



W.P.No.6233 of 2020 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

CORAM :

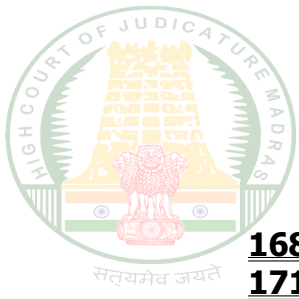
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.6233, 7199, 7588, 7734, 9002, 11786 of 2020, and
W.P.Nos.14531 and 16638 of 2022

and W.M.P.Nos.7335, 7336, 8601, 8602, 8924, 16036, 16037, 9093,
9094, 10943, 10945, 10947, 14497, 14498 of 2020, &
W.M.P.Nos.13723, 13724, 15928, 15929, 15932 of 2022

and

W.P(MD) Nos.15845, 15846, 15847, 15848, 15849, 15850, 15851,
15852, 15853, 15854, 15855, 17651, 17652, 17653, 17654, 17655,
17656, 17657, 17658, 17659, 17660, 17661, 17662, 17663, 17664,
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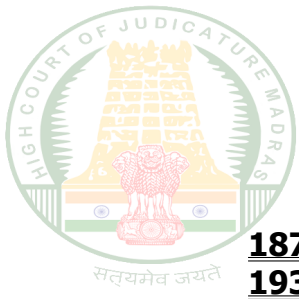


W.P.No.6233 of 2020 etc., batch

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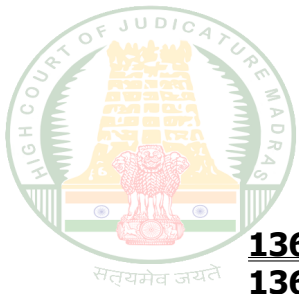
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W.P.No.6233 of 2020 etc., batch

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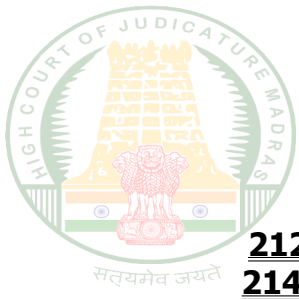
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W.P.No.6233 of 2020 etc., batch

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W.P.No.6233 of 2020 etc., batch

21288, 21277, 21280, 21284, 21285, 21289, 21291, 21287, 21290, 21405, 21406, 21451 & 21452 of 2022, and W.M.P.No.1926 of 2023

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W.P.No.6233 of 2020

Erode Mavatta Valamana Thodakka
Velanmai Kotturavu Vangi Paniyalargal
Sangam, Regd.No.401/ERD, Rep.by its
Secretary, R.Gopalakrishnan, S/o Late
Ramasamy, 2nd Floor, Periya Mariamman
Complex, No.110, Nehru Road, Fort
Erode - 638 001.

.... Petitioner

-Vs-

- 1.The Managing Director / Additional Registrar
Erode District Central Cooperative Bank
No.1, Bhavani Main Road, Erode.
- 2.The Assistant Commissioner of Income Tax
TDS Circle, Coimbatore, Coimbatore District.
- 3.The Assistant Commissioner of Income Tax
TDS Ward, Tiruppur, Tiruppur District.
- 4.The State of Tamil Nadu, Rep.by Secretary
to Government, Finance Department.
- 5.The State of Tamil Nadu, Rep.by Secretary
to Government, Co-operation, Secretariat,
Chennai.
- 6.The Registrar of Cooperative Societies
No.170, Periyar EVR High Road, Poonamallee
High Road, Kilpauk, Chennai 600 010.
(R4 to R6 suo motu impleaded vide order
dated 16.12.2021 made in W.P.No.6233 of
2020 made by RSKJ

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for

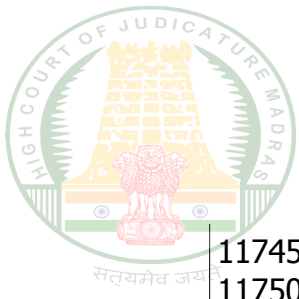


W.P.No.6233 of 2020 etc., batch

the issuance of a Writ of Certiorari calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.006410/2019-20, Kanakku dated 02.03.2020 and quash the same.

In all Writ Petitions
For Petitioners

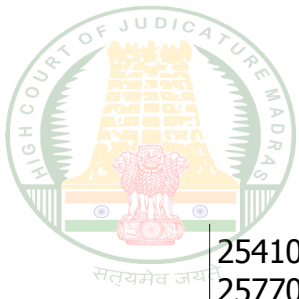
In W.P.Nos.6233, 7199, 7588, 7734, 9002, 11786, 14531 and 16638 of 2022	Mr.C.Prakasam
In W.P.(MD)Nos.15845, 15846, 15847, 15848, 15849, 15850, 15851, 15852, 15853, 15854, 15855, 17651, 17652, 17653, 17654, 17655, 17656, 17657, 17658, 17659, 17660, 17661, 17662, 17663, 17664, 17665, 17666, 18682, 18683, 18684, 18686, 18687, 18688, 18689, 18690, 18691, 18692, 18693, 18694, 18695, 18696, 18697, 18698, 18699, 18700, 18701, 20092, 20093, 20094, 20095, 20096, 20097, 20098, 21361, 21362, 21363, 21364, 21365, 21366, 21637, 21368, 21369, 21370, 21371, 21372, 21373, 21374, 21375, 22249, 22250, 22251, 22252, 22253, 22914, 22915, 22916, 22917, 22918, 22919, 22920, 22921, 22922, 22923 and 22924 of 2021, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 2514, 2566, 2567, 2691, 2692, 2693, 2694, 2695, 2696, 2697, 2698, 2699, 2700, 2701, 2702, 2703, 2704, 2705, 2706, 3230, 3231, 3232, 3233, 3721, 3722, 3723, 3724, 3725, 3726, 3727, 3728, 3729, 3730, 3765, 3766, 4087, 6637, 6674, 6675, 7405, 7406, 7407, 7408, 7409, 7410, 11739, 11740, 11741, 11742, 11743, 11744,	Mr.Kalaiselvam V.O.S



W.P.No.6233 of 2020 etc., batch

WEB CO

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W.P.No.6233 of 2020 etc., batch

WEB CO

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of 2022

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27125, 27126, 27127, 27128, 27129,
27130, 27131, 27283, and 27346 of
2022

No appearance

For Respondents

For R1 in W.P.Nos.6233 and 11786 of 2020, For R2 in W.P.Nos. 7199, 7588 and 7734 of 2020	Mr.L.P.Shanmugasundaram
For R4 to 6 in W.P.Nos.6233, 7588, and 7734 of 2020, For R3 to R5 in W.P.Nos. 9002 and 11786 of 2022	Mr.P.Gurunathan Additional Government Pleader
For R1 in W.P.No.7199 and 9002 of 2020, R2 in W.P.No.6233 and 11786 of 2022 and For R3 in W.P.Nos. 7588 and 7734 of 2020	Dr.B.Ramaswamy Senior Central Government Standing Counsel



W.P.No.6233 of 2020 etc., batch

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In W.P.Nos. 14531 and 16638 of 2022

Dr.B.Ramasamy, Senior Central
Government Standing Counsel - for R1
No appearance - for R2

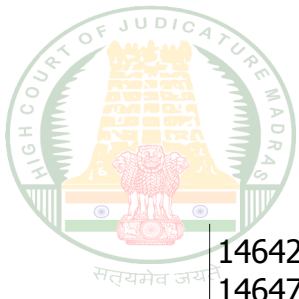
In W.P.(MD) Nos.15845, 15846, 15847,
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Dr.B.Ramasamy, Senior Central
Government Standing Counsel - for R1

Mr.P.Gurunathan
Additional Government Pleader - for R2

Dr.B.Ramasamy, Senior Central
Government Standing Counsel - for R1

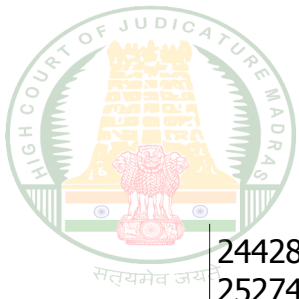
Mr.P.Gurunathan



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Dr.B.Ramasamy, Senior Central
Government Standing Counsel - for R1

Mr.P.Gurunathan
Additional Government Pleader - for R2

COMMON ORDER

Since the issue raised in these writ petitions is one and the same, with the consent of learned counsel for both sides, these writ petitions are disposed of by this common order.

2. The petitioners herein are Primary Agricultural Cooperative Credit Societies. They deal with lending loans to the members of the concerned Society for agriculture and allied activities.

3. Sometimes, when the State Government comes forward to give financial benefit or to undertake some welfare measures to larger public, that kind of Schemes are being implemented through these Cooperative Societies. One such welfare scheme that was proposed and implemented by the State

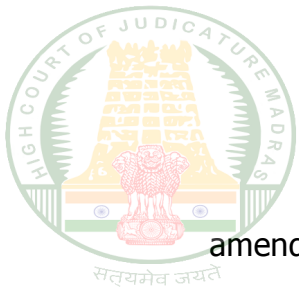


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Government is giving some freebies during the Pongal festival in the State of Tamil Nadu. When such kind of Pongal benefits by way of cash which was sought to be issued to the beneficiaries who are in lakhs and lakhs throughout the State of Tamil Nadu, such a massive welfare measures naturally have to be undertaken by the State Government through an organized system, which must have the capacity to act throughout the State.

4. That is the reason why the Government, when wanted to implement the Pongal welfare scheme, decided to implement the Scheme through these Primary Agricultural Cooperative Credit Societies spread across the State. According to the Scheme, the bulk allotment for the district concerned, would be made to the District Central Cooperative Bank concerned and from the Central Cooperative Bank concerned, the Primary Agricultural Cooperative Credit Society (In short 'the Primary Society') would draw the money in bulk and would distribute the money to the beneficiaries. For the purpose of distributing the money when the Primary Societies withdraw money from the Central Cooperative Bank of the district concerned, that was considered to be the income of the Society, where the Central Cooperative Bank was liable to deduct tax at source as per Section 194N of the Income Tax Act, 1961.

5. The said provision was brought to the Statute Book by virtue of the



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amendment made through Finance Act No.2 of 2019 with effect from
01.09.2019.

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6. As per Section 194N, a banking company or a post office responsible for paying any sum, aggregate of sums, as the case may be, in cash, in excess of one crore rupees during the previous year, to any person (herein referred to as the recipient) from one or more accounts maintained by the recipient with it, shall, at the time of payment of such sum, deduct an amount equal to two percent of sum exceeding one crore rupees, as income-tax. Therefore, it became obligatory on the part of those banking companies to make a deduction of tax at source at 2% of any payment in cash exceeding Rupees One Crore during the previous year to any person, from one or more accounts maintained by the recipient and that should be paid to the credit of the bank concerned as an assessee.

7. In fact, this ceiling of Rupees One Crore had been amended to Rupees Three Crores, in case of Cooperative Banks with effect from 01.04.2023.

8. Be that as it may. During the relevant point of time when these writ petitions were filed, pursuant to Section 194N of the Act, the respective Central Cooperative Banks had issued a circular to the Primary Societies coming under



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the purview of such District Central Cooperative Banks to strictly adhere to the provisions of Section 194N. Felt aggrieved over the said circular, as these Primary Societies were only acting as Facilitators to pass on the welfare scheme being implemented by the State Government, they have chosen to challenge the circulars issued by the respective District Central Cooperative Banks. That is how a batch of writ petitions both at the Principal Seat as well as the Madurai Bench of this Court came to be filed between 2020 and 2023.

9. When the first set of writ petitions came up for consideration before a learned Single Judge, who, having considered the import of Section 194N, was of the view that, since Section 194N is in the Statute Book as per which since the Central Cooperative Banks have to act upon the circular issued by them, cannot be found fault with, therefore, the prayer sought for in that batch of cases cannot be granted, hence, the learned Judge by an order dated 04.11.2022 in the matter of **Molasi Primary Agricultural Cooperative Credit Society Ltd., -vs- Income Tax Officer** has held as follows,

"23. For the above reasons, the challenge to the impugned Circulars cannot be entertained as the District Central Cooperative Banks have, therein, merely sought to bring to the notice of the petitioner societies the statutory provisions in regard to deduction of tax, enjoining that they adhere to, and comply with the same, scrupulously. There could be no



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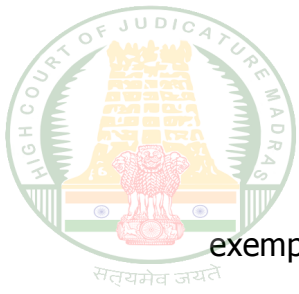
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fault attributed to R2 Banks in this regard.

24. In light of the discussion as above, the challenge to the Circulars fail and these Writ Petitions are dismissed both on the ground of maintainability as well as merits. No costs. Connected Miscellaneous Petitions are also dismissed."

10. Subsequently, another batch of cases, which were filed before the Madurai Bench of this Court, came to be disposed of by another learned Judge vide common order dated 24.02.2023 in W.P.(MD) Nos.27584 of 2022 etc., batch in the matter of **"DD388 Kuppammalpatti Primary Agricultural Cooperative Credit Society -Vs- The Assistant Commissioner of Income Tax and another"**

11. In the said judgment, the learned Judge also was of the similar view that, since Section 194N of the Act has come into effect from September 2019 and the provisions of Section 194N so long as is made available, if at all the Societies want to get any relief, they must seek for exemption from the said provision and in this regard, a request has already been sent by the Hon'ble Chief Minister of Tamil Nadu dated 24.03.2020 to the Hon'ble Finance Minister, Government of India and the Chief Secretary, Government of Tamil Nadu, who has sent a similar request in D.O.Lr.No.15350/CC1/2022 dated 27.09.2022 to the Chair Person, Central Board of Direct Taxes (CBDT) making a request for



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exemption of Cooperative Credit Societies and other Societies from the purview of the provisions of Section 194N of the Income Tax Act for the cash withdrawal exceeding Rupees One Crore from their accounts from the District Central Cooperative Banks and therefore, in view of the said action taken on behalf of the State Government, let the Primary Cooperative Societies who are the writ petitioners can await for a decision to be taken in this regard by the Ministry of Finance, Government of India and by recording the same, the writ petitions were dismissed as withdrawn by order dated 24.02.2023.

12. Subsequently, another batch of cases came to be disposed of by the very same learned Judge at the Madurai Bench of the Madras High Court on 03.03.2023 in W.P.(MD) Nos.4499, 4536 and 4592 of 2023 in the matter of **A.2979 Thirumohur Primary Agricultural Cooperative Credit Society Ltd., -Vs- The Income Tax Officer and Others**, where the learned Judge has taken note of the letter dated 27.09.2022 of the Chief Secretary, Government of Tamil Nadu writing to the Secretary to the Government, Government of India, Finance Department, New Delhi and Chair Person of CBDT and those requests made on behalf of the State Government since has been pending consideration before the Finance Ministry, Government of India as well as CBDT, the learned Judge has given a set of directions, which read thus:



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" 5.Having regard to the aforesaid submissions made, this Court without expressing any view on the merits of the controversy involved, passes the following order:

(i) it shall be incumbent upon the Ministry of Finance, Government of India and the Central Board of Direct Taxes, New Delhi to immediately examine the representation in D.O. Lr No. 15350/CC1/2022 dated 27.09.2022 sent by the Chief Secretary, Government of Tamil Nadu;

(ii) if it is found that any other details or supporting documents are necessary for granting the relief claimed had not been produced, the deficiencies in that regard shall be informed in writing to the concerned persons requiring the same to be furnished within a time frame of not less than 15 clear working days for the same;

(iii) in the event of not being satisfied with the said requirements even thereafter, an enquiry shall be conducted affording full opportunity of hearing to the Government of Tamil Nadu and to all stakeholders through public notice to explain their views in that regard;

(iv) a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated to the Government of Tamil Nadu in writing under acknowledgment; and

(v) the authorities under the Act shall be restrained from taking any coercive action for recovery of tax deduction at source under Section 194~N of the Act from the Primary Agricultural Co~operative Credit Societies in the State of Tamil Nadu till the aforesaid exercise is



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completed."

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13. Subsequently, another batch of cases of similar nature had come up before the learned Judge who disposed of a similar batch of cases on 04.11.2022. Those batch of cases also were disposed of by the same learned Judge at the Principal Seat of this Court on 26.06.2023 in W.P.Nos.14536 of 2022 etc., batch of cases, in the matter of **S.161 Podaturpet Venkateswara Primary Agricultural Cooperative Credit Society Ltd., Vs. Income Tax Officer and Others**, where the learned Judge having extracted the earlier order passed by the learned Judge dated 04.11.2022, had ultimately passed the following order.

" 7. *In fact in my order dated 04.11.2022, I have recorded the rival submissions in the context of the appropriate authority to consider request for exemption and stated thus:~*

?18. To a query from the Court, as to who would constitute the specific authority before whom such prayer was to be made, the respondents have reported written instructions from the Commissioner of Income Tax (TDS), Coimbatore stating thus: ?As per business allocation rule, Central Government for tax purposes is Finance Minister of India. Hence, any request may be in the name of the Finance Minister with copy to CIT ITA CBDT North Block who would process such requests.? The petitioners may thus approach the competent authority in the Government seeking relief from the



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application of Section 194N of the Act.?

8. *In light of the aforesaid, let notice be issued by the appropriate authority in the CBDT to the petitioner, if at all representation dated 27.09.2022 had been received by CBDT, and request for exemption on behalf of the petitioner societies be considered. If the CBDT is of the view that the representation would have to be made before any other appropriate authority, the petitioners may be duly informed in order that they can take necessary steps in this regard.*

9. *Learned counsel for the petitioner relies on a judgment of the Hon-ble Supreme Court in the case of The Principal Commissioner of Income Tax 17, Mumbai v M/s Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Limited [C.A.No.8719 of 2022 dated 20.04.2023] deciding the question of whether that petitioner was a cooperative society and not a bank for the purpose of Section 80 P(4) of the Act, in favour of the society and adverse to the Department. The petitioner is at liberty to cite this judgment and any other decisions that it places reliance upon, before the authority hearing the request for exemption.*

10. *In light of order dated 04.11.2022, these writ petitions are dismissed both on the ground of maintainability as merits with the directions as above. No costs. Connected miscellaneous petitions are closed."*

14. Therefore, at least four set of writ petitions have already been disposed of by four separate orders as cited supra.



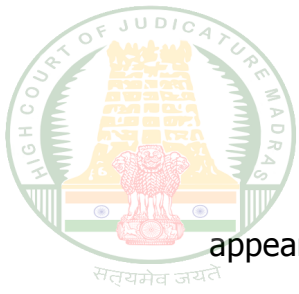
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WEB COPY 15. Insofar as the order dated 03.03.2023 is concerned, the learned Judge

has issued a Mandamus by way of directions in Para 5 of the order directing the Ministry of Finance, Government of India and the CBDT, New Delhi to immediately examine the representation given by the State Government written by the Chief Secretary, Government of Tamil Nadu dated 27.09.2022 and after affording an opportunity of hearing to the Government of Tamil Nadu and all stakeholders through public notice, a decision shall be taken with regard to the plea raised by them that whether these Cooperative Societies can be given exemption from the purview of Section 194N of the Income Tax Act.

16. Though such a direction was given by this Court on 03.03.2023, even till date no such exercise seems to have been undertaken by the Ministry of Finance, Government of India or the CBDT. In this context, Dr.B.Ramasamy, learned Senior Central Government Standing Counsel appearing for the Income Tax Department submitted that within a reasonable period, the request made by the Government of Tamil Nadu through the letter dated 27.09.2022 by the Chief Secretary to Government, Government of Tamil Nadu would be considered and a decision would be taken.

17. In view of the said stand taken by the learned Senior Counsel



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appearing for the Income Tax Department, Government of India and by taking note of the earlier directions given by this Court as stated supra by the order dated 03.03.2023 to the said authorities to consider and pass orders on the request made by the Government of Tamil Nadu through their letter dated 27.09.2022 of the Chief Secretary to Government, this Court is inclined to dispose of all these writ petitions with the following orders.

"That already a direction has been given by the order dated 03.03.2023 to decide on merits, the request made by the Government of Tamil Nadu through the Chief Secretary to the Government dated 27.09.2022 and since the learned Standing Counsel requested further time to decide the same on merits, I feel that further time of six weeks can be granted, within which the Ministry of Finance, Government of India and the CBDT, New Delhi would decide the request made by the Government of Tamil Nadu through the letter of the Chief Secretary to Government of Tamil Nadu dated 27.09.2022, seeking exemption for all those Primary Cooperative Credit Societies functioning in the State of Tamil Nadu from the purview of Section 194N of the Income Tax Act and accordingly pass orders thereon and communicate the same to the State of Tamil Nadu."

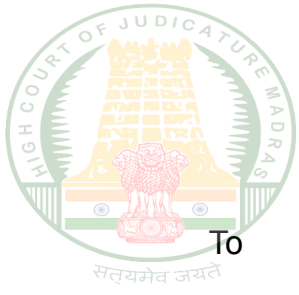


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WEB COPY 18. With the above direction, all these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

17.07.2023

Index : Yes
Neutral Citation : Yes
Speaking Order
KST



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To

WEB COPY

- 1.The Managing Director / Additional Registrar
Erode District Central Cooperative Bank
No.1, Bhavani Main Road, Erode.
- 2.The Assistant Commissioner of Income Tax
TDS Circle, Coimbatore, Coimbatore District.
- 3.The Assistant Commissioner of Income Tax
TDS Ward, Tiruppur, Tiruppur District.
- 4.The Secretary to Government, Finance Department.
- 5.The Secretary to Government, Co-operation, Secretariat,
Chennai.
- 6.The Registrar of Cooperative Societies
No.170, Periyar EVR High Road, Poonamallee
High Road, Kilpauk, Chennai 600 010.



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R. SURESH KUMAR, J.

KST

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batch of Writ Petitions

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