

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2008

CORAM:

THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P. No. 30300 of 2007 and
C.R.P. Nos. 1859 and 1860 of 2007
and

M.P.Nos. 1 and 2 of 2007 in respective petitions

W.P. No. 30300 of 2007:

Rane Brake Linings Employees Union
(Regn. No. MDS/461)

Rep. By its General Secretary G. Jayabalan
No. 30, II Main Road, Industrial Estate
Ambattur, Chennai - 58

... Petitioner

Vs.

1. State of Tamil Nadu
Rep. By its Secretary
Labour and Employment Department
Fort St. George, Chennai - 9

2. The Assistant Commissioner of Labour II
Department of Labour and Employment
III Floor Kuralagam, Prakasam Salai
Chennai - 108

3. The Management of
M/s Rane Brake Linings Limited
Plot No. 30 II Main Road
Industrial Estate, Ambattur

4. P. S. Rao

5. D. Bheemsingh Melchisedec

6. G. Shankar

7. V. Prakash

8. R. Sundar

9. K. Narayanan

10. N. Jeyaraman

11. R. Devarajan

12. P. Veeraraghavan

13. E. Thirugnanam

14. S. Kannan

.. Respondents

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W.P. No. 30300 of 2007 filed under Article 226 of the Constitution of India for the issuance of writ of Declaration declaring that the Memorandum of Settlement dated 18.5.2007 entered into between the respondents 3 and 7 to 14 and converted into a settlement under Section 12 (3) of the Industrial Disputes Act, 1947 through the second respondent, as void and unconstitutional.

For Petitioner : Mr. R. Yashod Varadhan, SC
for Mr. M. Ramamoorthy

For RR1 & 2 : Mrs. Bhavani Subbaroyan, AGP

For RR3 to 6 : Mr. A.L. Somayaji, SC
M/s Gupta & Ravi

For R7 : Mr. V. Prakash
(Party in person)

For RR8 to 14 : Mr. K. Sudalaikannu

C.R.P. Nos. 1859 and 1860 of 2007:

Rane Brake Linings Employees Union

(Regn. No. MDS/461)

Rep. By its Vice President P. Veeraraghavan

No. 30, II Main Road, Industrial Estate

Ambattur,

Chennai - 58

.. Petitioner in both C.R.Ps./Appellant in
CMA. 20 & 21 of 2006/ Petitioner

Vs.

1. G. Jayapalan

2. The Management of
M/s Rane Brake Linings Limited
rep. By its Chairman and Managing Director
No. 132 Cathedral Road
Chennai

3. The President
Rane Brake Linings Employees Union
No. 30, II Main Road, Industrial Estate
Ambattur, Chennai - 58

.. Respondents in both C.R.Ps./Respondents in
CMA.20 & 21 of 2006/Respondents

Petitions filed under Article 227 of the Constitution of India seeking to set aside the Decree and Judgement dated 20.02.2007 in C.M.A. Nos. 20 and 21 of 2006 on the file of the Subordinate Judge, Poonamallee.

For Petitioner : Mr. S.S. Vasudevan

For R1 : Mr. R. Yashod Varadhan, SC
for Mr. M. Ramamoorthy

For RR2 and 3 : Mr. A.L. Somaiyaji, SC
for M/s Gupta & Ravi

C O M M O N O R D E R

Heard the learned counsel appearing for the parties and have perused the records.

2. The writ petition and the Civil Revision Petitions were directed to be posted before this Court on the orders of the Honourable Chief Justice and in view of the inter-connectivity between the cases, the matters were heard together.

3. The writ petition has filed by a registered trade union represented by its General Secretary by name, one G. Jayapalan. The prayer in the writ petition is for the issuance of a writ of declaration declaring the memorandum of settlement dated 18.5.2007 entered into between the respondents 3 on the one side and respondents 7 to 14 on the other side under Section 12(3) of the Industrial Disputes Act, 1947 [for short, 'I.D. Act'] before the second respondent as void and unconstitutional.

4. It is claimed in the writ petition that the petitioner trade union is functioning in the third respondent factory at Ambattur. In that factory, out of 1318 workmen only for 918 workmen, Provident Fund contributions have been deducted and only 266 of them are permanent workmen. The rest of the workers were designated as Temporary Operator Trainees and some of them are also retained as contract workers. The said Jayapalan, who has sworn to the affidavit filed in support of the writ petition, claims that he was elected as the Union's General Secretary in the year 1991. He also stated that he was dismissed from service on 14.10.2006 without any enquiry as he was resisting the unfair trade practice indulged by the third respondent and he had also complained to authorities about the violations of various labour laws by the Management. He had also claimed that since the settlement dated 04.12.2002 relating to the service conditions of the workmen came to a close, during December 2005, the Union placed a fresh charter of demands dated 01.12.2005. Since the third respondent was not willing to consider their demands, an

industrial dispute was raised on 07.9.2006 before the Conciliation Officer. He also claims that by a no-confidence motion, he was removed from the post of General Secretary.

5. A suit also was filed before the Civil Court in O.S. No. 614 of 2005 against the petitioner and in I.A. No. 2405 of 2005, it was sought to restrain the third respondent Management in dealing with the said Jayapalan posing as its General Secretary. He also claimed that the seventh respondent (Mr. V. Prakash), who is appearing as a party-in-person, cannot claim to be the President of the Trade Union as he is neither a member nor an Honorary member of the Trade Union so as to hold the post of the President. Injunction sought for by the Union represented by its Vice President owing allegiance to the seventh respondent was dismissed by the Civil Court on 28.02.2006. As against the same, appeals were filed being C.M.A. Nos. 20 and 21 of 2006 before the Sub-Court, Poonamallee, and those appeals were also dismissed vide judgment dated 20.7.2007.

6. In the meanwhile, in order to prevent the said Jayapalan from functioning as the General Secretary, the eighth respondent filed a writ petition being W.P. No. 13342 of 2007 and the said writ petition was also dismissed by this Court on 16.4.2007 holding that the subject matter of the writ petition was an internal dispute of a Trade Union and, therefore, the Court cannot entertain a writ petition between two groups which are claiming to control the affairs of the petitioner Trade Union.

7. However, as against the said order, a writ appeal was filed being W.A. No. 741 of 2007 and in that Writ Appeal, interim applications being M.P. Nos. 1 and 2 of 2007 were taken out seeking for restraining the Joint Commissioner of Labour, Chennai, from rejecting any settlement or agreement reached between the Union led by the seventh respondent and the third respondent Management and for a further prayer that the second respondent should not entertain any application from the said Jayapalan pending disposal of the writ appeal. A Division Bench of this Court, by an order dated 09.5.2007, granted an interim injunction. Subsequently, the writ appeal itself came to be finally disposed of by a Division Bench vide judgment dated 13.6.2007.

8. The Division Bench confirmed the earlier order of this Court and passed a final order, which reads as follows:

"Having heard the parties, while we are not inclined to interfere with the order passed by the learned single Judge, we allow the appellant to take appropriate step if a favourable order is passed in the Civil Revision Petition. The writ appeal stands disposed of with the above liberty. Consequently, connected M.Ps. Are closed. There will be no order as to costs."

9. However, it is seen that during the pendency of that interim order, a Failure Report dated 21.02.2007 was sent by the Assistant Commissioner of Labour to the first respondent State Government and the same is pending consideration by the Government for an appropriate reference.

10. The learned counsel appearing for the petitioner submitted that during the pendency of the writ appeal (W.A. No. 741 of 2007), taking advantage of the interim order, a Settlement under Section 12(3) of the I.D. Act came to be signed between the group led by the seventh respondent and the third respondent Management before the second respondent Conciliation Officer on 18.5.2007 thereby foreclosing the dispute raised by the Union on behalf of the petitioner Union. It is this Settlement dated 18.5.2007, which is sought to be impugned in the writ petition.

11. Mr. R. Yashod Varadhan, learned Senior Counsel appearing for the petitioner Union submitted that inasmuch as the group led by the seventh respondent could not get any interim order in the Civil Court restraining the said Jayapalan from functioning as the General Secretary and also the writ appeal was disposed on 13.6.2007 by a Division Bench relegating the parties to wait for the outcome of the decision of the Civil Court, the settlement signed during the interregnum is wholly illegal and mala fide and cannot stand in the eye of law. Learned Senior Counsel also pointed out that the failure report by the second respondent was made on the dispute raised by the petitioner Union and the group led by the seventh respondent cannot frustrate their efforts by entering into a settlement which is also against the interest of the workmen.

12. Learned Senior Counsel also relied upon the judgment of the Supreme Court reported in 2005 (8) SCC 51 [Jaihind Roadways v. Maharashtra Rajya Mathadi Transport and General Kamgar Union and others] and submitted that if the settlement is tainted and unfair, that can be challenged. He also sought to argue that the group led by Jayapalan represents the majority of the workmen and, therefore, the Settlement impugned in the writ petition is a fraud on the provisions of the I.D. Act and it should not stand to continue even for a minute. He also questioned the method adopted by the second respondent in arriving at the settlement with the group led by the seventh respondent.

13. On behalf of the respondents 3 and 4, a counter affidavit dated 18.10.2007 was filed refuting the allegations made against the Management. It was stated on behalf of the Management that after several rounds of discussion, the settlement was signed between the workmen and the Management on 18.5.2007 and this was largely due to the active encouragement made by the second respondent Conciliation Officer. The said Conciliation Officer had also verified the genuineness of the parties representing the workmen. In the absence of any Court order in favour of

the said Jayapalan, there was nothing wrong in the Management entering into a settlement with the group representing the majority of the workmen. The terms of the settlement had come into force with effect from 01.6.2007 and out of 266 permanent workmen on whom the settlement was binding, 222 workmen had received the benefits under the settlement and they have also started giving production with the new norms prescribed. The other allegation of unfair labour practice allegedly indulged by the third respondent was also denied.

14. It was also seriously contended that with reference to the termination of the said Jayapalan, a dispute has been raised and the same is pending. It was stated that excepting for 35 workers, who refused to undertake to give the new production, all others are co-operating and implementing the terms of the settlement. It was only those 35 workers owing allegiance to the said Jayapalan, are indulging in "Go-Slow" tactics. The terms of Settlement had provided substantial wage increase and even in terms of wage arrears, all the workmen have received hefty amounts and, therefore, there was nothing wrong in the said settlement and the writ petition is liable to be dismissed.

15. Mr. A.L. Somayaji, learned Senior Counsel appearing for the respondents 3 to 6 submitted that even the judgment of the Supreme Court in Jaihind Roadways case (cited supra) far from helping the case of the petitioner goes against their contentions. He also submitted that first of all, that a settlement not being bona fide will have to be established only before an appropriate labour forum and there must be strong material to show that it lacked in bona fide or it was tainted or unfair. The petitioners have not made out any case for impugning the settlement and the writ petition is a direct outcome of the inter-Union rivalries between the said Jayapalan and the Union led by the seventh respondent.

16. Mr. V. Prakash, the President of the Trade Union appearing in person, submitted that he represents the majority of the workmen and the settlement has been signed in the interest of the workmen. The said Jayapalan has no locus standi to file a writ petition and, much more, use the name of the registered Trade Union as he ceased to be a member of the Trade Union after a no-confidence motion was passed by the majority of the workmen. He had not challenged the no-confidence motion and his subsequent removal from membership in any known forum. Further, he had lost the following of the workmen and the present attempt made by him is that of an agent provocateur and the writ petition is not in the interest of the workmen. The settlement had substantially advanced the interest of the workmen and any further litigation will only frustrate the workmen who have been eagerly awaiting for a wage revision.

17. Mr. K. Sudalaikannu, learned counsel appearing for the respondents 8 to 14, who are all office bearers of the petitioner union (though impleaded only in their individual capacity) submitted that workmen were happy with the settlement and excepting for a handful of persons, the said Jayapalan does not represent any other interest. He also submitted that to be a President of the Trade Union, it is not a pre-condition that the said person has to be a member or Honorary member at the first instance. In fact, when the seventh respondent was elected as the President of the trade union, he ipso facto becomes a honorary member and this has been the practice in all the Trade Unions across the country. Any other contrary construction will lead to an upset situation and defeat the very purpose of having an outsider to guide any trade union.

18. Mrs. Bhavani Subbarayan, learned Additional Government Pleader, on instructions, submitted that there was no illegality committed by the Conciliation Officer and she had taken into account all the relevant factors before appending her signature to the impugned Settlement dated 18.5.2007. The general body meeting of the Union had authorised its office bearers to sign the settlement.

19. Since much reliance was placed upon the interim orders passed by the Civil Court and the said interim orders have become the subject matter of two Civil Revision Petitions before this Court being C.R.P. Nos. 1859 and 1860 of 2007, with the consent of the parties and on the orders of the Honourable Chief Justice, they were also tagged along with the writ petition.

20. The suit in O.S. No.614 of 2005 was filed before the Court of District Munsif, Ambattur, by Rane Brake Linings Employees' Union represented by its Vice President Mr. P. Veeraraghavan (12th respondent in the writ petition) for a prayer that G. Jayapalan (deponent to the affidavit in the writ petition) be restrained from holding himself as the General Secretary of the petitioner Union and also for a prayer that the Management (respondents 3 and 4 in the writ petition) from in any manner dealing with the said Jayapalan. Pending the suit, two interim applications being I.A. Nos. 2404 and 2405 of 2005 were filed by the Trade Union. While in the first application, an interim injunction was sought for restraining the said Jayapalan from holding himself as the General Secretary of the Rane Brake Lining Employees' Union (Regd. No. MDS/461) pending the suit. In the second application, an injunction was sought against the Management (Rane Brake Lining Company) and its President from dealing with in any manner with the said Jayapalan.

21. The learned District Munsif, Ambattur, after hearing the parties, by an order dated 28.02.2006, held that there was no procedure for no-confidence motion contemplated in the bye-laws and, therefore, no motion will have any effect and that the issue whether the said Jayapalan can be restrained from functioning can be decided only in a trial. Curiously, the learned District Munsif also held that the prayer in the interim applications and in the main suit were the same and, therefore, the issues can be decided only in the trial. With reference to I.A. No. 2405 of 2005, on the basis of the undertaking given by the Management that all the privileges given to the office bearers would be extended to all, the application was closed.

22. As against these two orders, two appeals being C.M.A. Nos. 20 and 21 of 2006 were preferred before the Sub-Judge, Poonamallee. The first appellate Court held that since no documents were produced by both sides and hence, no issue can be decided and the issues would be decided after examination of all witnesses and on a perusal of the documents in the main suit. In terms of the balance of convenience, it held that any order granted will cause hardship to the Management and so saying, the appeals were dismissed by the orders dated 20.02.2007. It is as against these two orders, the two Civil Revision Petitions have been filed.

23. Mr. S. S. Vasudevan, learned counsel appearing for the petitioners submitted that both the trial Court and the lower Appellate Court have failed to take note of relevant circumstances of the case including a prima facie opinion as well as the balance of convenience and have miserably erred in not granting the injunction as prayed for. The finding of the trial Court that since the relief in the I.A. as well as the suit are the same, there was no necessity to grant any interim order, cannot be accepted as that would amount to negating the power of the trial Court from granting any interim orders in any suit pending trial.

24. With reference to the order passed by the lower Appellate Court, it went at a tangent by stating that there was no material placed for arriving at any conclusion. Such a finding failed to take note of the documents filed along with the Complaint. The petitioners have filed as many as ten documents including the minutes of the meetings of the general body as well as bye-laws of the trade union. The specific averment was that 152 members of the trade union gave a requisition proposing a no-confidence motion against the first defendant and a general body meeting was accordingly convened by the President on 27.11.2005 thereby giving more than 15 days notice. It was also stated that in the meeting on 27.11.2005 that out of 292 members, 152 members were present and have signed the minutes even though the quorum was only 98 members. Though the resolution could have been passed by show of hands, a secret ballot was conducted in which 159 members voted in favour of the seventh respondent and the decision to expel the first respondent was communicated to him on 30.11.2005. Even the Registrar of Trade Unions was also

informed of the same. Till date, the first defendant never took any steps to challenge the said action. This itself will show that there was a prima facie case to hold against the first defendant and since the earlier settlement had expired as early as 2005 and the talks were prolonged for more than one year, the workers have become restless as their wages were not revised over a long time.

25. Therefore, both the trial Court as well as the lower Appellate Court ought to have seen that enough materials were available to show that there were both prima facie case as well as balance of convenience in granting injunction pending the suit. In fact, the finding of the trial Court that if the prayer is similar both in the suit as well as in the interim application and hence, no relief can be granted, is not valid. The lower Appellate Court was wrong in stating that there was no documents filed before the trial Court. On the contrary, while deciding the application under Order XXXIX Rule 1 CPC, the plaint documents have always been taken note of for deciding the limited question of prima facie finding. Therefore, it is a fit case where the orders of both the Courts have to be set aside and pending the suit, the Revision petitioners (plaintiff) are entitled for an order of injunction.

26. Per contra, Mr. R. Yashod Varadan, learned Senior Counsel representing the first defendant (first respondent in the CRP) stated that though the office bearers of the trade union may not have any constitutional right or common law right, but yet the registered body functioning under its bye-laws approved by the authorities under the relevant Act, must confirm to its bye-laws and in the absence of any provision for no-confidence motion, the attempt by the petitioner in dislodging the first defendant is illegal and the lower Court had correctly refused the declaratory relief of injunction.

27. Mr. Manohar Gupta of M/s Gupta and Ravi, representing the respondents 2 and 3, submitted that it was purely an inter-union rivalry and, therefore, the factory management need not be dragged into in the civil dispute.

28. In the absence of the first defendant challenging his removal by a meeting convened by a majority of members and the decision having been communicated to him, the trial Court ought to have granted the interim order as prayed for by the petitioner. In fact, the finding that the prayer in the I.A. as well as in the suit is same and, therefore, no

relief can be granted, is contrary to the provisions of the Specific Relief Act as well as Order XXXIX Rule 1 CPC. The trial Court did not apply its mind in deciding the question of grant of any interim order and merely ipsi dixi stated that no relief can be granted in view of the similarity of the prayer in I.A. and the suit.

29. The lower appellate Court did not even look into the plaint documents to see whether any materials were available for grant of an interim order and held that there was no documents filed. The approach of the lower Appellate Court is contrary to the records and it had ignored the practice adopted in Courts that while arguing an interim application, reliance can be made upon the plaint documents. Though in a regular trial, a formal proof may be required, but in rendering a decision on an interim application, documents filed by both sides can be looked into to have a prima facie view and, therefore, the lower appellate Court was wrong in rejecting the appeals filed by the petitioner.

30. In this case, the general body Minutes were very much available and was also filed as Document No. 6 along with the plaint. Once it is held that the first defendant can be restrained from holding himself as General Secretary pending the suit, the other application was only consequential because the Management cannot be allowed to deal with strangers posing as office bearers of a registered Trade Union.

31. In the light of the above, the order and decree dated 28.02.2006 passed by the trial Court in I.A. Nos. 2405 and 2406 of 2006 as well as the judgment and decree dated 20.02.2007 passed by the lower Appellate Court in C.M.A. Nos. 20 and 21 of 2006 will stand set aside. An order of injunction in favour of the petitioner / plaintiff as prayed for in I.A. Nos. 2404 and 2405 of 2006 will stand issued pending disposal of the suit in O.S. No. 614 of 2005.

32. Since the order in the C.R.P. Nos. 1859 and 1860 of 2007 has been granted in favour of the petitioner, in the light of the judgment dated 13.6.2007 passed by the Division Bench in W.A. No. 741 of 2007, there will be no difficulty for the Rane Brake Lining Employees' Union (Regd. No. MDS/461) represented by its General Secretary R. Sundar from taking appropriate steps in furtherance of the order of the Civil Court.

33. With reference to the prayer in W.P. No. 30300 of 2007, this Court is unable to go into the validity of the settlement as the petitioners have failed to prove any illegality or mala fide in arriving at the settlement as indicated in the judgment of the Supreme Court in Jaihind Roadways case (cited supra). The only forum open to them is to question the settlement before the appropriate forum. However, the grievance of the petitioner is that on the failure report dated 21.02.2007 sent by the second respondent Conciliation Officer, the first respondent Government had not taken any decision and only when the matter is referred for adjudication, the question relating to fairness of the settlement can be gone into before the adjudicating machinery.

34. However, Mr. A.L. Somayaji, learned Senior Counsel representing the Management as well as Mr. V. Prakash appearing in person, submitted that the failure report had become infructuous in the light of the settlement dated 18.5.2007 entered into between the Trade Union and the third respondent Management before the office of the second respondent Conciliation Officer. Therefore, no reference can be made through any adjudicating forum. This is a matter which the first respondent State will have to decide after applying its mind on the basis of relevant records. As long as there is a failure report sent to the Government, the first respondent State will have to take a decision in terms of Section 10(1) of the I.D. Act. It is needless to state that while deciding the said issue, the first respondent State can also take into account the subsequent developments including the arriving of the settlement dated 18.5.2007 between the workers and the Management. Therefore, a direction is issued to the first respondent State to pass appropriate orders in terms of the failure report dated 21.02.2007 sent by the second respondent Conciliation Officer in reference No. Na. Ka. A/1555/06 within a period of four weeks from the date of receipt of a copy of this order in accordance with law. Depending upon the outcome of the order passed by the first respondent, it is open to the petitioner to pursue appropriate action as it may deem fit in the circumstances of the case.

35. At the close of the arguments, Mr. M. Ramamoorthy, learned counsel appearing for the petitioner in the writ petition submitted that only a few workers have not been paid the revised wages as per the settlement dated 18.5.2007 and there is a discrimination between the set of workers owing allegiance to the said G. Jayapalan and the other workers led by the seventh respondent. Therefore, he prayed this Court should issue appropriate directions to the third respondent Management to grant benefits as provided in the settlement. However, such an issue does not arise for consideration in the present writ petition.

36. Mr. A.L. Somayaji, learned Senior Counsel appearing for the third respondent Management submitted that the revision of wages in the settlement dated 18.5.2007 is also linked with the revised work-norms and unless the workmen give undertakings that they will also observe the same work norms as per the settlement, the question of extending the benefits of the revised wages will not arise in respect of them and, therefore, this Court need not grant any direction as sought for by the learned counsel for the petitioner. In view of the above, it is open to those workmen, who have not got the revision of wages, to give appropriate undertakings and then get the terms of the settlement implemented regarding revision of wages.

37. In the light of the above, W.P. No. 30300 of 2007 will stand dismissed except for the direction to the first respondent State to pass appropriate orders on the Failure Report dated 21.02.2007 sent by the second respondent within a period of four weeks. Civil Revision Petition Nos. 1859 and 1860 of 2007 will stand allowed and there shall be an order of injunction as prayed for in I.A. Nos. 2404 and 2405 of 2005 in O.S. No. 614 of 2005 filed by the petitioner / plaintiff. However, the parties are allowed to bear their own costs. Connected Miscellaneous Petitions stand closed.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Secretary
Government of Tamil Nadu
Labour and Employment Department
Fort St. George
Chennai - 9
2. The Assistant Commissioner of Labour II
Department of Labour and Employment
III Floor Kuralagam, Prakasam Salai
Chennai - 108

3. The Subordinate Judge,
Poonamallee.

4. The District Munsif cum
Judicial magistrate,
Ambattur.

+1 cc to Mr.S.S.Vasudevan, Advocate Sr.No.4529.

+1 cc to M/s.Gupta & Ravi, Advocate Sr.No.4674.

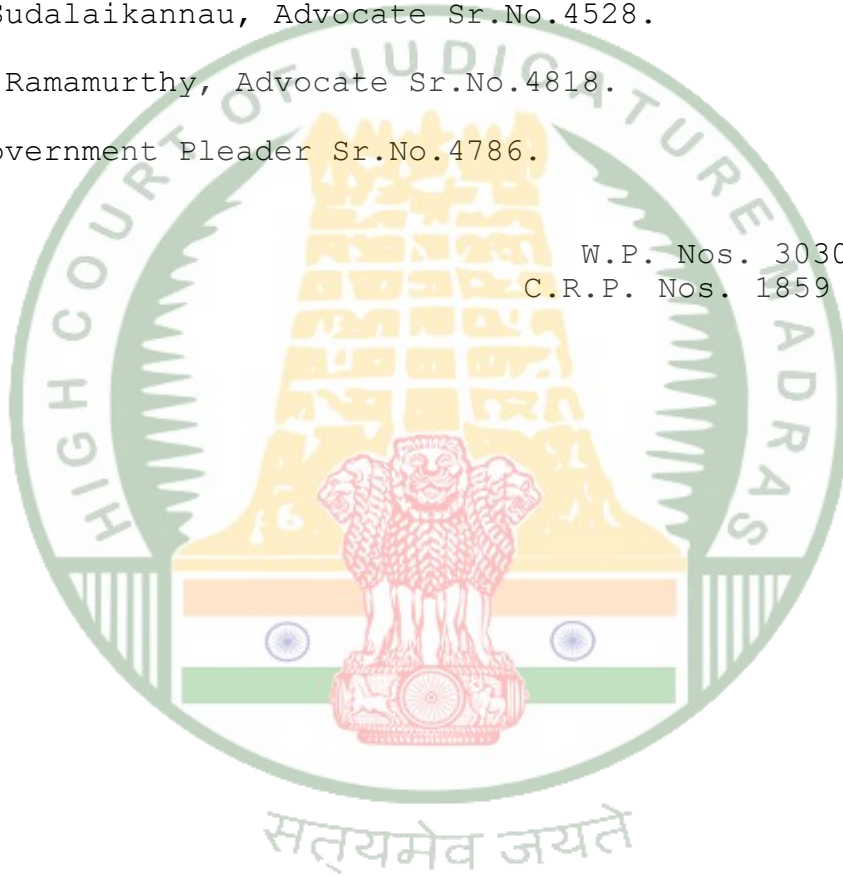
+1 cc to Mr.K.Sudalaikannau, Advocate Sr.No.4528.

+3 ccs to Mr.M.Ramamurthy, Advocate Sr.No.4818.

+1 cc to The Government Pleader Sr.No.4786.

ASM(CO)
DCP/4.2

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