging the same, an appeal was preferred in A.S.No.34 of 2016 before VII Additional City Civil Court, Chennai. The said appeal was allowed on 05.10.2016. Aggrieved by this, the present second appeal has been preferred by the defendants.

3. The respondent/ plaintiff case is that he was appointed to the post of Helper at Unit Run Canteen Embarkation Headquarters by the Lt.Col. of Embarkation Headquarters namely the Chairman, URC: Embarkation Headquarters, Fort St. George, Chennai, by order dated 01.04.2005 and the scale of pay was fixed at Rs.2,550/- with effect from 01.04.2015. By order dated 29.3.2007 issued by the 1st defendant, the respondent/plaintiff was promoted from the post of helper to the post of sale attendant and thereafter, the respondent / plaintiff was upgraded to the post of salesman from Sales Attendant with effect from 01.04.2011. The respondent/plaintiff has been working as Sales man without any blemishes in scale of pay of Rs.5,250/- with an annual increment of Rs.135/- with effect from 01.04.2011. A show cause notice was issued on 08.10.2014 to the respondent/plaintiff making false and frivolous



S.A.No.1159 of 2019

WEB COPY

allegations against the him and he was called upon to give a reply to the show cause notice dated 08.10.2014. The respondent/plaintiff submitted a reply on 20.10.2014 denying the allegations leveled against him and explained as to what had happened. Thereafter, no enquiry was conducted at all of any kind nor any valid memo was issued against the respondent/plaintiff nor any enquiry was conducted after obtaining the explanation to any charge memo. In fact, no charges were framed and issued to the respondent/plaintiff as per the Rules. The respondent/plaintiff further states that, another cause notice was issued on 10.07.2015 referring to the Headquarters letter dated 17.03.2015 and also stating that an enquiry was conducted as ordered by the Embarkation Headquarters, Chennai and in that enquiry the respondent/plaintiff was found guilty. Actually, no enquiry was conducted nor the respondent/plaintiff was found guilty and the letter dated 17.03.2015 of the Headquarters was not communicated to the respondent/plaintiff but it was stated in the show cause notice that the Headquarters Dakshin Bharat area advised the 1st defendant / appellant to take necessary disciplinary action as per the rules on the subject. The letters referred to in the show



S.A.No.1159 of 2019

WEB COPY

cause dated 10.07.2015 were given to the respondent /plaintiff, no enquiry was conducted nor any charges were framed against him and no disciplinary action was initiated against him under the rules in force. On receipt of the above show cause notice dated 10.7.2015 he submitted an explanation on 15.07.2015 denying the allegations leveled against him and inspite of that, the first defendant has chosen to issue the impugned order dated 28.07.2015 whereby the respondent/plaintiff has been terminated from the post of salesman of URC Embarkation Headquarters, Chennai. The respondent/plaintiff states that the impugned order of termination is in violation of the mandatory principles of natural justice in that it is submitted that the appellant/1st defendant has failed to conduct any enquiry into the matter as contemplated under the mandatory provisions of rules governing for termination of service of the respondent/plaintiff who was permanently employed in time scale of pay in the appellant/defendant's Unit Run Service Canteen and consequently the respondent/plaintiff is entitled to be reinstated into service with all consequential service benefits. There is no reason whatsoever for the appellant/defendant to fail to follow the rules and regulations governing



S.A.No.1159 of 2019

WEB COPY

the service conditions of the respondent/plaintiff and the failure to adopt legal procedure contemplated under the rules governing the service conditions of the respondent/plaintiff tells on the validity of the order of termination and consequently the order of termination is liable to be set aside. Hence this suit.

4. Respondents 1 and 2/Defendants 1 and 2 remained absent and were set exparte.

5. Before the trial court on the side of the respondent/plaintiff, respondent/plaintiff was examined as P.W.1 and Exhibits A.1 to A.8 were marked. After full fledged trial, the trial court dismissed the suit without costs. Against which, the respondent/plaintiff has preferred the appeal in A.S.No.34 of 2016 before the VII Additional City Civil Judge, Chennai. The First Appellate Court allowed the appeal and set aside the judgment and decree of the trial Court. Aggrieved by this, the defendants have preferred the present second appeal.



S.A.No.1159 of 2019

WEB COPY 6.The learned counsel appearing for the Appellant/defendants

submits that the trial Court considering the evidence on record rightly dismissed the suit by stating that the respondent/plaintiff failed to prove his case. However, the First Appellate Court erred in concluding that it is not made clear whether charge sheet was served upon the respondent/plaintiff by referring to Clause C of the Rule 24. The learned counsel would further submit that the respondent/plaintiff admitted the charges and agreed to pay the amount involved in the case. He would further submit that the respondent/plaintiff is governed by the rules governing by the employment and the said rules provide for the appeal remedy. The respondent/plaintiff ought to have approached the Appellate Authority which is the appropriate forum and precluded from challenging the termination order before a Civil Court. Hence, the First appellate Court erred in declaring the termination order as illegal and directing reinstatement of the respondent/plaintiff without any jurisdiction. The Appellate Court ought to have seen that the respondent/plaintiff's employment is governed by the terms and conditions of service and revised pay scales of regular civilian employees Unit Run Canteen paid

Page 7 of 27



S.A.No.1159 of 2019

out of Non- Public Fund and that the Rule 29 provides for the review of punishment by the Appellate Authority. Hence, the suit is not maintainable before the Civil forum. He would further submit that the Canteen employees are treated as Government servants and the Central Administrative Tribunals alone have jurisdiction. Hence, prayed for setting aside the judgement and decree passed by the First Appellate Court.

7. On the other hand, the learned counsel for the respondent/plaintiff submits that the impugned order of termination dated 28.07.2015 has been passed by the appellants is quite contrary to and in violation of the mandatory provisions of rules and regulations governing the service conditions of the appellant. The trial court failed to find that the appellants have not issued any charge memo nor found him guilty of any charges of misconduct conducting an enquiry into the matter. However the first appellate Court rightly allowed the appeal suit and decreed the suit in favour of the respondent/plaintiff. Hence, he prayed for dismissal of the present second appeal.



S.A.No.1159 of 2019

WEB COPY 8.Heard on both sides and records perused.

9.First and foremost question to be addressed in the instant case is the status of the employees of URCs. It is not in dispute that the respondent/plaintiff is an employee of URCs in the Air Force. What is the status of URCs is no longer res-integra. Earlier the Hon'ble Apex Court in the case of ***Union of India Vs. Mohd. Aslam***, reported in ***2001(1) SCC 720*** held that employees of URCs are Government servants, however, doubting the correctness of the view, a Three Judges Bench decided the issue in the matter of ***R.R. Pillai (dead) through Lrs. Vs. Commanding Officer Head Quarter S.A.C (U) & Ors.***, reported in ***(2009) 13 SCC 311*** and ***Union of India Vs. Dayalu Ram***, reported in ***(2019) 1 Scale 352***. The relevant discussion of the same is reproduced as hereunder:

9.In the case of Aslam's case (supra) a Bench of this court proceeded on incorrect factual premises inasmuch as after noticing that the URCs are not funded from the



S.A.No.1159 of 2019

WEB COPY

Consolidated Fund of India, it went wrong in concluding that the URCs are funded by CSD as well as the articles were supplied by the CSD. Unfortunately, it did not notice that no such funding is made by the CSD. Further, only refundable loans can be granted by the CSD to URCs at the rate of interest laid down by it from time to time upon the application of URCs seeking financial assistance. URCs can also take from other Non- Public Funds.

10. Further observation regarding supply is also not correct. URCs, in fact, purchase articles from CSD depots and it is not an automatic supply and relation between URCs and CSDs is that of buyer and seller and not of principal and the agent. This Court further went wrong in holding that URCs are parts of CSDs when it has been clearly stated that URCs are purely private ventures and their employees are by no stretch of imagination employees of the Government or CSD.

11. Additionally, in Aslam's case (supra) reference was made to Parimal Chandra Raha and Ors. V. LIC. The



S.A.No.1159 of 2019

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Bench hearing the matter unfortunately did not notice that there was no statutory obligation on the part of the Central Government to provide canteen services to its employees. The profits generated from the URCs are not credited to the Consolidated Funds, but are distributed to the Non Public Funds which are used by the units for the welfare of the troops. As per para 1454 of the Regulations for the Air Force, 1964 the losses incurred by the non public funds are not to be borne by the State.

12. The factors highlighted to distinguish Chotelal's case in our considered opinion are without any material. There was no scope for making any distinction factually between Aslam's case and Chotelelal's case. In our view, therefore, Aslam's case was not correctly decided.

13. The question whether the URC can be treated as an instrumentality of the State does not fall for consideration as that aspect has not been considered by CAT or the High Court. Apparently, on that score alone we could have dismissed the appeal. But we find that the High Court placed reliance on Rule 24 to deny the effect of the appointment.



S.A.No.1159 of 2019

WEB COPY

14. From Rule 4 read with Rule 2 it is clear classification that all employees are first on probation and they shall be treated as temporary employees. After completion of five years they might be declared as permanent employees. They do not get the status of the Government employees at any stage. In Aslam's case CAT's order was passed in 1995. By that time 1999 Rules were not in existence and 1984 rules were operative.

15. It is to be noted that financial assistance is given, but interest and penal interest are charged. The URCs can also borrow from financial institutions. The reference is answered by holding that employees of URCs are not government servants.

16. The High Court has come to an abrupt conclusion about validity of Rule 24, distinguishing the decision of this Court in DTC v. D.T.C. Mazdoor Congress. The Present appellant had questioned validity of Rule 24. High Court should have considered that challenge in the proper perspective. But it is not necessary to examine that question as the original employee R.R. Pillai has already



S.A.No.1159 of 2019

WEB COPY

expired. But, in the peculiar facts of the case we direct that a sum of Rs.2 lakhs be paid to his legal representatives within a period of three months in full and final settlement of all his claims.

11. Later on, in the case of Dayalu Ram (supra), the Apex Court affirmed the view taken in the case of R.R. Pillai (supra), which is reproduced as under :-.

9. The position of Unit Run Canteens of the Indian Army is no longer res integra following the decision of the three Judge Bench in R.R. Pillai. The reference to the Bench of three Judges was occasioned as a result of a doubt having been cast on an earlier decision of a two-Judge Bench in Union of India versus M. Aslam. The Bench of three Judges observed that despite noticing that Unit run Canteens are not funded from the Consolidated Fund of India, the two Judge Bench in M. Aslam erroneously held that these canteens are funded by the Canteen Stores Department (CSD). In R.R. Pillai after reviewing the position of regimental canteens, this Court held that the employees have not been granted the status of government employees at any stage. Hence the reference



S.A.No.1159 of 2019

WEB COPY

was answered by holding that employees of the Unit run Canteens are not Government employees. This decision has been followed in a subsequent decision in Gobinda Prasad Mula."

10. Therefore, the Hon'ble Apex Court answered the reference by holding that employees of the URCs are not Government employees. Hence, the terms and conditions of service of Canteen employees are governed by the rules called "The Rules regulating the Terms and Conditions of Service of Civilian Employees of Air Force Unit Run Canteen paid out of Non-Public Funds".

11. The next contention of the learned counsel for the respondent/plaintiff is that in the absence of any provisions providing for termination from service, the authorities of the URC have no jurisdiction to pass the order of termination as a punishment against the respondent/plaintiff without conducting any enquiry as contemplated under the provisions of the Rules and Regulations dated 28.04.2003. The learned counsel for the respondent/plaintiff would submit that the appellants/ defendants have neither followed proper legal procedures nor



S.A.No.1159 of 2019

WEB COPY

the principles of natural justice, in terminating the service of the respondent. According to him, the action taken against the respondent/plaintiff and the termination are penal in nature, however, no charge memo was issued on the respondent, no explanation was called for from him and without providing opportunity to raise his defence, terminated him from service. Hence, the action taken by the appellants are not legally sustainable. The learned counsel for the respondent would submit that the termination of the respondent/plaintiff is against law, there is no other go for the respondent except to file a civil suit in O.S.No.4650 of 2015 on the file XVII Assistant City Civil Court, Chennai and that there is no express provision in the Rules and Regulations dated 28.04.2003 ousting the Civil Court jurisdiction and therefore, the Civil Suit filed by the respondent/plaintiff is legally maintainable. The learned counsel further referred to Rule 33 of the Rules framed and issued on 28.04.2003 regulating the terms and conditions of service of civilian employees of URC paid out of Non-Public Fund which reads as follows:

"Any legal dispute arising between the employee and employer



will be submitted to jurisdiction of local courts."

12.A perusal of the aforesaid rules would clearly establish that any legal dispute arising between the respondent/plaintiff and appellants/defendants, i.e., employee and employer respectively, the Competent Court having jurisdiction would be the local Civil Courts, normally the Civil Court vested with the territorial and pecuniary jurisdiction.

13.In ***Ramendra Kishore Biswas Vs. State of Tirupura***, reported in ***AIR 1999 SC 294***, a three Judge Bench of the Hon'ble Supreme Court has held as follows:

" 5... Indeed, it is appropriate to relegate a person to exhaust Departmental remedies when he approaches the Court without exhausting Departmental remedies under the Service Rules but to hold that the Civil Court had no jurisdiction while hearing a second appeal, after the matter has been litigated in Civil Courts for more than five years was, to say the least, not proper. The learned single Judge ought to have decided the case on its own merits and not made a short cut of it. The appellant could not have been non-suited on the ground that he had failed to take recourse



S.A.No.1159 of 2019

WEB COPY *to proceedings under the C.C.5 (C.C and A) Rules 1965 against the order of dismissal."*

In the decision, the Hon'ble Supreme Court has further held that as a matter of fact, it was appeared to them that the single Judge had failed to exercise the jurisdiction, vested with him, while non suiting the appellant. On the aforesaid grounds, it was held as appropriate to allow the appeal, setting aside the order of the learned single Judge and remit the mattes back to the High Court for fresh decision of the regular Second Appeal and the cross-objections on their own merits. It has been categorically held by the Threes Judge Bench of the Apex Court that the civil Court is vested with the jurisdiction, accordingly, the High Court has to dispose the second appeal on merits. The aforesaid decision is directly applicable to the present second appeals.

21. In Dharma Nand vs. Union of India, reported in 2004 SCC (L&S) 1034, relying on Union of India vs. M.Asalam, reported in (2001) 1 SCC 720, the Hon'ble Supreme Court has held that canteen employees under the defence ministry were to be treated an Government servants.



S.A.No.1159 of 2019

WEB COPY 14. In the light of the decisions rendered by the Hon'ble Apex

Court referred to above, this Court is of the view that the suit filed by the appellants are maintainable in law and the Civil Court has jurisdiction to decide the same, according to law and the plea of the respondent that the civil court has got no jurisdiction is not sustainable in law.

15.The respondent/ plaintiff was appointed to the post of Helper at Unit Run Canteen Embarkation Headquarters by the Lt.Col. of Embarkation Headquarters namely the Chairman, URC: Embarkation Headquarters, Fort St. George, Chennai, by order dated 01.04.2005 and the scale of pay was fixed at Rs.2,550/- with effect from 01.04.2015. By order dated 29.3.2007 issued by the appellant/1st defendant, the respondent/plaintiff was promoted from the post of helper to the post of sale attendant and thereafter, the respondent / plaintiff was upgraded to the post of salesman from Sales Attendant with effect from 01.04.2011. The respondent/plaintiff has been working as Sales man without any blemishes in scale of pay of Rs.5,250/- with an annual increment of Rs.135/- with effect from 01.04.2011. A show cause notice was issued on 08.10.2014 to the respondent/plaintiff making false and frivolous

Page 18 of 27



S.A.No.1159 of 2019

allegations against him and he was called upon to give a reply to the show cause notice dated 08.10.2014. The respondent/plaintiff submitted a reply on 20.10.2014 denying the allegations leveled against the respondent/plaintiff and explaining as to what had happened. Thereafter, there is nothing on record to show that memo was issued against the respondent/plaintiff and after obtaining the explanation to the charge memo, charges were framed and issued to the respondent/plaintiff as per the Rules. It is also not established on the side of the appellant/defendant that whether any enquiry was conducted as ordered by the Embarkation Headquarters, Chennai and in that enquiry the respondent/plaintiff was found guilty. The appellant/defendant failed to prove that a letter dated 17.03.2015 of the Headquarters was communicated to the plaintiff. It was only stated in the show cause notice dated 10.07.2015 that the Headquarters Dakshin Bharat area advised the appellant/1st defendant to take necessary disciplinary action as per the rules on the subject. There is nothing on record to show that disciplinary action was initiated against the respondent/plaintiff under the rules in force. On receipt of the above show cause notice dated 10.7.2015 the respondent/plaintiff submitted an

Page 19 of 27



S.A.No.1159 of 2019

WEB COPY explanation on 15.07.2015 denying the allegations levelled against him and inspite of that, the appellant/1st defendant has chosen to issue the impugned order dated 28.07.2015 whereby the respondent/plaintiff has been terminated from the post of salesman of URC Embarkation Headquarters, Chennai.

16.It is not in dispute that the appellants/defendants were empowered to take appropriate disciplinary action against the respondent/plaintiff, in case of proved misconduct, including removal/dismissal of the employee from service. But, it is mandatory on the part of the appellants/defendants to follow the procedures as per the terms and conditions of the service of the employees, otherwise it would be an arbitrary action, legally not sustainable. Paragraph No.41 of the terms and conditions of service, for taking action dealing with case of misconduct, reads as follows:

41. Before awarding to an employee any of the punishments mentioned in para 30-C and 39, the following procedure shall be followed by the disciplinary authority:

a) The employee is to be served with a charge



S.A.No.1159 of 2019

WEB COPY

sheet, clearly stating the imputation of misconduct against him and calling upon him to show CAUSE as to why one or more of the punishments included in those guidelines should not be awarded to him.

b) The reply to the charge sheet, if any, is to be duly considered by the disciplinary authority.

c) If the employee so desires, he is to be heard in person and is also to be allowed to cross examine witness(es) against him or procedure witnesses in his defence. The disciplinary procedure is laid down in Appendix "B".

17.Further, if there is any adverse order, the affected employee is entitled to prefer appeal. The appellate authority may either *suo moto* or on appeal from an individual, review any order of the disciplinary authority and on much review, pass any order or issue any direction deems fit on the facts and circumstance of the case. The appellate authority shall be the authority superior in the chain of command.



S.A.No.1159 of 2019

WEB COPY 18. In the instant case, there is nothing on record to show that charge memo was issued on the respondent/plaintiff. There is no material on record to show that explanation was called for and opportunity was given to the respondent/plaintiff. Since, the appellants/defendants remained ex-parte, the respondent/plaintiff had no opportunity to cross examine any witness of the appellants in this regard. Moreover, it is not established that the appellants/defendants have followed the procedures contemplated under the rules for terminating the respondent/plaintiff. The appellants/defendants ought to have issued charge memo, calling for explanation and if the explanation is not satisfactory, after framing of charges, enquiry ought to have been conducted in accordance with law by following the principles of natural justice. Therefore, there is nothing on record to show that the appellants/defendants have followed the mandatory procedures.

19. In *Dharma Nan vs. Union of India*, reported in *2004 SCC (I & S) 1034*, the Hon'ble Apex Court has held that the termination of the Canteen employees were illegal, on the ground that the mandatory



S.A.No.1159 of 2019

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20.The First appellate Court has rightly held that the denial of explanation in Ex.A7 cannot be treated as admission by the respondent/plaintiff. Under Ex.A7, the plaintiff has clearly denied the allegations levelled against him. In spite of his denial the appellant/defendants have issued the notice of termination, which is illegal. There is nothing on record to show that enquiry was conducted and in pursuant to the enquiry, the punitive show cause notice was issued on 10.07.2015. On perusal of which, it is seen that while laying procedure for dealing with the case of misconduct it is provided that the delinquent shall be served with the charge sheet clearly stating that the details of mis conduct against him. But in this case it is not made clear whether any charge sheet is served upon the delinquent and further clause "C" of Rule 24 lays down "if the employee so desires, he is to be heard in person and is also to be allowed to cross examine witness or witnesses against him or produce witnesses in his defence" and further



S.A.No.1159 of 2019

WEB COPY

perusal shows that the disciplinary procedure is laid down for "dismissal/discharge" as described in Appendix "B" wherein also holding of any inquiry is made mandatory. But in this case though on the side of the respondent it is alleged that no enquiry was conducted nor any opportunity was given to the respondent/plaintiff to state his defence, the appellants 1 and 2 have not taken any care to appear before the trial court and refute the allegations put forth by the respondent/plaintiff by stating that he was given an opportunity by holding an enquiry and to defend his case. Under the circumstances, in the absence of any denial by the appellants that, it is to be presumed that no opportunity was given to the respondent/plaintiff to defend his case, which is mandatory one as laid down under the rules and regulations of service of Civilian Employees of Unit Run Canteen paid out of non public fund. So as discussed above, it is decided that the above procedural lapse is fatal to the proceedings and against the law and procedure laid down under rules and regulations governing the service of Civilian Employees of Unit Run Canteen paid out of non public fund. The appellant/1st defendant has failed to conduct any enquiry into the matter as contemplated under the mandatory



S.A.No.1159 of 2019

WEB COPY

provisions of rules governing for termination of service of the respondent/plaintiff who was permanently employed in time scale of pay in the appellant/defendant's Unit Run Service Canteen, which is a violation of principles of natural justice and consequently the respondent/plaintiff is entitled to be reinstated into service with all consequential service benefits. There is no reason whatsoever for the appellant/defendant to fail to follow the rules and regulations governing the service conditions of the respondent/plaintiff and the failure to adopt legal procedure contemplated under the rules governing the service conditions of the respondent/plaintiff tells on the validity of the order of termination.

21.The trial court failed to find that the appellants/defendants have not issued any charge memo nor found him guilty of any charges of misconduct conducting an enquiry into the matter. However the first appellate Court rightly allowed the appeal suit and decreed the suit in favour of the respondent/plaintiff.



S.A.No.1159 of 2019

WEB COPY

22.In the result,

(i)the second appeal in S.A.No.1159 of 2019 dismissed. The judgment and decree passed by the first appellate court in A.S. Nos.34 of 2016 is confirmed and the judgment passed by the trial Court in O.S.No.4650 of 2015 is set aside. The termination order dated 28.07.2015 is set aside and the appellant/1st defendant is directed to reinstate the plaintiff into service with benefits like seniority, pay protection with arrears of salary and allowances from 28.07.2015. No costs.

10.10.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vsn

To

- 1.The VII Additional City Civil Judge, Chennai,
- 2.the XVII Assistant, City Civil Judge, Chennai
3. The Section Officer, VR Section, High Court, Madras.

Page 26 of 27



WEB COPY



S.A.No.1159 of 2019

K.GOVINDARAJAN THILAKAVADI,J.
vsn

Pre- delivery judgment made in
S.A.No.1159 of 2019

10.10.2025