

W.P.No.17521 of 2020

DR.VINEET KOTHARI, J.
and
M.S.RAMESH J.

ORDER

(Made by Dr.Vineet Kothari,J)

This matter was mentioned to us to be taken up for Admission hearing in post lunch session in Supplementary List, in view of the urgency of the matter, the record of the writ petition was placed before us for admission and was taken up today itself during Court hours.

2. We have heard Mr.Arvind Datar and Mr.P.S.Raman, learned Senior Counsel appearing for the petitioner assisted by Mr.Ankur Kashyar, Mr.R.Sankaranarayanan, learned Additional Solicitor General for the first respondent Central Government assisted by Mr.K.Jayaganesh, Senior Panel Counsel, Mr.Ravi Kadam, learned Senior Advocate for the second respondent Reserve Bank of India, assisted by Mr.Ashish Kamat and Mr.P.Giridharan, Mr.Umasuthan, learned counsel for the third respondent (The Lakshmi Vilas Bank Limited) and Mr.AR.L.Sundaresan, learned senior counsel for the fourth respondent (DBS Bank India Limited), assisted by Mr.Suhrith Parthasarathy.

3. Mr.Arvind Datar, learned Senior Counsel appearing for the petitioner has submitted that the Central Government, Ministry of Finance, Department of Financial Services (Banking Division) vide Notification No.GSR 731(E) dated **25th November 2020**, has approved and promulgated the Scheme of Amalgamation of one **M/s. Lakshmi Vilas Bank Ltd.** with the fourth respondent company **M/s. DBS Bank India Limited**, which is wholly owned Subsidiary of the Singapore Company and the petitioner herein represents the interests of retail investors, who are the shareholders of the Bank, M/s. Lakshmi Vilas Bank Limited and the Scheme of Amalgamation sanctioned under Section 45 of the Banking Regulation Act, is questioned in the present writ petition.

4. The appointed date under the said notification is **27th November 2020**, i.e. today and it was also brought to our notice that two such writ petitions challenging the very same Notification have been challenged by the original promoters M/s. Kare Electronics and Development Private Limited and Others v. Reserve Bank of India in Bombay High Court also in **W.P.L. No.6969 of 2020** and M/s. India Bulls Housing Limited vs. Union of India and Others in **W.P.L. No.6943 of 2020**, in which, the Bombay High Court, while issuing notice to the respondents yesterday, has refused to grant any interim relief in the form of whole or part suspension of the Scheme in question.

5. Mr.Arvind Datar, learned Senior Counsel, taking us through the details of the Scheme essentially submitted that the Lakshmi Vilas Bank was having robust health and the Book Value of shares as well as Market Value in the Stock Exchange was fairly good and in January 2018 only Rights Issue of Shares was undertaken by the said Bank at the rate of Rs.122/- per share as against the Face Value of Rs.10/- per share and a sum of Rs.781.00 Crores was received by the said Bank from the existing shareholders upon such Rights Issue and one M/s. India Bulls invested at the rate of Rs.112/- per share in July 2019, a sum of Rs.3700 Crores in the said Bank and therefore, a sudden decision to invoke the powers under Section 45 of the Act and Moratorium imposed by the Reserve Bank of India under Section 35A of the Banking Regulation Act, 1949, supersession of its Board of Directors and a Scheme of Amalgamation with the fourth respondent Company are questionable and without giving any adequate opportunity of hearing and only 3 or 4 effective days to make objections against the Draft of the Scheme of Amalgamation given vide Notification dated 17th November 2020 and issuing the Notification on 25th November 2020 itself for a Scheme of Amalgamation to be effective from 27.11.2020 and then through this, the entire Assets and Liabilities of the said M/s. Lakshmi Vilas Bank has been made over under the said Scheme to the fourth respondent Company M/s.DBS Bank India

Limited, which is a wholly owned subsidiary of a Singapore company.

6. Particularly, attacking Clause (7) of the said Scheme notified on 25th November 2020, the learned Senior Counsel appearing for the petitioner Mr.Arvind Datar and Mr.P.S.Raman, submitted that the entire share value of the shareholders who are approximately 97000 in number, including the Share Premium Account of the Transferor Bank have been written off completely and Clause 7(2) of the Scheme provides that the Transferor Bank shall cease to exist by operation of the said Scheme and its shares and debentures listed in any Stock Exchange shall stand delisted without any further action from the transferor Bank, transferee Bank or order from any authority, from the appointed day, i.e. 27.11.2020.

7. Clause 7 of the said Scheme is quoted below for ready reference:

"7. Rights and liabilities of members and creditors of transferor bank.- (1) On and from the appointed date, the entire amount of the paid-up share capital and reserves and surplus, including the balances in the shares or securities premium account of the transferor bank, shall stand written off.

(2) On and from the appointed date, the transferor bank shall cease to exist by operation of this Scheme, and its shares or debentures listed in any stock exchange shall stand delisted

without any further action from the transferor bank, transferee bank or order from any authority."

8. The learned Senior Counsel for the petitioner therefore submitted that the amalgamation of Lakshmi Vilas Bank with the fourth respondent Company is on account of the illegal and arbitrary exercise of powers conferred upon the Central Government and the Reserve Bank of India under Section 45 of the Act and the protection given to the shareholders under Section 45, which is a Non-obstante provision have not been observed and provided for in the said Scheme despite objections raised and therefore, the Scheme of Amalgamation deserves to be quashed in exercise of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, as there is no alternative remedy available to the petitioners.

9. Per contra, Mr.Ravi Kadam, learned Senior Counsel appearing for the Reserve Bank of India vehemently opposed all these submissions and urged that to protect the interest of the Depositors of the said financially ailing Bank M/s. Lakshmi Vilas Bank, the Reserve Bank of India, the Regulator, considered it fit to frame a Scheme of Amalgamation of the said Bank with a healthy and financially sound fourth respondent Bank and therefore, invoking its powers under Section 45 of the Act, framed the

said Scheme of Amalgamation and issued Moratorium, Supersession of Board of Directors Order, upon a fair and reasonable offer of investment by the said fourth respondent company to the extent of approximately Rs.2500 Crores. The said Amalgamation has been approved by the Central Government and the Scheme has already taken effect at the mid night of 26th/27th November 2020 and therefore, this Court should not interfere in the said matter in any manner much less by grant of any interim relief to the petitioner at this stage, as the book value of the shares held by them has turned negative and in a fair and reasonable exercise of its powers, the Reserve Bank of India has exercised the said powers.

10. Mr.R.Sankaranarayanan, learned Additional Solicitor General appearing for Union of India, also supported the submissions made by Mr.Ravi Kadam, learned Senior Counsel appearing for the Reserve Bank of India, that the Central Government is fully empowered to protect the interest of the small Depositors whose Deposits were in the risks in the hands of the said Lakshmi VilasBank and therefore, it became necessary for the Central Government to invoke the powers upon the application made by the Reserve Bank of India under Section 45 of the Banking Regulation Act.

11. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the fourth respondent DBS Bank India Limited, also vehemently opposed all these submissions and submitted that the said fourth respondent has infused its funds in the said Bank on the assurance of the Scheme of Amalgamation approved by the Central Government in terms of the Draft Scheme which has been finalised after hearing the objections of the shareholders and other objectors and therefore, there is no going back on the said Scheme. Repelling the attack on Clause 7 of the said Scheme, Mr.AR.L.Sundaresan, learned Senior Counsel vehemently submitted that any interim relief at this stage will cause serious prejudice to the fourth respondent company as with the writing off of the share capital of the Lakshmi Vilas Bank, the present petitioner and other shareholders of that company cannot claim anything in any manner from the fourth respondent Bank and the rights of the fourth respondent cannot be altered or prejudiced by interfering with the said Scheme. Citing the parameters for grant of stay, namely *prima facie* case, irreparable injury and balance of convenience, he urged the Court not to grant interim relief at this stage, even if the writ petition is admitted for hearing.

12. Having heard the learned counsel at length, at this stage, we are of the opinion that the matter would require more detailed consideration and therefore, this writ petition deserves to be admitted as

the petitioners have made out a *prima facie* case for admission.

13. **Admit. Issue Notice.** The respondents have put in appearance. So, service is complete. At the request of the learned counsel for the respondents, three weeks time is allowed to file counters and the matter may be listed for final hearing after the pleadings are complete.

Consideration for Interim Relief

14. Giving our earnest and objective consideration to the prayer for interim relief, we are not inclined to grant any blanket interim order in the present writ petition, more so when the Amalgamation Scheme duly approved by the Central Government at the instance of the Reserve Bank of India, has already come into operation today, before we are hearing the present case on 27th November 2020. The effect of the Scheme has already started and it being a statutory exercise of powers by the Central Government as well as Reserve Bank of India, both the Instrumentalities of the State, we are not inclined to grant any stay with regard to the operation of the Scheme fully or partially.

15. At the same time, we feel that completely reducing the book value of the shares of the Lakshmi Vilas Bank to zero or rather negative figure is an exercise which has not happened in public domain and the

share holders including the present petitioner do not seem to be aware of the exact reasons for the same. Their interest therefore deserves to be protected in the manner now onwards in a legally permissible manner, till the respondents file their counter and satisfy the Court and the writ petition is disposed of, as the petitioner has made a *prima facie* case.

16. The protection of interests of small Depositors and large Depositors also is of course the mandate of law and that is why Section 45 gives a non obstante power to the Regulator, the Reserve Bank of India to frame such Scheme of Amalgamation, etc. We are not inclined to entertain any challenge to the powers of the Reserve Bank of India or the Central Government, nor such a challenge is made in the writ petition itself. But, Clauses (f) and (h) of Sub-section (5) of Section 45 provides that if the shareholders of the Transferor Company are not allotted any shares in the new Transferee company, they will be paid cash compensation as provided therein. Such a provision made in Section 45 of the Act obviously to give at least the face value or some compensation to the shareholders of the Transferor company. Even if the power of reduction of their share value to a lower figure is given in the said provisions, reducing it to zero or negative figure, *prima facie*, cannot be done without very very compelling reasons and after taking such shareholders in confidence or valuation of shares done, which is open to

scrutiny. Section 45 of the Banking Regulation Act is quoted below for ready reference:

"45. Power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution of amalgamation.-

(1) Notwithstanding anything contained in the foregoing provisions of this Part or in any other law or 8 [any agreement or other instrument], for the time being in force, where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of 9[a banking company]

(2) The Central Government, after considering the application made by the Reserve Bank under sub-section (1), may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.

[8 Substituted by Act 7 of 1961, for "any agreement".

9 Substituted by Act 7 of 1961, for "the banking company".]

(3) Except as otherwise provided by any directions given by the Central Government in the order made by it under sub-section (2) or at any time thereafter the banking company shall

not during the period of moratorium make any payment to any depositors or discharge any liabilities or obligations to any other creditors.

(4) During the period of moratorium, if the Reserve Bank is satisfied that- (a) *in the public interest; or*

(b) in the interests of the depositors; or

(c) in order to secure the proper management of the banking company; or

(d) in the interests of the banking system of the country as a whole, it is necessary so to do, the Reserve Bank may prepare a scheme-

(i) for the reconstruction of the banking company, or

(ii) for the amalgamation of the banking company with any other banking institution (in this section referred to as "the transferee bank").

(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:-

(a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, the liabilities, duties and obligations of the banking company on its reconstruction or as the case may be, of the transferee bank;

(b) in the case of amalgamation of the banking company, the

transfer to the transferee bank of the business, properties, assets and liabilities of the banking company on such terms and conditions as may be specified in the scheme;

(c) any change in the Board of Directors, or the appointment of a new Board of Directors, of the banking company on its reconstruction or, as the case may be, of the transferee bank and the authority of whom, the manner in which, and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of Directors or of any Director the period for which such appointment shall be made;

[1 Substituted by Act 7 of 1961, Section 4, for sub-sections (4) to (9).]

(d) the alteration of the memorandum and articles of association of the banking company on its reconstruction or, as the case may be, of the transferee bank for the purpose of altering the capital thereof or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation;

(e) subject to the provisions of the scheme, the continuation by or against the banking company on its reconstruction or, as the case may be, the transferee bank, of any actions or proceedings pending against the banking company immediately before the date of the order of moratorium;

(f) the reduction of the interest or rights which the members, depositors and other creditors have in or against the banking company before its reconstruction or amalgamation to such

extent as the Reserve Bank considers necessary in the public interest or in the interest of the members, depositors and other creditors or for the maintenance of the business of the banking company;

(g) the payment in cash or otherwise to depositors and other creditors in full satisfaction of their claim-

(i) in respect of their interest or rights in or against the banking company before its reconstruction or amalgamation; or

(ii) where their interest or rights aforesaid in or against the banking company has or have been reduced under clause (f), in respect of such interest or rights as so reduced;

(h) the allotment to the members of the banking company for shares held by them therein before its reconstruction or amalgamation whether their interest in such shares has been reduced under clause (f) or not, of shares in the banking company on its reconstruction or, as the case may be, in the transferee bank and where any members claim payment in cash and not allotment of shares, or where it is not possible to allot shares to any members, the payment in cash to those members in full satisfaction of their claim-

(i) in respect of their interest in shares in the banking company before its reconstruction or amalgamation; or

(ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced;

(i) the continuance of the services of all the employees of the banking company(excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme) in the banking company itself on its reconstruction or, as the case maybe, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting, or as the case may be, by which they were being governed, immediately before the date of the order of moratorium:

PROVIDED that the scheme shall contain a provision that-

(i) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Central Government, to the said employees the same remuneration and the same terms and conditions of service 1 [as are, at the time of such payment or grant, applicable] to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the Reserve Bank(whose determination in this respect shall be final);

(ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service 2 [as are, at the time of such payment or grant, applicable] to the other employees corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent

to those of such other employees of the transferee bank:

PROVIDED FURTHER that if in any case under clause (ii) of the first proviso any doubt or difference as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank 1 [the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause,] to the Reserve Bank whose decision thereon shall be final;

[1 Substituted by Act 1 of 1984, for "as are applicable" w.e.f.15-2-1984.

2 Substituted by Act 1 of 1984, for "as are applicable" w.e.f.15-2-1984.]

(j) notwithstanding anything contained in clause (i) where any of the employees of the banking company not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), are specifically mentioned in the scheme under clause (i) or where any employees of the banking company have by notice in writing given to the banking company, or, as the case may be, the transferee bank at any time before the expiry of the one month next following the date on which the scheme is sanctioned by the Central Government, intimated their intention of not becoming employees of the banking company on its reconstruction or, as the case may be, of the transferee bank, the payment to such employees of compensation, if any, to which they are entitled under the Industrial Disputes Act, 1947, and such pension, gratuity, provident fund and other retirement benefits ordinarily

admissible to them under the rules or authorisations of the banking company immediately before the date of the order of moratorium;

(k) any other terms and conditions for the reconstruction or amalgamation of the banking company;

(l) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

(6)(a) A copy of the scheme prepared by the Reserve Bank shall be sent in draft to the banking company and also to the transferee bank and any other banking company concerned in the amalgamation, for suggestions and objections, if any, within such period as the Reserve Bank may specify for this purpose.

(b) The Reserve Bank may make such modifications, if any, in the draft schemes it may consider necessary in the light of the suggestions and objections received from the banking company and also from the transferee bank, and any other banking company concerned in the amalgamation and from any members, depositors or other creditors of each of those companies and the transferee bank.

[1 Substituted by Act 1 of 1984, Section 34 for "the doubt or difference shall be referred" w.e.f. 15-2-1984.]

(7) The scheme shall thereafter be placed before the Central Government for its sanction and the Central Government may

sanction the scheme without any modifications or with such modifications as it may consider necessary, and the scheme as sanctioned by the Central Government shall come into force on such date as the Central Government may specify in this behalf:

PROVIDED that different dates may be specified for different provisions of the scheme.

1 [(7A) The sanction accorded by the Central Government under sub-section (7), whether before or after the commencement of section 21 of the Banking Laws (Miscellaneous Provisions) Act, 1963 (55 of 1963) shall be conclusive evidence that all that requirements of this section relating to reconstruction, or, as the case may be, amalgamation have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Central Government to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise and whether instituted before or after the commencement of the said section 21), be admitted as evidence to the same extent as the original scheme.]

(8) On and from the date of the coming into operation of the scheme or any provision thereof, the scheme or such provision shall be binding on the banking company, or, as the case may be, on the transferee bank and any other banking company concerned in the amalgamation and also on all the members, depositors and other creditors and employees of each of those companies and of the transferee bank, and on any other person having any right or liability in relation to any of those companies or the transferee bank 2 [including the trustees or other persons Managing, or connected in any other manner with, any provident fund or other fund maintained by any of those companies or the transferee bank].

3 [(9) On and from the date of the coming into operation or, or as the case maybe, the date specified in this behalf in, the

scheme], the properties and assets of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and vest in, and the liabilities of the banking company shall, by virtue of and to the extent provided in the scheme, stand transferred to, and become the liabilities of the transferee bank.

[1 Inserted by Act 55 of 1963, w.e.f. 1-2-1964.

2 Inserted by Act 1 of 1984, w.e.f. 15-2-1984.

³ Substituted by Act 1 of 1984, for certain words w.e.f. 15-2-1984.]

(10) If any difficulty arises in giving effect to the provisions of the scheme, the Central Government may by order do anything not inconsistent with such provisions which appears to it necessary or expedient for the purpose of removing the difficulty.

(11) Copies of the scheme or of any order made under subsection (10) shall be laid before both Houses of Parliament, as soon as may be, after the scheme has been sanctioned by the Central Government, or, as the case may be, the order has been made.

(12) Where the scheme is a scheme for amalgamation of the banking company, any business acquired by the transferee bank under the scheme or under any provision thereof shall, after the coming into operation of the scheme or such provision, be carried on by the transferee bank in accordance with the law governing the transferee bank, subject to such modifications in that law or such exemptions of the transferee bank from the operation of any provisions thereof as the Central Government on

the recommendation of the Reserve Bank may, by notification in the Official Gazette, make for the purpose of giving full effect to the scheme:

PROVIDED that no such modification or exemption shall be made so as to have effect for a period of more than seven years from the date of the acquisition of such business.

(13) Nothing in this section shall be deemed to prevent the amalgamation with a banking institution by a single scheme of several banking companies in respect of each of which an order of moratorium has been made under this section.

(14) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(15) In this section, "banking institution" means any banking company and includes the State Bank of India or 1 [a subsidiary bank or a corresponding new bank].

¹³Substituted by Act 1 of 1984, for certain words w.e.f. 15-2-1984.

1 [Explanation.-References in this section of the terms and conditions of service as applicable to an employee shall not be construed as extending to the rank and status of such employee.]

17. In the present case, the financial health of the Transferor company at least in last year, 2019, appears to be not in negative and

they had issued even rights shares at a high premium to the existing shareholders and later on a bidding process also appears to have been undertaken to infuse fresh investment in the said Bank. While all this were going on, the Draft Amalgamation Scheme and powers of Moratorium and Supersession of Board etc. appeared to have happened in a fast track manner in the present case in November 2020 itself. Between 17.11.2020 to 25.11.2020, barely a week, the entire exercise of Section 45 appears to have been completed leaving the shareholders of the Transferor company in a complete black out and their rights and investment written off completely, without taking them into confidence at all. This aspect of the matter calls for a judicial review and that is why we are inclined to admit this writ petition.

18. Though we are conscious of the fact that the Scheme has become operative today itself, on 27.11.2020 and therefore, even though not without powers to do so, we felt advised and therefore, we are not inclined to stay the operation of the said Scheme wholly or partially, but in order to give proper legal protection to the shareholders which may yield to their benefit, even in future also, we make the following interim order, *qua* the Respondent No.4 DBS Bank India Limited.

(i) No further prejudicial action by the fourth respondent (DBS Bank Limited) shall be taken against the shareholders of the Transferor

company Lakshmi Vilas Bank, without leave of this Court.

(ii) The fourth respondent company DBS Bank India Limited should furnish an Undertaking in this Court to the effect that in case this Court comes to a conclusion and directs the fourth respondent company to provide a cash compensation to the shareholders of the Transferor company M/s. Lakshmi Vilas Bank, they will compensate such shareholders of Lakshmi Vilas Bank.

(iii) To provide a security for the aforesaid purpose, we direct the fourth respondent company to create a separate Reserve Fund in their own Books of Accounts to the extent of Face Value of the shares of the Transferor company Lakshmi Vilas Bank and maintain the same subject to further orders and directions of this Court in the present writ petition.

(iv) Except the aforesaid directions against the fourth respondent, we make it clear that we are not interfering with the operation of the said Scheme in any other manner.

List the matter for final hearing on 5th January 2021.

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(V.K.J.) (M.S.R.J.)
27.11.2020

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After the pronouncement of this interim order, Mr.Ravi Kadam, learned Senior Counsel for the Reserve Bank of India made a oral request that the operation of this interim order may be kept in abeyance for a period of three weeks. We are not inclined to do so, as this interim order is not against the Reserve Bank of India or the Central Government in any manner.

2. A similar request was made by Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the fourth respondent DBS Bank India Limited also, to stay the operation of this interim order for a period of three weeks. This request is also turned down, as the aforesaid interim relief to the petitioner is just to protect the interest of the shareholders of Lakshmi Vilas Bank in future and no immediate prejudice is caused to the fourth respondent nor the flow of benefits to the fourth respondent under the operation of the Scheme are stopped in any manner by this interim order. Therefore, this request is also turned down.

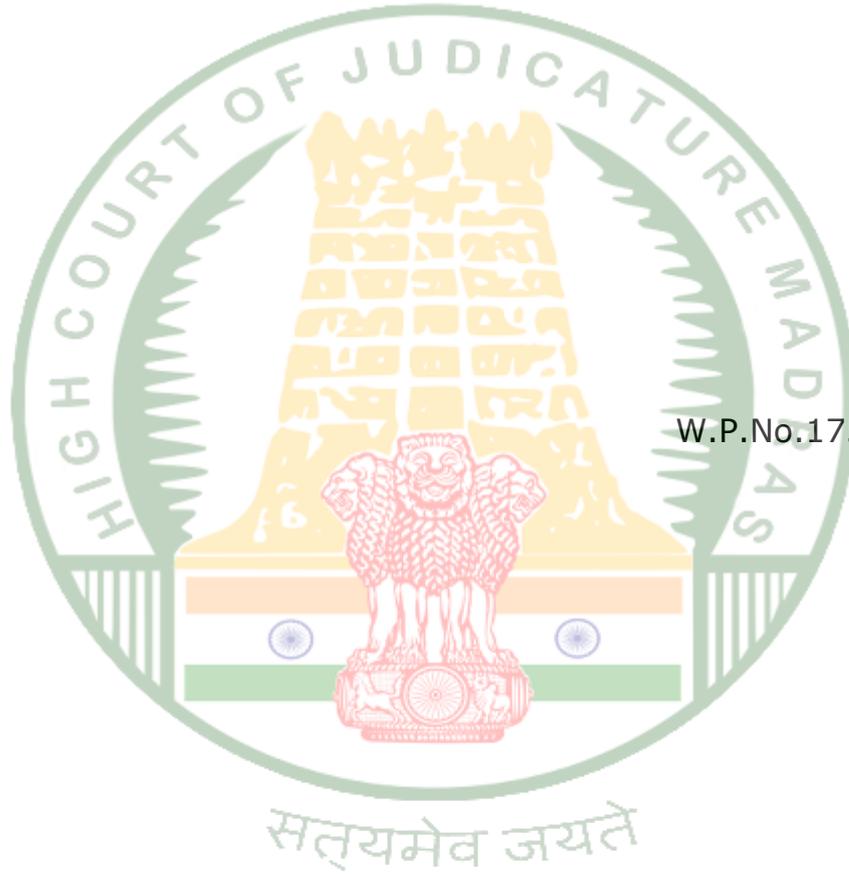
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(V.K.J.) (M.S.R.J.)
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Dr.VINEET KOTHARI,J,
and
M.S.RAMESH,J

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