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W.P.(MD) Nos.17210 and 18015 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on 20.04.2023	Delivered on 08.06.2023
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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD) Nos.17210 and 18015 of 2022**and****W.M.P.(MD) Nos.22467 and 19441 of 2022**

V.Sundararaj

..Petitioner in both the Writ Petitions

Vs.

1.The Registrar General,
High Court of Judicature, Madras,
Chennai – 600 104.

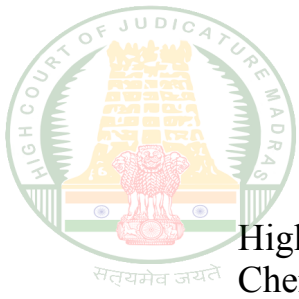
2.The Member-Convener,
Principal Secretary to the Government,
Co-operation, Food and Consumer Protection Department,
Chennai – 600 009.

3.The Secretary to Government,
Ministry of Consumer Affairs,
Government of India,
New Delhi.

..Respondents in WP(MD) No.17210 of 2022

1.The Registrar General,

1/23



W.P.(MD) Nos.17210 and 18015 of 2022

High Court of Judicature, Madras,
Chennai – 600 104.

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2. The Member-Convener,
Principal Secretary to the Government,
Co-operation, Food and Consumer Protection Department,
Chennai – 600 009.
3. The Secretary to Government,
State of Tamil Nadu,
Department of Law and Justice,
Chennai – 600 009.
4. The Secretary to Government,
Ministry of Consumer Affairs,
Government of India,
New Delhi.
5. The Registrar,
Tamil Nadu State Consumer Dispute Redressal Commission,
Chennai.

..Respondents in WP(MD) No.18015 of 2022

Prayer in WP.(MD)No.17210 of 2022: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned notification No.2/2022 dated 17.07.2022 issued by the 2nd respondent and quash the same as illegal and consequently direct the 2nd respondent to either to obtain leave or permission from the Hon'ble Supreme Court of India before issuing any such notification in the recruitment for the posts of Members and Presidents in the State and District Consumer Forums in the future.

Prayer in WP.(MD)No.18015 of 2022: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified



W.P.(MD) Nos.17210 and 18015 of 2022

Mandamus, calling for the records pertaining to the impugned notification No.1/2022 dated 17.07.2022 issued by the 1st and 2nd respondents and quash the same as illegal and consequently direct the 1st and 2nd respondents either to obtain leave or permission from the Hon'ble Supreme Court of India before issuing any such notification in the recruitment for the posts of Members (Non-Judicial) in the Tamil Nadu State Consumer dispute redressal Commission.

For Petitioner : Mr.G.Prabhu Rajadurai
in WP.(MD)No.17210 of 2022
Mr.C.M.Arumugam
in WP.(MD)No.18015 of 2022

For Respondents : Mr.N.Mohideen Basha for R1 in both Wps

Mr.Veera Kathiravan,
Additional Advocate General
Assisted by Mr.M.Sarangan,
Additional Government Pleader
for R2 in WP.(MD)No.17210 of 2022 and
for R2 and R3 in WP.(MD)No.18015 of 2022

Mr.V.Malaiyendran,
Central Government Standing Counsel



WEB COPY



W.P.(MD) Nos.17210 and 18015 of 2022

for R3 in WP.(MD)No.17210 of 2022
for R4 in WP.(MD)No.18015 of 2022

Mr.D.Venkatachalam for petitioner
in WMP.(MD)Nos.22467 & 19441 of 2022

COMMON ORDER

The challenge in W.P.(MD)No.17210 of 2022 is to the notification dated 17.07.2022, issued by the Government of Tamil Nadu Co-operation, Food and Consumer Protection Department, Chennai inviting applications from eligible candidates for appointment as Member in the District Consumer Redressal Commission in the State of Tamil Nadu.

2. The other writ petition viz., W.P.(MD)No.18015 of 2022 has been filed challenging a similar notification dated 17.07.2022, issued by the very same Department of the Government of Tamil Nadu inviting applications from eligible candidates for appointment as Member (Non-judicial / earmarked for women candidate) in the State Consumer Disputes Redressal Commission.

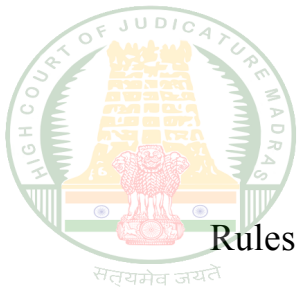


W.P.(MD) Nos.17210 and 18015 of 2022

3. The challenge is mainly on the ground that the impugned notifications issued on 17.07.2022 are based on the Rules framed by the Central Government in the year 2020 are bad in law, in view of the fact that some of the Rules particularly Rule 3(2)(b), 4(2)(c) and Rule 6(9) have been declared ultra vires the Constitution of India by the Nagpur Bench of the Bombay High Court on 14.09.2021 itself and as such the notifications issued based on the non-existent rule is bad in law.

4. Our attention is also drawn to the fact that the said judgment of the Bombay High Court rendered on 14.09.2021 in W.P.No.1096 of 2021 has been confirmed by the Hon'ble Supreme Court on 03.03.2023 in Civil Appeal No.831 of 2023. The main contention of the petitioner is that the Central Rules having been struck down by a High Court cease to exist in the statute book. The fact that the challenge to the striking down of the Rules has also failed is also pressed into service by the petitioner to buttress his contention that the entire procedure relating to recruitment of non-judicial members in the consumer Fora all over the State is vitiated.

5. The State would resist the contention on the ground that the



W.P.(MD) Nos.17210 and 18015 of 2022

Rules of the year 2020 are very comprehensive and they have been followed in letter and spirit. The State also seeks to rely upon various orders passed by the Hon'ble Supreme Court in suo moto W.P.(Civil)No.2 of 2021. Heavy reliance is sought to be placed by the State on the order dated 22.10.2021 made by the Hon'ble Supreme Court.

6. We have heard Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner in W.P.(MD)No.17210 of 2022, Mr.C.M.Arumugam, learned counsel appearing for the petitioner in W.P.(MD).No.18015 of 2022, Mr.N.Mohideen Basha, learned counsel appearing for the 1st respondent in both the writ petitions, Mr.Veerakathiravan, learned Additional Advocate General assisted by Mr.M.Sarangam, learned Additional Government Pleader for the 2nd respondent in W.P.(MD)No.17210 of 2022 and respondents 2 and 3 in W.P.(MD).No.18015 of 2022, Mr.V.Malaiyendran, learned Central Government Standing Counsel for the 3rd respondent in WP.(MD)No.17210 of 2022 and for the 4th respondent in WP(MD).No.18015 of 2022 and Mr.D.Venkatachalam, learned counsel appearing for the petitioner in WMP(MD).Nos.22467 and 19441 of 2022.



W.P.(MD) Nos.17210 and 18015 of 2022

7. The fact is that the Central Government framed Rules relating

to the qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Member of the State Commission and District Commission in the year 2020. These Rules were published in the Central Government Gazette on 15th July 2020 and they were to come into force on and from 20th July 2020. The Rules were called “The Consumer Protection (Qualification for Appointment, Method of recruitment, Procedure of Appointment, Term of Office, Resignation and Removal of President and Member of the State Commission and District Commission) Rules, 2020. Some of these Rules, particularly Rule 3(2)(b), 4(2)(c) and 6(9) were challenged before the Nagpur Bench of Bombay High Court in WP.No.1096 of 2021.

8. The challenge was mounted on the ground that the requirement of experience of not less than 20 years prescribed in Rule 3(2)(b), 15 years prescribed in Rule 4(2)(c) and the sweeping powers given to the selection committee under Rule 6(9) are ultra vires the Constitution of India. A Division Bench of Nagpur Bench of the Bombay High Court by its judgement dated 14.09.2021 struck down the above three provisions on the

7/23



W.P.(MD) Nos.17210 and 18015 of 2022

ground that they are ultra vires the Constitution of India. The Division Bench held that Rule 3(2)(b) and 4(2)(c) of the Rules, 2020 prescribing a minimum experience of not less than 20 years for appointment of President and Members of the State Commission and experience of not less than 15 years for appointment of President and Members of State Commission under the Act of 2019 is an attempt to circumvent the directions issued by the Hon'ble Supreme Court in the *Madras Bar Association Vs. Union of India* reported in *2020 SCC Online 962* and the *State of Uttar Pradesh and others Vs. All Uttar Pradesh Consumer Protection Bar Association* reported in *2017 (1) SCC 444*.

9. As regards Rule 6(9), the Division Bench concluded that the said Rules provides unfettered rights to the Selection Committee, which runs counter to the observations of the Hon'ble Supreme Court in the judgements referred to above. The Division Bench of Nagpur Bench of the Bombay High Court after declaring the above three Rules are arbitrary, unreasonable and violative of Article 14 of the Constitution of India had directed the Union of India to provide for appropriate substitute to the said



W.P.(MD) Nos.17210 and 18015 of 2022

Rules. The said judgement was kept suspended for a period of two weeks to enable the parties to move the Hon'ble Supreme Court. The said judgement was put in challenge in Civil Appeal Nos.831, 832 and 833 of 2023. All the above appeals came to be dismissed by the Hon'ble Supreme Court on 03.03.2023.

10. Parallely the Hon'ble Supreme Court had initiated suo motu proceedings to monitor the actions taken by various State Governments to fill up the vacancies in the Consumer Fora all over the country in Suo Moto W.P.No.2 of 2021. Various directions were issued by the Hon'ble Supreme Court on various dates, in order to ensure that the State Governments fall in line in filling up the vacancies in the State and District Fora.

11. Though the suo Motu proceedings were initiated even in the year 2021 and actions taken by the States in filling up the vacancies in the Consumer Fora was monitored by the Hon'ble Supreme Court, the State of Tamil Nadu took its own sweet time and issued the impugned notification calling for applications from qualified persons to fill up the post of Members of the Consumer Fora on 17.07.2022, i.e., almost 10 months after

9/23



W.P.(MD) Nos.17210 and 18015 of 2022

the judgement of the Nagpur Bench of the Bombay High Court in WP.No. 1096 of 2021, declaring Rule 3(2)(b), 4(2)(c) and 6(9) of the Consumer protection (Qualification for appointment, method of Recruitment, procedure of Appointment, term of Office, Resignation and Removal of President and Members of the State Commission and District Commission Rules, 2020 ultra vires. It is not in dispute that while dismissing the appeal, the Hon'ble Supreme Court had directed the Central Government to amend the Rules in accordance with the directions contained in its judgement dated 03.03.2023.

12. Be that as it may, the questions that arise in these writ petitions are

a) The effect of the judgement of the Nagpur Bench of Bombay High Court striking down some of the Rules as unconstitutional and

b) The effect of the directions issued by the Hon'ble Supreme Court in Suo Motu W.P.No.2 of 2021.

13. While Mr.Prahu Rajadurai, learned counsel appearing for the

10/23

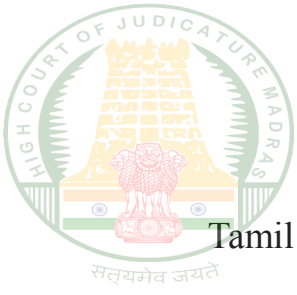


W.P.(MD) Nos.17210 and 18015 of 2022

petitioner in WP(MD)No.17210 of 2022 and Mr.C.M.Arumugam, learned counsel appearing for the petitioner in WP(MD)No.18015 of 2022 would vehemently contend that once the Rules framed by the Central Government have been struck down by a High Court as unconstitutional, they are effaced from the statute book and any notification/s issued under those Rules or anything done pursuant to those Rules would be invalid, unless it is shown that the Hon'ble Supreme Court had passed some orders in the appeal/ appeals against the judgement of the High Court reviving the said Rules.

14. It is not shown to us that the operation of the judgement of the Nagpur Bench of the Bombay High Court in W.P.No.1096 of 2021 was stayed pending appeal before the Hon'ble Supreme Court in S.L.P. (Civil) No.19492 of 2021. We find from the orders that have been placed before us that the Hon'ble Supreme Court had issued notice on the Special Leave Petition as well as the prayer in the interim reliefs returnable by 31.01.2022 on 17.12.2021 and thereafter the Special Leave Petition has been adjourned for filing counter on various occasions. No interim order has been granted. Pointing out the above absence of interim orders, the learned counsel for the petitioner would submit that the issuance of notifications by the State of

11/23



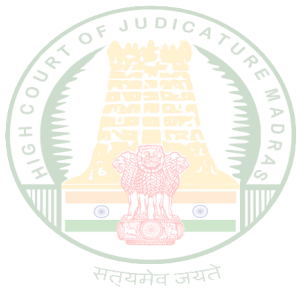
W.P.(MD) Nos.17210 and 18015 of 2022

Tamil Nadu on 17.07.2022 under the Rules that were struck down is improper as well as illegal.

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15. Mr.Veerakathiravan, learned Additional Advocate General appearing for the respondents would however contend that the notifications were issued in view of specific orders passed by the Hon'ble Supreme Court in Suo Motu W.P.No. 2 of 2021. Relying heavily upon the orders passed by the Hon'ble Supreme Court in Suo Motu W.P.No. 2 of 2021 on 22.10. 2021, which reads as follows

On 11.08.2021, in the conspectus of the discussion on the data placed before us we had issued certain directions to ensure that the vacancies are filled in posts of the Chairman/members of the Consumer Forums. It is only thereafter it was brought to our notice on mentioning that the writ proceedings had been filed before the Nagpur Bench of the Bombay High Court challenging certain advertisement and Rules relating to the persons to man the Consumer Forums. The issue was whether the pronouncement in that judgment should be deferred on account of the proceedings before us and we clarified that it would not be so as per our order dated 08.09.2021. Thereafter the



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W.P.(MD) Nos.17210 and 18015 of 2022

learned Amicus pointed out to us on mentioning that Rules 3(2)(b), 4(2)(c) and 6(9) of the Consumer Protection (Qualification for appointment, method of Recruitment, procedure of appointment, term of office, resignation and removal of President and member of the State Commission and District 6 Commission) Rules, 2020, had been struck down and that the same may have impact on the process already started for the other States. We directed the matter to be listed today in order to enable us to examine the impact of the said judgment and pass necessary directions.

Learned ASG submits that the two weeks window was provided by the judgment of the High Court to enable the Central Government or any party aggrieved by the judgment to assail the same before us and the Union of India and the State of Maharashtra are in process of filing the SLP. Be that as it may, the question is whether the process which has been initiated in the different States in pursuance to our comprehensive order passed on 11.08.2021 should be kept in abeyance in view of this judgment. On consideration of the importance of filling up of the vacancies, we are of the view that the timeline and processes fixed by us must continue as in some of the



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W.P.(MD) Nos.17210 and 18015 of 2022

cases the appointments have been made and in others the appointment process is at an advance stage. Thus, the process initiated in pursuance to that order should not be impeded by the subsequent judgment of the Nagpur Bench of the Bombay High Court whatever be the ultimate result of further proceedings to be filed by the Government in that behalf.

Insofar as the State of Maharashtra is concerned, we are informed that the appointments of Members have not been made and in view of the judgment the process would depend on the result of the Special Leave Petition(s) to be filed by the State of Maharashtra and the Central Government and whether in those proceedings any interim orders are passed.

The matter is to be listed on 10.11.2021 on further progress, including on the infrastructure aspect, for which in the prescribed form called for by the Amicus Curiae, the data had to be submitted. The State which have not done so will positively do so within one week from today, failing which the concerned Secretary of the State Government shall remain personally present.



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W.P.(MD) Nos.17210 and 18015 of 2022

The papers qua a representation received from the members of the State Consumer Disputes Redressal Commission, U.P. may be examined; the prayer of that being that the members of the State Commission (retired Judge of District Judge-Supertime Scale) should be entitled to receive salary, allowances and other perquisites as are admissible to a sitting District Judge of the same Pay scale of the State.

A copy of the same be forwarded to Mr. Gopal Shankaranarayanan, learned Amicus Curiae, Mr. Aman & Lekhi, learned Additional Solicitor General and to the Standing counsel for the State of Uttar Pradesh.

the learned counsel would submit that in view of the above positive direction, the State was compelled to proceed with issuance of impugned notification.

16. We find that several directions have been issued by the honourable Supreme Court in *Suo Motu* W.P.No. 2 of 2021 on various dates, and all such directions have been flouted with impunity by the State of Tamil Nadu and eventually when the impugned notifications were issued on 17.07.2022, the judgement of the Nagpur Bench had been pronounced



W.P.(MD) Nos.17210 and 18015 of 2022

declaring some of the Rules, particularly, the Rules relating to experience required as unconstitutional.

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17. The Hon'ble Supreme Court in its order dated 22.10.2021 had considered the question as to whether the process of appointment that was initiated earlier in various States, some of which were at an advanced stage should be kept in abeyance, in view of the judgement of the Nagpur Bench of the Bombay High Court and the Hon'ble Supreme Court in the said order observed as follows:-

Be that as it may, the question is whether the process which has been initiated in the different States in pursuance to our comprehensive order passed on 11.08.2021 should be kept in abeyance in view of this judgment. On consideration of the importance of filling up of the vacancies, we are of the view that the timeline and processes fixed by us must continue as in some of the cases the appointments have been made and in others the appointment process is at an advance stage. Thus, the process initiated in pursuance to that order



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W.P.(MD) Nos.17210 and 18015 of 2022

should not be impeded by the subsequent judgment of the Nagpur Bench of the Bombay High Court whatever be the ultimate result of further proceedings to be filed by the Government in that behalf.

18. Therefore, what was sought to be protected by the Hon'ble Supreme Court by its order dated 22.10.2021 is only action taken prior to that date, pursuant to the order of the Hon'ble Supreme Court dated 11.08.2021.

19. In the cases on hand, we find that no notification was even issued by the State of Tamil Nadu as on 22.10.2021. The earliest notification calling for applications for the post of President and Members of the District Forum was made on 19.12.2021, i.e., after the order dated 22.10.2021. The impugned notifications have been made on 17.07.2022. It should be pointed out at this juncture at the risk of repetition that both these notifications were subsequent to the Nagpur Bench of Bombay High Court declaring Rule 3(2)(b), 4(2)(c) and 6(9) as unconstitutional. Therefore, legally and technically those Rules were not in the statute book on the date



W.P.(MD) Nos.17210 and 18015 of 2022

when the notifications calling for appointment were issued.

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20. The State had successfully dragged its feet on the appointments, despite the fact that the Hon'ble Supreme Court was monitoring the action taken by the States in filling up the vacancies in the Consumer Fora. A bare perusal of records of the proceedings of the Hon'ble Supreme Court in S.L.P.(Civil) No.19492 of 2021 would show that the Hon'ble Supreme Court had not suspended the operation of the judgement of the Nagpur Bench of Bombay High Court pending the said Special Leave Petition, which was later converted into Civil Appeal in Civil Appeal No. 831 of 2023.

21. Therefore, we will have to necessarily conclude that the Rules relating to experience viz., Rules 3(2)(b), 4(2)(c) and 6(9) were not in the statute book on the date when the impugned notifications were issued by the State. Therefore, the candidates who did not satisfy the required experience as per the Rules which were struck down were disabled or prevented from applying. The affirmation of the judgement of the Bombay High Court by

18/23



W.P.(MD) Nos.17210 and 18015 of 2022

the Hon'ble Supreme Court on 03.03.2023 would, in our opinion, made things worse for the respondents.

22. Once the striking down of the Rules is upheld by the Hon'ble Supreme Court, it would necessarily date back to the judgement of the Bombay High Court i.e., 14.09.2021. The notifications in issue having been issued after the said date, cannot be sustained.

23. The law is settled to the effect that once a provision of the Central Law or a Rule is held to be unconstitutional by a High Court, the same would stand effaced from the statute book in respect of the entire Nation and it cannot be said that it would not be valid within the jurisdiction of the particular High Court and it would be valid in other areas. This position was reiterated by the Hon'ble Supreme Court in ***Kusum Ingots & Alloys Ltd., Vs. Union of India and another*** reported in (2004) 6 SCC 254, wherein, the Hon'ble Supreme Court after examining the effect of Clause (2) of Article 226 of the Constitution of India held as follows:-

21. A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply



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W.P.(MD) Nos.17210 and 18015 of 2022

to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in a vacuum.

22. The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.(emphasis spplied)

24. If the said position is accepted, we have to necessarily conclude that the impugned notifications are bad and they have to be accordingly quashed. If the notifications are bad and they are liable to be quashed, the subsequent selection procedure that has been undertaken



W.P.(MD) Nos.17210 and 18015 of 2022

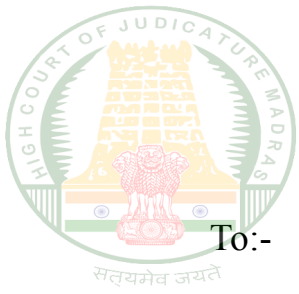
would also suffer from the same vice.

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25. Hence, both the Writ Petitions are **allowed** and the impugned notifications are quashed. The State Government will take appropriate action to make appointments afresh in accordance with the directions of the Hon'ble Supreme Court in *The Secretary Ministry of Consumer Affairs Vs. Dr.Mahindra Bhaskar Limaye and others* made in Civil Appeal Nos.832 and 833 of 2023. There shall be no order as to costs. In the light of the disposal of the writ petitions, both the writ miscellaneous petitions seeking impleading will stand dismissed. We make it clear that we have not dealt with any other notification apart from the impugned Notifications.

(R.S.M.,J) (L.V.G.,J)
08.06.2023

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Index :Yes
Internet :Yes
Neutral Citation :Yes
Speaking order

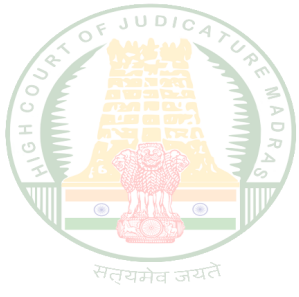


W.P.(MD) Nos.17210 and 18015 of 2022

To:-

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Principal Secretary to the Government,
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W.P.(MD) Nos.17210 and 18015 of 2022

R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

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**PRE-DELIVERY COMMON ORDER IN
W.P.(MD) Nos.17210 and 18015 of 2022**

08.06.2023

23/23