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W.P.No.14959 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 20.06.2023

ORDERS PRONOUNCED ON : 18.07.2023

CORAM:

THE HONOURABLE Mr.JUSTICE BATTU DEVANAND

W.P.No.14959 of 2021

S.Porkamalam

.. Petitioner

Vs.

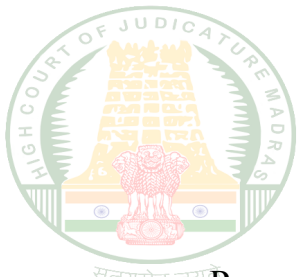
1.The State of Tamil Nadu,
Rep., by its Additional Chief Secretary,
Finance Department,
Fort St. George, Chennai-600 009.

2.The Commissioner of Treasuries & Accounts,
Integrated Office,
Buildings for the Finance Dept.,
Amma Complex,
No.571, Anna Salai,
Nandanam, Chennai-600 035.

3.The Additional Treasury Officer,
District Treasury,
Tirunelveli-627 009.

4.United India Insurance Company Ltd.,
5th Floor, PLA Rathna Tower,
Raja Buildings,
212, Anna Salai, Chennai-600 006.

.. Respondents



W.P.No.14959 of 2021

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Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the third respondent in Na.Ka.No.5790/2021/No.1 signed on dated 09.06.2021 and quash the same and consequently to direct respondents 1 to 4 to settle the medical reimbursement claim under New Health Insurance Scheme for pensioners dated 16.09.2020 to the petitioner.

For Petitioner : Ms.A.Subadra
For RR1 to 3 : Mr.V.Ramesh
Government Advocate
For R4 : Mr.T.Shanmugam
Standing Counsel

ORDER

This writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus to call for the records of the proceedings issued by the Respondent No.3 in Na.Ka.No.5097/2021/1, dated 09.06.2021 and quash the same and for the consequential direction to the respondents to settle the medical reimbursement claim dated 16.09.2020 under New Health Insurance Scheme for pensioners to the petitioner in the interest of justice.

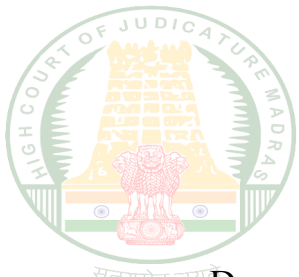


W.P.No.14959 of 2021

WEB COPY

2. The facts of the case are that the petitioner is a retired Secondary Grade Teacher, AGP School, Shencottah. The petitioner is a beneficiary and insured under New Health Insurance Scheme (NHIS) for employees and pensioners (including spouse) formulated by the Respondent No.1 during 2014 and continued vide G.O.Ms.No.222, Finance (Pension) Department, dated 30th June, 2018. The annual premium of Rs.3,800/- plus GST per pensioner/family pensioner payable by the State Government to the United Insurance Company, Chennai, shall be recovered from the pensioners/family pensioners at the rate of Rs.350/- per month by deduction in monthly pension. The petitioner is paying Rs.350/- per month as premium by deduction in monthly pension and as such, the petitioner is insured under NHIS.

3. Due to the pandemic caused by Covid-19, the Health and Family Welfare Department, Government of Tamil Nadu has issued G.O.Ms.No.240, dated 05.06.2020 to cover the treatment of Covid-19 under Chief Minister's Comprehensive Health Insurance Scheme (CMCHIS). Consequently, through G.O.Ms.No.280, Finance (Salaries)

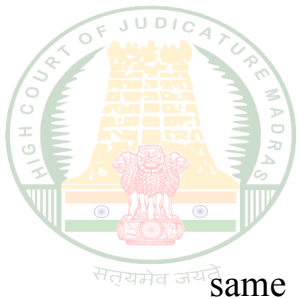


W.P.No.14959 of 2021

WEB COPY

Department, dated 24.06.2020, the State Government has issued directions for the treatment of critical and non-critical Covid-19 positive cases for employees and pensioners covered under NHIS and ceiling rates were fixed. A sum of Rs.5 Crores was sanctioned towards contribution to the corpus fund for Covid-19 treatment in NHIS. Through G.O.Ms.No.281, Finance (Pension) Department, dated 24.06.2020, a sum of Rs.2.5 Crores towards contribution to the corpus fund for Covid-19 treatment in NHIS for pensioners/family pensioners has been sanctioned.

4. The petitioner was diagnosed with Covid-19 positive and admitted in Meeran Hospital, Tenkasi on 24.08.2020, which is an approved hospital by the Government for Covid-19 treatment and discharged on 02.09.2020 after 10 days. She incurred medical expenses of Rs.2,62,596/-. As the petitioner is the pensioner under NHIS, she is entitled for medical reimbursement of medical expenses incurred by her towards Covid-19 treatment. The petitioner made a claim on 16.09.2020 to the Respondent No.2 herein. The Respondent No.2 has forwarded the



W.P.No.14959 of 2021

WEB COPY

same to the Respondent No.3 for taking necessary action. In turn, the Respondent No.3 has forwarded the same to the Respondent No.4 to provide reimbursement. However, the Respondent No.4 has rejected the petitioner's claim on the ground that the claim is non-critical Covid-19 claim in the non-network hospital and as such, the claim cannot be considered under both NHIS and corpus fund mode and the same was intimated to the petitioner *vide* impugned proceedings by the Respondent No.3. Aggrieved by the rejection of the claim of the petitioner, the petitioner is constrained to file this writ petition.

5. The respondents filed their counter affidavits.

6. In the counter affidavit filed by Respondents No.1 to 3, it is averred at paragraph No.8 as extracted hereinunder:

“8. In this connection it is further submitted that in G.O.(Ms).No.280, Finance (Salaries) Department, dated 24.06.2020 issued in connection with treatment for Covid-19 under the New Health Insurance Scheme, it is clearly stated as follows:



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W.P.No.14959 of 2021

“4(iv) Government Employees/Pensioners who have already taken treatment for Non-critical COVID-19 care in empanelled Hospitals from 01.03.2020 to till date are directed to submit their claims for reimbursements by appealing to the Commissioner of Treasuries and Accounts, Chennai. The Commissioner of Treasuries and Accounts shall recommend to the United India Insurance Company Limited to reimburse the payment from the Corpus fund provided by the Government. Therefore, the application received from the Writ Petitioner through the 2nd respondent has been forwarded to insurance company for taking further action to settle the reimbursement to the Writ Petitioner as per the Government order.”

Further, it is submitted that in the Government Letter No.36962/Finance (Salaries)/2020, dated 11.11.2020, the Government has issued the clarification as follows:

“Non critical Covid-19 claims as per G.O.(Ms).No.280, Finance (Salaries) Department, dated: 24.06.2020 can only be in empaneled and COVID authorized hospital, Critical care which is covered in New Health Insurance Scheme, shall be



WEB COPY



W.P.No.14959 of 2021

covered as per existing contract.”

In view of the above said fact the claim of the petitioner deserve no merit and consequently based on the letter of insurance company, the application was returned to the Writ Petitioner as per the Government Letter No.36962/Finance (Salaries)/2020, Dated: 11.11.2020 by stating the above said reasons.”

7. It is also averred in the counter of Respondents No.1 to 3 that the petitioner has preferred an appeal to the District Level Empowered Committee and the Committee has recommended the case of the petitioner to the Respondent No.4. However, the Respondent No.4 has rejected the claim of the petitioner on the ground that the treatment was taken in non-network hospital under a non-critical condition, which is not covered under the Insurance Scheme for pensioners. It is further averred that as per the provisions of this Scheme, the petitioner ought to have approached the State Level Empowered Committee for redressal of her grievance, but she straightaway approached this Court without exhausting the appeal remedy available in this scheme.



W.P.No.14959 of 2021

WEB COPY

8. In the counter affidavit filed by the Respondent No.4, while explaining the provisions of the Insurance Scheme, it is contended that the Respondent No.4 shall make payments to all Covid-19 positive cases that received critical care as per the package rate for exhausting procedures covered under the New Health Insurance Scheme, subject to a ceiling of Rs.4 Lakhs.

9. It is further averred at paragraph No.10 of the counter of the Respondent No.4 as extracted herein under:

“10. It is further respectfully submitted that 4th Respondent has no power or authority to reimburse other than the eligible amount, since there is no Tri-partite agreement in respect of the COVID-19 PANDEMIC and also there is no package rate fixed by the Insurance Company. The Petitioner should approach concerned officials and further if any grievance are to be redressed, the Petitioner should only approach the authorized officials and competent authorities for payment of the balance reimbursement claim amount of Rs.1,85,254/-. It is reiterated that this Insurance Company has reimbursed the claim of



WEB COPY



W.P.No.14959 of 2021

the Petitioner in so far as it is concerned as per the GO issued by the Government in connection with the sanction of bills for COVID 19 affected persons, the room rent and pharmacy bills. Thus this Respondent has not committed any illegality or irregularity or insufficient service as alleged by the Petitioner and acted in accordance with the powers vested on the Insurance Company.”

10. In the said counter, the Respondent No.4 requested this Court to issue direction to the petitioner to submit all original documents related to Covid-19 to the Respondent No.2 as per G.O.Ms.No.280, Finance (Salaries) Department, dated 24th June, 2020 and the same will be forwarded to the Respondent No.4 and the Respondent No.4 will process the claim and the eligible amount will be disbursed to the petitioner.

11. Heard Ms.A.Subadra, learned counsel for the petitioner, Mr.V.Ramesh, learned Government Advocate for Respondents No.1 to 3 and Mr.T.Shanmugam, learned Standing Counsel for the Respondent No.4 and perused the materials available on record.

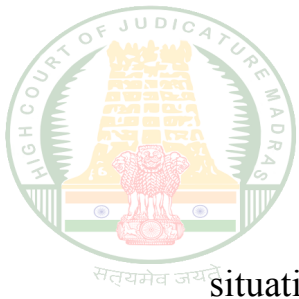


W.P.No.14959 of 2021

WEB COPY

12. Learned counsel for the petitioner submits that the petitioner, being a pensioner under NHIS, is entitled to medical assistance on a cashless basis in a network hospital and on reimbursement basis, in a non-network hospital for emergency care. As the petitioner is contributing Rs.350/- per month as her contribution towards payment of the premium and the scheme provides coverage for the treatments up to a maximum of Rs.4 Lakhs per pensioner for a block of four years from 01.07.2018 to 30.06.2022, the respondents ought to have settled the claim of the petitioner. As per the scheme, the petitioner is eligible for reimbursement of her medical expenses incurred for Covid-19 treatment, as she has not made any claim from 01.07.2018 except the present claim for reimbursement of Rs.2,62,596/- for medical expenses incurred by her.

13. Learned counsel for the petitioner further submits that the petitioner is aged about 73 years and is a Type-II Diabetic patient and also has undergone Corollary Artery Bypass Grafting (CAVG) open heart surgery in the year 2016. The petitioner was infected with Covid-19 and admitted in Meeran Hospital, Tenkasi, on 24.08.2018 in an emergent

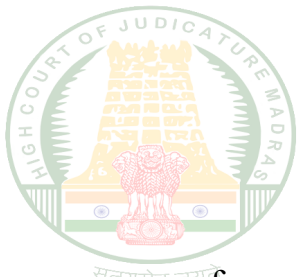


W.P.No.14959 of 2021

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situation. Learned counsel for the petitioner contends that as it is widely known that Covid-19 is a deadly disease required intensive care treatment, the petitioner was admitted in the Government approved hospital and fortunately saved from the deadly disease. G.O.Ms.No.281, Finance (Pension) Department, dated 24.06.2020 extended treatment of Covid-19 positive cases covered under NHIS. As the petitioner is eligible under the said scheme for reimbursement of the medical expenditure incurred by her for Covid-19 treatment, the respondents ought to have processed the claim of the petitioner instead of rejecting the same on the ground that the petitioner's claim is non-critical Covid-19 claim in non-network hospital. Learned counsel for the petitioner would submit that the action of the respondents is in gross violation and law and against constitutional rights and against fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India and sought to allow the writ petition.

14. Learned Government Advocate appearing for Respondents No.1 to 3 submits that originally the claim of the petitioner was



W.P.No.14959 of 2021

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forwarded to the Joint Director of Health Services, Tirunelveli, for consideration *vide* third respondent's letter dated 15.10.2020, which was returned by the Joint Director of Health Services *vide* file in Rc.No.7990/Ka.1/2020, dated Nil, November, 2020. The medical reimbursement application was submitted before the District Level Empowered Committee (DLEC) headed by the District Collector, Tenkasi on 17.12.2020. The DLEC has recommended the treatment of Covid-19 from 24.08.2020 to 02.09.2020 and for payment towards medical expenses of Rs.2,62,596/-. Accordingly, the recommendation of the DLEC was submitted to the fourth respondent *vide* third respondent's letter dated 09.06.2021 for further necessary action.

15. The learned Government Advocate contends that the reimbursement application of the petitioner was returned by the Respondent No.4 to the petitioner, since the treatment taken by the petitioner was non-critical Covid-19 and the hospital in which the treatment was taken by the writ petitioner is also non-network hospital.



W.P.No.14959 of 2021

WEB COPY

16. During the course of hearing, the learned Government Advocate placed a copy of the Government Order issued by the Government of Tamil Nadu in G.O.Ms.No.165, Finance (Health Insurance) Department, dated 1st June, 2022 and he has drawn the attention of this Court to paragraph No.8 of the said Government Order, which is extracted herein under:

“8. The Government after careful examination of the proposal of Commissioner of Treasuries and Accounts, have decided to accept the same and accordingly issue the following orders:-

(i) Sanction is accorded for an adhoc amount of Rs.10.00 crore (Rupees ten crore only) to clear the claims of the eligible expenses incurred by the Government Employees and their eligible family members and Pensioners (including spouse) / Family Pensioners under Non-Critical COVID care treatment undertaken in Non-Network hospitals by creating two Corpus Funds one for Rs.6.00 crore [Rupees six crore only] for Pensioners (including spouse) / Family Pensioners and Rs.4.00 crore [Rupees four crore only] for Government Employees and their eligible family members considering the



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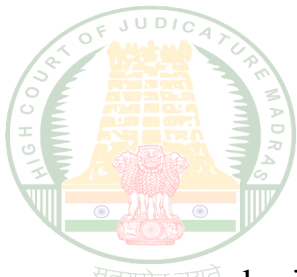


W.P.No.14959 of 2021

welfare of the Employees / Pensioners. There shall be no change in the existing modalities followed in respect of reimbursement claims settled by United India Insurance Company Limited from the funds released by Government under these Corpus Fund.

(ii) Government Employees/Pensioners who have already taken treatment for Non-Critical COVID care in Non-empanelled Hospitals from 01.03.2020 to till date are directed to submit their claims for reimbursement by applying to the Commissioner of Treasuries and Accounts, Chennai. The Commissioner of Treasuries and Accounts shall forward the applications along with documents to the United India Insurance Company Limited to reimburse the eligible amount from the Corpus Fund provided by the Government as is followed as per the G.Os first and second read above without reference to the District Level Empowered Committee.”

17. Learned Standing Counsel appearing for the Respondent No.4 submits that in the light of the latest Government Order issued by the State Government in G.O.Ms.No.165, dated 01.06.2022, the claim of the petitioner will be considered and requested to direct the petitioner to



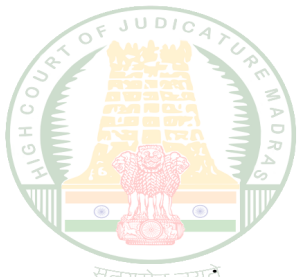
W.P.No.14959 of 2021

submit a claim with all original documents for fresh consideration.

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18. This Court gave anxious consideration to the submissions made by the learned counsels and carefully examined the materials available on record.

19. It is an admitted fact that the petitioner is a pensioner and she is contributing Rs.350/- per month towards her contribution for payment of premium for the New Health Insurance Scheme, which is meant for employees and pensioners. It is also an admitted fact that the petitioner has not made any claim for the block period of four years from 01.07.2018 to 30.06.2022. It is also an admitted fact that the petitioner was infected with Covid-19 and admitted in Meeran Hospital, Tenkasi on 24.08.2020 and discharged after 10 days. There is no dispute with regard to the expenditure incurred by the petitioner for an amount of Rs.2,62,596/- for the treatment of Covid-19. The only reason assigned by the respondents to reject the claim of the petitioner is that the petitioner's claim is a non-critical Covid-19 claim and she took treatment

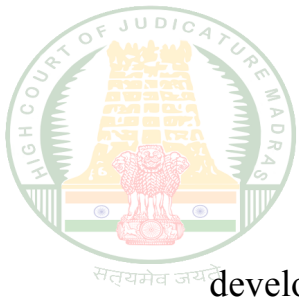


W.P.No.14959 of 2021

in non-network hospital.
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20. It is well known to all that the Covid-19 pandemic was unprecedented and unforeseen. It has triggered economic and social disruption around the globe. On 30th January 2020, the World Health Organization (WHO) declared Covid-19 as a Public Health Emergency of International Concern (PHEIC), the highest level of alarm under international law, and urged countries to prepare for containment, detection, isolation, and case management.

21. On 5th October 2020, the WHO warned that Covid-19 was not only a health crisis, but also a social, economic, and humanitarian crisis that required a whole-of-government and whole-of-society response. The WHO emphasized the importance of protecting the most vulnerable groups, such as older people, people with underlying conditions, and essential workers. “People aged 60 years and over, pregnant people and those with underlying medical problems like high blood pressure, heart and lung problems, diabetes, obesity or cancer, are at higher risk of



W.P.No.14959 of 2021

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developing serious illness. However, anyone can get sick with COVID-19 and become seriously ill or die at any age.” - World Health Organization.

22. During all stages of this pandemic lockdown and thereafter also, there was a huge demand for hospital beds in India. Initially, only the government hospitals admitted Covid-19 patients in the entire country, while private and corporate hospitals remained closed not only due to the lockdown imposed by the Government of India, but also due to the terror induced by the virus’s rapid rate of mutation, lack of research and the risks involved. After a few days, some private hospitals started to admit Covid-19 patients as well. Due to the scarcity of hospital beds for Covid-19 cases, the country witnessed a period when the State Governments set up makeshift medical care centres in Function Halls, Hotel Rooms and the Buildings of Educational Institutes etc.

23. It is an admitted fact that during the pandemic period, as there was a great demand for admission in the hospitals for COVID-19, the



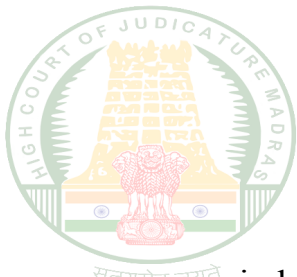
W.P.No.14959 of 2021

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public including the Government employees and pensioners were left with no other option but to take treatment in private hospitals, which are not covered under the network hospitals listed under the different Health Insurance Schemes.

24. The country's death-toll hiked due to COVID pandemic, while we all lived in terror, shock and mourning. We Indians could not enter a temple, church or mosque etc., to go to pray during the lockdown, but looked up to our doctors as gods and all that we could do is pray, beg and yearn for one single bed in any hospital for treatment.

25. COVID-19 symptoms range from asymptomatic to deadly, but most commonly include fever, nocturnal cough, and fatigue. As such to classify the medical assistance provided into critical or non-critical categories would be a farce, as in 2020, as the whole pandemic situation was burning the country in chaos due to lack of research and shock. Thus, each and every step in the treatment should be considered critical. Anyone who is deprived of such medical care or insurance or



W.P.No.14959 of 2021

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reimbursement related to such medical care is directly being deprived of their Right to Life under Article 21 of the Indian Constitution.

26. While the world and our country was facing such a dire situation due to Covid-19, the petitioner, who was infected with Covid-19 at the old age of 73 and had Type-II diabetes, and undergone Corollary Artery Bypass Grafting (CAVG) open heart surgery in the year 2016, got admitted in a hospital for treatment from 24.08.2020 to 02.09.2020, as evidenced by the medical reports, the contention of the respondents that the petitioner is not entitled to the expenditure incurred by her for Covid-19 treatment on the ground that it was non-critical care and treatment taken in a non-network hospital seems to be inhuman, irrational, unreasonable, unjust and violative of the right to life guaranteed under Article 21 of the Constitution of India.

27. The Respondent No.4, being the public sector undertaking of the Government of India dealing with the public money as trustee, has to consider the claims of the cases such as petitioner's claim with



W.P.No.14959 of 2021

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reasonableness and with utmost care. It is not fair for the Respondent No.4 to include such clauses and imposing such conditions in the terms and conditions of the policy/scheme, which are against the public interest. It appears that the officials of the State Government of Tamil Nadu also did not take much care while entering into an agreement with the Respondent No.4, i.e., the United India Insurance Company Ltd. Accordingly, the action of the respondents in rejecting the claim of the petitioner, in the light of the facts and circumstances of the case, is declared as inhuman, irrational, unreasonable, unjust, against to the public interest and violative of the Right to Life guaranteed under Article 21 of the Constitution of India.

28. However, in view of the fact that the State Government of Tamil Nadu in G.O.Ms.No.165, Finance (Health Insurance) Department dated 01.06.2022, issued instructions to clear the claims of the eligible expenses incurred by the Government employees and their eligible family members and pensioners (including spouse)/family pensioners under non-critical Covid care treatment undertaken in a non-network



W.P.No.14959 of 2021

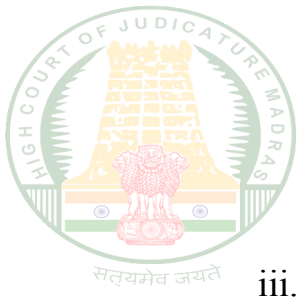
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hospital, in the considered opinion of this Court, it is appropriate to direct the petitioner to re-submit her claim to the Respondent No.3 and on such submission, the Respondents No.2 and 3 shall forward the same immediately to the Respondent No.4 and the Respondent No.4 shall clear the claim of the petitioner without any unreasonable delay or without raising unnecessary objections to settle the claim of the petitioner to meet the interest of justice.

29. For the above stated reasons, in the considered opinion of this Court, the proceedings of the Respondent No.3, impugned in this writ petition, is liable to be set aside.

30. In the result, this Writ Petition is allowed with the following directions:

- i. The proceedings of the Respondent No.3 in Na.Ka.No.5790/2021/1, dated 09.06.2021 is set aside;
- ii. The petitioner shall re-submit her claim within a period of one week from today to the Respondent No.3;



W.P.No.14959 of 2021

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- iii. On receipt of the same, the Respondents No.2 and 3 shall forward the same to the Respondent No.4 within a week thereafter; and
- iv. On receipt of the claim petition, the Respondent No.4 shall settle the claim of the petitioner within a period of one week thereafter.

31. As the respondents are responsible to drag the petitioner to the Court of law for justice at this old age, taking into account the age and health conditions of the petitioner for the inconvenience and hardship being suffered by her, the respondents are directed to pay exemplary cost of Rs.25,000/- (Rupees Twenty Five Thousand only) to the petitioner within 3 weeks from today and file a memo of payment of cost before the Registrar (Judicial), Madurai Bench of Madras High Court, Madurai.

18.07.2023

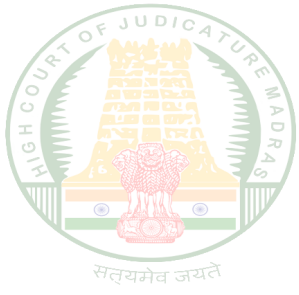
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W.P.No.14959 of 2021

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The State of Tamil Nadu,
Finance Department,
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BATTU DEVANAND, J.

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Order made in
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Dated : 18.07.2023