HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WP.Nos.8037, 10661, 11488, 11510, 11743, 11769, 11788, 12696, 13054, 13055, 13657, 13779, 13916, 14010, 14170, 14242, 14573, 14574, 14715, 14938, 15014, 15042, 15043, 15063, 15121, 15164, 15173, 15205, 15220, 15534 and 15556, 15928, 16118 and 16119 of 2019

COMMON ORDER:

A large number of writ petitions have been filed questioning the action taken by the State-authorities in terminating the services of the petitioners under the "Mid Day Meal Scheme". Among all these cases, WP.Nos.11488, 11743, 13055 and 14573 of 2019 were taken up for hearing.

Learned counsel representing the petitioners in these four matters took the lead and argued the same. Learned Government Pleader appearing for the respondents replied in all these matters. All the other counsels who have filed the large batch of writ petitions essentially adopted the submissions made by the learned counsels, who took the lead.

The status of various petitioners in the batch of writ petitions is described as follows:

WP.No.8037 of 2019: Petitioners in this writ petition are claiming to be appointed as cooks by the Mid Day Meal Implementation Committee. They are claiming obstruction from discharge of services.

WP.No.10661 of 2019: The petitioner is claiming to be cook. Respondents are trying to terminate his services without notice.

WP.No.11488 of 2019: The petitioner is claiming to be Mid Day Meal Agency. Show cause notice was issued to which reply was given.

WP.No.11510 of 2019: Petitioner is claiming tobe an implementing agency. Show cause notice was given and explanation was offered.

WP.No.11743 of 2019: Petitioner is claiming to be Mid day meal agent. Show cause notice was given. Explanation is also furnished. Its services are terminated.

WP.No.11769 of 2019: Petitioner is a group of people who are given permission to cook meals. Its services are terminated without notice.

WP.No.11788 of 2019: Petitioners are claiming to be the cooking agency. Their services are being terminated without any notice.

WP.No.12696 of 2019: Petitioner is claiming to be the cooking agency. Its services are being terminated without any notice. Representation submitted by the petitioner.

WP.No.13054 of 2019: Petitioner is claiming to be the member of the helping group appointed for cooking. Services were terminated without notice.

WP.No.13055 of 2019: Petitioner is claiming to be a Mid Day Meal agency. Services are terminated without notice.

WP.No.13657 of 2019: Petitioner is claiming to be a group leader of self styled group entrusted with the work of supply of Mid Day Meals. Notice given, explanation also submitted.

WP.No.13776 of 2019: Petitioner is a Mid day meal program worker. Work is terminated and a new party is appointed without any notice.

WP.No.13916 of 2019: Petitioner is a society represented by team leader. Services are discontinued without any notice.

WP.No.14010 of 2019: Petitioner is an implementing agency. Show cause notice was issued. Termination was carried out.

WP.No.14170 of 2019: Petitioner claims to be implementing agency. Show cause notice issued. Termination is implemented and effected.

WP.No.14242 of 2019: Petitioner is an implementing agency. A Show cause notice was issued. Services are terminated.

WP.No.14573 of 2019: Petitioner is a Sangam-association engaged as a Mid Day Meals agency. Services are terminated without notice.

WP.No.14574 of 2019: Petitioner is a Mid Day Meals agent. Service is termination without any notice.

WP.No.14715 of 2019: Petitioner claims to be Mid Day Meal worker. Services were termination without any notice.

WP.No.14938 of 2019: Petitioner is a Mid Day Meal worker Agency. Its services were terminated without any notice.

WP.No.15014 of 2019: Petitioner claims to be a Mid Day Meal Worker Agency. Its services were terminated without any notice.

WP.No.15042 of 2019: Petitioner claims to be a Mid Day Meal Programmer. Its services were terminated without any notice.

WP.No.15043 of 2019: Petitioner is a Mid Day Meal worker Agency. Its services were terminated without any notice.

WP.No.15063 of 2019: Petitioner claims to be an agent. Its services were terminated without any notice.

WP.No.15121 of 2019: Petitioner is a Mid Day Meal worker Agency. Its services were terminated without any notice.

WP.No.15164 of 2019: Petitioner is a Mid Day Meal worker Agency. Its services were terminated without any notice.

WP.No.15173 of 2019: Petitioner is a Mid Day Meal worker Agency. Its services were terminated without any notice.

WP.No.15205 of 2019: Petitioner is a Mid Day Meal worker Agency. Its services were terminated without any notice.

WP.No.15220 of 2019: Petitioner is a Mid Day Meal worker Agency. Its services were terminated without any notice.

WP.No.15534 of 2019: Petitioner is a Mid Day Meal Worker Agency. Show cause notice is given. Explanation was furnished.

WP.No.15556 of 2019: Petitioner claims to be a member of the group appointed for cooking. Show cause notice is given. Its services were terminated without any notice.

WP.No.15928 of 2019: Petitioner himself styled as a Mid Day Meal Agency. Its services were terminated without any notice.

WP.No.16118 of 2019: Petitioner styles herself as Organizer. Show cause notice received. Reply given.

WP.No.16119 of 2019: Petitioner states that she was appointed to Mid Day Meal. Show cause notice was given and reply was also given.

The brief factual background to these cases is that the Mid Day Meal Scheme was introduced through out the State of Andhra Pradesh pursuant to the orders of the Hon'ble Supreme Court of India in WP.No.196 of 2001. The Government decided to implement the scheme by giving hot cooked food in the various schools. G.O.Ms.No.94 dated 25.11.2002 was issued with some guidelines for implementation of the scheme. The scheme was to be implemented through the implementing agency described as follows:

> **5. Implementing Agency (IA):**
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> In Rural Areas DWCRA/Self Help Groups/SEC/other agencies like temple, NGO's of proven track record, Charitable trusts/Group of Parents (in this order of preference) to be identified by the MRO would be the Implementing Agencies.
>
> In Urban Areas Community Development Societies (CDS)/NGO/Urban SHGs/DWCUA/SEC/other agencies like temples, NGOs of proven track record,

> Charitable trusts/Group of Parents (in this order of preference) to be identified by a Committee headed by the MRO would be the Implementing Agencies.
>
> In Twin Cities of Hyderabad and Secunderabad Contractors can also be identified as Implementing Agency, if no CDS/DWCUA/SHG/Charitable trusts etc., comes forward.

In addition, various committees were constituted for monitoring the implementation of the scheme. Certain guidelines were also given for picking up the raw-material necessary for cooking of the food and for supply of the same. Some rates for the services rendered were also stipulated, which were later amended also. The G.O. did not however, talk of or give any guidelines for the termination/removal of the implementing agency. In this batch of writ petitions, petitioners described themselves as Mid Day Meal Agency; as a Worker, Contractor etc. Despite pertinent questions from the Court, a very clear or categorical answer was not received from the petitioners of their exact 'status'. Therefore, in line with GO.Ms.No.94 they are described as Implementing Agencies only.

Submission of petitioners:

In many of the cases, it was argued that the services of the petitioners were terminated without any notice whatsoever and that therefore, the same is contrary to the settled rule of *audi alteram partem.* In certain cases, an

argument was advanced that a very peremptory show cause notice was issued and that immediately thereafter, new agencies were appointed without following the guidelines issued in G.O.Ms.No.94 which provided for a procedure for appointment of an agency.

In WP.No.11488 of 2019, the learned counsel Sri M.Siva Kumar, took the lead and argued the matter. It is his contention that in a batch of writ petitions filed in the year 2014, a learned single Judge of this Court passed orders on 30.12.2014 (WP.No.9800 of 2013 and batch), wherein, the learned single Judge was pleased to give certain directions to the Government. According to the learned counsel, the learned single Judge noticed that there is no procedure for termination of the agency and therefore, if any deficiency is noticed, the same should be communicated to the Implementing Agency and the explanation offered should be considered before passing any adverse order. Learned counsel argued that the procedure prescribed by learned single Judge of this Court has not been followed in the present cases. In addition, the learned counsel also relied upon ***G.Vallikumari v. Andhra Education Society and others***[1] to argue that if an order is passed adversely affecting an individual, it should contain reasons. To a similar effect is the judgment relied upon by him in ***Secretary and Curator,***

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[1] (2010) 2 SCC 497

Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity[2], wherein the importance of giving reasons in administrative and judicial orders was amplified. Lastly, he relied upon ***Veerendra Kumar Dubey v. Chief of Army Staff and others***[3] and argued that procedural safeguards must be followed before the services of the petitioners are terminated. He submits that the important rule of natural justice has not been followed and that the petitioners are being summarily dismissed. The judgment of the learned single Judge of this Court is also relied upon by the learned counsel for the petitioner in WP.No.11743 of 2019. In continuation with the same line of submissions, the learned counsel in WP.No.14573 of 2019, argued relying upon a Division Bench judgment of this Court reported in ***Gangikuntal Sridhar v. The State of Andhra Pradesh***[4] that the State cannot be allowed to hire and fire employees like a private establishment nor can they replace one set of temporary employees with another set of temporary employees. He also argued that the inequality of bargaining power of the petitioners is clearly visible from the fact that they are small time individuals who cannot face the might of the State. He points out that all the petitioners were summarily ousted from being the Implementing Agencies

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[2] (2010) 3 SCC 732

[3] (2016) 2 SCC 627

[4] 2017 (2) ALT 485

despite years of service. It is his contention that because of the change in the political scenario, a new set of people are being allowed to function as the Implementing Agencies. Above in brief are the submissions of the learned counsel for the petitioners which have been adopted by all others.

After hearing in majority of matters Sri M.Solmon Raju, learned counsel for the petitioner in WP.No.15928 of 2019 was heard once again and the learned counsel for the petitioner was given the case law that was cited by the learned Government Pleader Sri Syed Khadar Masthan. Then the learned counsel Sri Solomon Raju argued that both Articles 14 and 21 of the Constitution of India were ignored in this case and that the petitioners fundamental rights of equality and right to life are deprived in this case. According to him, it is a fundamental principle of our Indian Judicial system that rule of *audi alteram partem* is always to be followed. This rule, according to him, is a rule which has been adopted as a guiding principle in all the cases so far decided by the highest Courts of land. Learned counsel submits that once the rule of natural justice was flouted, this Court has the jurisdiction and the power to pass appropriate orders. He also relies upon ***T.Kumar Babu v. Government of Andhra Pradesh***[5], wherein in para 30, it was stated that even if Government instructions cannot be elevated to the

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[5] LAWS (APH) 2009 7 69

status of subordinate legislation, nevertheless they must be followed. The finding at para 30 of this judgment is that the Government which issued the instructions should follow the same. Basing on this judgment, the learned counsel submits that GO.Ms.No.94 should be followed in its letter and spirit. It is his contention that if fresh appointments are to be made, the procedure prescribed under G.O.Ms.No.94 must be followed. In addition, he relies upon ***P.Ramanaiah v. Tirumala Tirupati Devasthanams***[6]. He argues that the work entrusted to the petitioners in this case is perennial in nature and therefore, their services cannot be terminated unilaterally. Lastly, he relies upon ***Pradeep Kumar Rapria v. State of Haryana***[7] and argues that even in cases of contractual matters and appointment of Law Officers, the action of the State should be proper and it is amenable to judicial review. Therefore, for all these reasons, learned counsel argues that this is a fit case in which the writ petition should be allowed. He also relies upon the judgment of the learned single Judge of this Court mentioned earlier (WP.No.9800 of 2013 and batch), wherein the learned Judge was pleased to issue directions for termination of Mid Day Meals Scheme.

Learned counsel in the alternative argues that even if the State has a right to terminate the Mid Day Meal Agents,

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[6] LAWS(APH) 2012 3 110=2012 (5) ald 501

[7] AIR 2016 SC 1629

Contractors, Workers etc., they will have to give them a notice and then terminate their services, particularly in cases where people who are working as the implementing agency for years. Further, he submits that if fresh appointments are to be made, the procedure stipulated under G.O.Ms.No.94 should be scrupulously followed. Therefore, it is his contention that as the procedure stipulated under G.O.Ms.No.94 is not followed, petitioners are entitled to relief apart from the relief claimed on the basis of the breach of the fundamental rule of natural justice.

Reply by the Government/State:

In reply to this, on behalf of the State, Sri Syed Khadhar Mastan appeared and argued in WP.No.11488 of 2019 essentially. The following judgments were cited by him. ***Sri Kodanda Ramaswamy Oriental Educational Committee v. The District Level Committee for Mid-Day Meal Scheme, Cuddapah***[8], ***Rudramamba Mahila Dwacra Group, Shiva Nagar, Warangal v. Principle Secretary, Education Department, Govt. of A.P.***[9], ***D.Ameena Bee v. Commissioner, Anatapur Municipality, Anatapur***[10] and lastly ***Rachakonda Nagaiah v. Government of A.P., rep., by the District Collector, Nalgonda.***[11]

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[8] 2003 (2) APLJ 323

[9] 2004 (6) ALD 157

[10] 2005 (2) ALT 576

[11] 2013 (3) ALT 377

The fundamental submission of the learned Government Pleader on behalf of the State is that the petitioners have not clarified their actual or proper status. It is his contention that some of them are described as Workers and some of them are described as Agencies etc. He also contends that they do not have a vested right to be continued and that the action of the State is correct. He also argues that only if there is a right and an infringement of that right, this Court can grant an order as prayed for. He points out that there is no judicially enforceable right leading to a legal grievance which can be enforced through a Court of law. His contention is that therefore the petitioners cannot seek the extraordinary remedy from this Court. He points out that three out of the four judgments relied upon by him are directly under the Mid Day Meals Scheme. He also points out that the Division Bench of this Court in WA.No.39 of 2005 and batch (WP.No.22118 of 2004) has held that the appellants cannot be appointed forever and that new agencies should be allowed to operate. It is his contention that the learned single Judge who decided WP.No.9800 of 2013 and batch did not consider the earlier judgments of the learned single Judges of this Court or of the Division Bench particularly under the Mid Day Meals Scheme itself. Therefore, he submits that the judgment of the learned single Judge of this Court does not reflect the correct law. He points out that the issue whether the

petitioners have a right which can be enforced is not at all considered in the batch of cases disposed by the learned single Judge in WP.No.9800 of 2013 and batch. Therefore, it is his contention that the Government did not commit any error. He lastly points out that the rules of natural justice cannot always be brought into every administrative action and that there is no straight jacket formula for defining natural justice.

Sri Syed Khadhar Masthan, the Government Pleader relies upon a judgment reported in ***Pimpri Chinchwad Municipal Corporation v. M/s. Gayatri Construction Company***[12]. Relying upon paras 9 to 11 of the judgment he argues that the present contract is a non-statutory contract and that therefore a writ is not the proper remedy at all. Merely because one of the parties to the agreement is a statutory body, a writ is not maintainable. Relying upon ***State of Guajarat v. Meghji Pethraj Shah Charitable Trust***[13], which is reproduced in para 10 of SLPNo.1129 of 2019, learned counsel argued as follows:

> "22. We are unable to see any substance in the argument that the termination of arrangement without observing the principle of natural justice (audi alteram partem) is void the termination is not a quasi-judicial act by

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[12] Civil Appeal No.4912 of 2008

[13] (1994) 3 SCC 552

> any stretch of imagination; hence it was not necessary to observe the principles of natural justice. It is not also an executive or administrative act to attract the duty to act fairly. It was – as has been repeatedly urged by Shri Ramaswamy – a matter governed by a contract/agreement between the parties. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, e.g., where the matter is governed by a non-statutory contract. Be that as it may, in view of our opinion on the main question, it is not necessary to pursue this reasoning further."

Learned counsel therefore argued that as these contracts are non-statutory in nature, the rules of natural justice need not be incorporated into the same. It is his contention that a writ petition can be filed in contractual matters, in a very limited area but in view of the clear pronouncement of a Division Bench of this Court in ***Gangikuntal Sridhar's*** case (4 supra), the petitioners are not entitled to file the writ petitions and or seek any remedy through a writ Court. He points out that the petitioners are variously described as implementing agencies, workers, contractors etc., and that their status itself is a matter of doubt. Therefore, learned counsel submits that these applications are devoid of merits and they should be dismissed.

Determination:

This Court after hearing the learned counsels notices that there is strength in what is stated by the learned advocate appearing for the respondents/State. The petitioners are variously described as Workers, Implementing Agencies etc. In addition, if the G.O.Ms.No.94 dated 25.11.2002 is considered; it talks of the implementing agencies only. Para 5 of the G.O. talks of various groups which have to be appointed as Implementing Agencies. It does not talk of individuals being appointed as Implementing Agencies. In many cases individuals are also appointed. Apart from that, this Court also notices that the learned single Judge in ***Sri Kodanda Ramaswamy Oriental Educational Committee's*** case (5 supra) and ***Rudramamba Mahila Dwacra Group, Shiva Nagar, Warangal's*** case (6 supra) have held that the petitioners under the Mid Day Meals Scheme do not have vested legal right which is enforceable by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. In ***Sri Kodanda Ramaswamy Oriental Educational Committee's*** case at para 10, it was held as follows:

> "10. It is pertinent to note that G.O.ms.No.94 itself is only an administrative order which has no statutory force. The guidelines annexed to the G.O.Ms.No.94,

> indicates the procedure to be followed for proper implementation of a welfare scheme. The entrustment of work to an implementing agency in pursuance of such guidelines does not confer any legal right on any person which can be enforceable by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The law is well-settled that administrative instructions confer no enforceable right." (emphasis supplied)

Apart from this judgment, the Division Bench of this High Court in ***D. Ameena Bee'***s case (7 supra) held as follows:

> "5. The impugned proceedings, dated 17-11-2004, which is challenged before us, in our considered opinion, in no manner affects any of the guaranteed rights of the appellants herein. The order under which the appellants herein were entrusted with a duty of cooking the mid-day meal itself does not confer any right and therefore, the question of taking of any right, as such, does not arise. The impugned decision obviously appears to have been taken by the Municipality pursuant to the instructions of the Government, which itself is in the realm of the policy decision. Implementation of schemes may

> depend upon variety of circumstances and the administration learns by experience and there is nothing wrong in changing the manner of implementation of the schemes by involving some more implementing agencies. The appellants cannot claim any monopoly as implementing agencies and insist that the same number of students/schools must be entrusted continuously and no other new implementing agency should be allowed to be intruded into in implementing the scheme."

As rightly argued by the learned counsel for the Government, the issues raised in these writs were not considered by the learned single Judge while disposing of WP.No.9800 of 2013 and batch. This Court, therefore, is following the other single Judges of this Court in two judgments reported earlier. Apart from this, the decision of the Division Bench is clearly binding on this Court. The two single Judges and the Division Bench held that the guidelines do not confer any legal right on the person who is appointed/functioning as an Implementing Agency. The Division Bench clearly held that the impugned decision in that case is in the realm of policy decisions and therefore, the petitioners cannot have a right to question the same. This Court is bound by the Division Bench judgment.

Lastly, a learned single Judge of this Court in ***Rachakonda Nagaiah's*** case (8 supra) has reviewed the entire case law on the subject by referring to large number of judgments and ultimately came to the following conclusion:

> "No one can seek a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one, suffering a legal grievance, can ask for a mandamus. A person can be said to be aggrieved only when he is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. (Halsbury's Laws of England, 4th Edn., Vol. I, para 122; State of Haryana v. Subash Chander Marwah MANU/SC/0400/1973 : (1974) 3 SCC 220; Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed MANU/SC/0011/1975 : (1976) 1 SCC 671; Ferris: Extraordinary Legal Remedies, para 198; and Mani Subrat Jain v. State of Haryana MANU/SC/0540/1976 : (1977) 1 SCC 486). In order that mandamus may issue to compel an authority to do something, it must be shown that the statute imposes a legal duty on that authority, and the aggrieved party has a legal right under the statute to enforce its performance. (Subash Chander Marwaha MANU/SC/0400/1973 : (1974) 3 SCC 220; Dr Rai Shivendra Bahadur v. Governing Body of the Nalanda College MANU/SC/0098/1961 : AIR 1962 SC 1210)"

Learned counsel in WP.No.14573 of 2019 relied upon a Division Bench judgment reported in ***Gangikuntal Sridhar*** (4 supra). In that case, the point that felt for consideration was the nature of employment of the appellants and who is the *de jure* employer. The Division Bench of this Court after going through the entire facts came to the conclusion that there is 'a master and servant' relationship between the State and the outsourced employees. Mere fact that there is an outsourcing agency did not deter the Division Bench from coming to a conclusion that there is a master and servant relationship between the petitioners and the State. Therefore, the Division Bench held that the respondent/State cannot be permitted to sever the master and servant relationship in a summary manner. As noted earlier and despite the repeated questions from this Court, the status of the petitioners is not at all clearly explained. A master-servant relationship is neither pleaded nor established. In fact, the learned single Judge in ***Sri Kodanda Ramaswamy Oriental Educational Committee*** (5 supra) also noticed that G.O.Ms.No.94 does not provide for appointment for an Implementing Agency. It talks of "identification" of the Implementing Agency. Thereafter, the learned single Judge held that G.O.Ms.No.94 is only a welfare scheme and it does not confer a legal right on a person which can be enforced under Article 226 of the Constitution of India.

To the same effect is the judgment in ***Rudramamba Mahila Dwacra Group*** (6 supra). Lastly, the Division Bench

in ***D.Ameena Bee's*** case (7 supra) held that the decision to terminate the Mid Day Meal Scheme Agencies is in the realm of policy and that the Court should not interfere. In para 3 the Division Bench held as follows:

> "3. That the predominant purpose of engaging the services of the implementing agencies is to entrust them with the work of cooking so that the scheme is properly implemented and the students derive the benefit of the scheme. It is meant for the welfare and benefit of the students. Even the proceedings of the District Collector, referred to hereinabove, does not confer any right upon anyone of the implementing agencies. The implementing agencies are not expected to convert this scheme into any profit making ventures. May be in the process, the actual personnel involved may derive semblance of wage, but the scheme is not intended to provide any employment to any individual or implementing agencies. In the circumstances, we are of the opinion that the proceedings of the District Collector approving the list of identified implementing agencies by the Municipality itself does not confer any indefeasible right upon any one of the implementing agencies or individuals consisting of such implementing agencies." (emphasis supplied)

In that view of the matter, this Court is of the opinion that the orders passed by the learned single Judges in ***Sri***

Kodanda Ramaswamy Oriental Educational Committee's and ***Rudramamba Mahila Dwacra Group***'s cases (5 and 6 supra) and the Division Bench judgment in ***D.Ameena Bee***'s case (7 supra) are more appropriate and have discussed the issue in its proper perspective. These judgments were not placed before the learned single Judge in that batch of writ petitions. This Court which is bound by the law of precedent is following the Division Bench judgment in ***D.Ameena Bee's case.*** This Court is also of the opinion that even if a contract can be spelt out between the petitioners and the State, it is purely non-statutory in nature and cannot be enforced through a writ petition.

In addition, the rules of natural justice cannot be put in a straight jacket formula. As the petitioners do not have legally enforceable right, granting of a relief only on the ground that they are not giving an opportunity of being heard and the same would be an empty formality.

If the rules of natural justice are flouted, the option left to this Court is to remand the matter back or to set aside the orders and direct a *de novo* hearing. In view of the fact that two single Judges and one Division Bench have held that the petitioners do not have an enforceable right and that these decisions are policy decisions, this Court holds that a further opportunity of hearing will not serve any useful purpose

(***Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise***[14]).

In that view of all the above, this Court is of the opinion that the petitioners have not made out a case for issuance of a writ of Mandamus. This Court does not find an enforceable legal/statutory right that is available to the petitioners which would entitle them to invoke the extra ordinary jurisdiction of this Court and seek a writ of Mandamus.

Therefore, for all these reasons, the writ petitions are all dismissed. No order as to costs.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

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D.V.S.S.SOMAYAJULU,J

Date : 31.10.2019
KLP

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[14] 2015 (8) SCC 519