

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.711 of 2020

Padmavathi Hospitality and Facilities
Management Service
rep. by its Authorized Representative
J.Anjananandan,
No.2-B, 2nd Floor J.V.L.Towers
New No.51 Old No.117
Nelson Manickam Road, Aminjikarai,
Chennai – 600 029.

..... Appellant

vs

- 1 The Tamil Nadu Medical Service Corporation
(A Government of Tamil Nadu undertaking)
No.417 Pantheon Road Egmore
Chennai - 600 008.
- 2 The Director of Medical Education
Directorate of Medical Education
Kilpauk, Chennai - 10.
- 3 The Assistant Commissioner GST
Chennai North Commissionerate
No.2054, I Block, Newry Towers
12th Main Road, 2nd Avenue
Anna Nagar, Chennai - 600 040.

4 Krystal Integrated Services Pvt. Ltd.
No.15, Krystal House, Dr.Mankikar Road
Sion East, Mumbai - 400 022.

5 The Assistant Commissioner (CT)
State GST, Koyambedu GST Circle
CMDA Administration Building
2nd Floor, Koyambedu
Chennai - 600 107.

6 Tamil Nadu Advance Ruling Authority
PAPJM Buildings, II Floor
No.1, Greams road
Chennai.

.... Respondents

PRAYER: Appeal under Clause 15 of the Letters Patent to set aside the
order dated 28.2.2020 passed by the learned Single Judge in
W.P.No.24412 of 2019

For Appellant : Mr.Nithyaesh Natraj

For 1st respondent : Mr.Shivakumar

For 2nd respondent : Mr.Karthikeyi Balan

For respondents 3 and 5 : Mr.Mohammed Saffiq
Spl. Government Pleader

For 4th respondent : Mr.P.Vinod Kumar

JUDGMENT
(Delivered by *The Hon'ble Chief Justice*)

This appeal is limited for a relief against the observations and directions contained in paragraphs (41) and (42) of the impugned judgment dated 28.2.2020, in a challenge raised by the appellant in W.P.No.24412 of 2019 relating to a dispute regarding acceptance of a bid and award of a contract pursuant to the tender notice dated 19.2.2019.

2. Another writ petition, being W.P.No.27267 of 2019, was filed by a separate petitioner, wherein the said petitioner claimed the bid for itself, and for rejecting the bid of the appellant herein as well as the successful bidder, M/s.Krystal Integrated Services Private Limited, fourth respondent herein. Both the writ petitions were taken up together and have been dismissed. While dismissing the writ petitions, the learned Single Judge has made the following observations in paragraphs (40) to (42), which are reproduced herein under:

"40. The reasons and the law laid down by the Hon'ble Supreme Court are binding. I hold that both the Writ Petitioners have embarked on a speculative journey to deliberately frustrate further progress in the tender process. Both the Writ Petitions have to suffer an order of dismissal and accordingly they are dismissed.

41. It must also be stated that the learned counsel for the Writ petitioner in W.P.No.24412 of 2019, made the following endorsement in the Writ Petition on the last day when the writ petitions were reserved for orders:

'Petitioner may be permitted to withdraw with liberty'
This Court expresses its deep displeasure over such an endorsement made by the learned counsel for the petitioner. It exhibits lack of professional ethics. It is very specifically ordered that no liberty of any kind is granted for the Writ Petitioner in W.P.No.24412 of 2019.

42. Both the Writ Petitions are dismissed. Each of the Writ Petitioners are directed to pay costs of Rs.5,00,000/- (Rupees Five Lakhs only) to the Chief Justice Relief Fund, High Court of Madras. Consequently, connected Writ Miscellaneous Petitions are closed."

3. We are not concerned with the observations made or the relief prayed for by the other writ petitioner in W.P.No.27267 of 2019 and the present appeal is confined to the limited relief as

prayed for by the appellant in the appeal arising out W.P.No.24412 of 2019 only.

4. Having entertained the appeal, we had passed the following order on 27.7.2020, while issuing notice:

"We have heard learned counsel for the petitioner Mr.Shivakumar, learned counsel appearing for the first respondent; Mr.P. Vinod Kumar, learned counsel for the fourth respondent and Mr.V.Jayaprakash Narayanan, learned State Government Pleader for the State and its authorities.

2. *Issue Notice to the unserved respondents returnable at an early date.*

3. *Learned counsel may also take private notice to the unserved respondents and a copy of the papers be circulated to all the learned counsels.*

4. *Learned counsel for the appellant has urged that this appeal is limited in its scope questioning the correctness of the observations, directions and imposition of cost as contained in paragraph Nos.41 and 42 of the impugned judgment dated 28.02.2020. Learned counsel submits that the petitioner had instructed the counsel to withdraw the writ petition with liberty, as an application before the*

Advance Ruling Authority was pending which was also one of the alternative remedies available in respect of the dispute that has been raised in the writ petition.

5. *It is the contention of the learned counsel that on 06.02.2020, he was granted permission to make the endorsement of withdrawal on the record, which was duly made, in the hope that the writ petition filed insofar as the present appellant is concerned, had been permitted to withdraw with liberty to approach the Advance Ruling Authority, but, when the impugned judgment was delivered on 28.02.2020, the appellant's counsel was taken by surprise with the observations made and cost imposed on the appellant.*

6. *Learned counsel has clarified that the other writ petitioner had been contesting his writ petition and there was no endorsement by the said writ petitioner for withdrawing the case. He also points out that this matter had been heard at length before another learned Single Judge, where written arguments had been filed on 04.10.2019 and in spite of the matter having been heard and judgment reserved by the learned Single Judge, the same was not pronounced, as a result thereof, the matter came to be heard by another learned Single Judge, who has now dismissed the writ petition with the said observations.*

7. *The contention is that there was no attempt on the part*

of the appellant to put the Court to any form of inconvenience or seek adjournment or any unnecessary indulgence, and he was simply pursuing his legitimate and bona fide right to seek a judicial review from this Court in a contractual matter to the extent it may have been permissible.

8. *In this background, once the petitioner had sought withdrawal and had endorsed it, then, the dismissal of the writ petition and imposition of cost without putting the appellant's counsel to notice on this ground, is not justified, more so, in the back ground of the litigation as indicated above.*

9. *The Respondents may give their limited response on this issue, which has been raised in this appeal.*

10. *Having considered the submissions raised by the learned counsel for the respondents as well, prima facie we find that a case for grant of interim relief has been made out.*

11. *Accordingly, until further orders of this Court, we stay the operation of paragraph Nos.41 and 42 of the impugned judgment dated 28.02.2020.*

List the matter on 07.09.2020."

5. The appellant had also taken a plea in his writ petition that the appellant had made an application for advance ruling on the applicability of Goods and Service Tax in respect of the information required for the tender before the Advance Ruling Authority. It is in this context that the relief for setting aside the tender proceedings was prayed for in the writ petition.

6. Noticing the aforesaid fact, the learned Single Judge while hearing the writ petition giving rise to this appeal, on 14.11.2019, had passed the following order:

"Heard Mr. AR.L. Sundaresan, Learned Senior Counsel appearing for the Petitioner, Mr. V.M. Shivakumar appearing for the First Respondent, Mr. Vijay Narayan, Learned Advocate General assisted by Mr. R. Venkatesh, Learned Government Advocate appearing for the Second Respondent, Mr. M. Santhanaraman, Learned Counsel appearing for the Third Respondent, Mr. D. Ravichander, Learned Counsel appearing for the Fourth Respondent and Mr. M. Hariharan, Learned Additional Government Pleader appearing for the Fifth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. Notice to the Sixth Respondent returnable by 22.11.2019.
Private notice is also permitted.

3. Learned Senior Counsel appearing for the Petitioner submits that the Petitioner had made an application for advance ruling on the applicability of Goods and Service Tax in respect of the tender, which forms the subject of this Writ Petition, before the Sixth Respondent, and in view of the first proviso to Section 98(2) of the Central Goods and Services Tax Act, 2017, seeks a clarification from this Court for enabling the Sixth Respondent to pass orders in that application.

4. Having regard to the facts involved in this case, and in particular, the Counter Affidavit dated 12.11.2019 filed by the Third Respondent, the pendency of this Writ Petition shall not preclude the Sixth Respondent from deciding the aforesaid application for advance ruling said to have been made by the Petitioner.

5. Learned Counsel for the parties seek time to make further submissions in the Writ Petition. Post the matter along with W.P. No. 27267 of 2019 on 22.11.2019 at the end of the list."

7. The contention of the learned counsel for the appellant is

that it is for this reason that the appellant made a request before the learned Single Judge to allow the appellant to withdraw his writ petition, for which an endorsement was made so that he may have the liberty to pursue the appeal before the Advance Ruling Authority.

8. The contention of the learned counsel for the appellant is that the endorsement made for withdrawal of the writ petition was unequivocal, as the appellant did not wish to contest the writ petition since he was pursuing his application before the Advance Ruling Authority, the Court ought to have simply dismissed the writ petition and there was no justification for having imposed costs.

9. It is submitted that since the Advance Ruling Authority had failed to decide the application in spite of the said observation made by the learned Single Judge on 14.11.2019 during the pendency of the writ petition, there was no option to the appellant except to pursue his cause and make a request to that effect.

10. In spite of the endorsement having been made, the Court instead of passing an order of dismissing the writ petition permitting the appellant to withdraw the same, has proceeded to express its anguish on account of the pendency of the writ petition terming it as a speculative journey for frustrating the tender process. Learned counsel submits that the aforesaid observation of the learned Single Judge in the background aforesaid, when the appellant himself has volunteered to withdraw his writ petition, is not justified and the Court ought not to have proceeded to decide the matter on merits, nonetheless the appellant is only contesting the observations made with regard to the right of withdrawal and the imposition of costs in the present appeal.

11. Learned counsel for the parties have been heard and Mr. Shivakumar, learned counsel for the first respondent submits that since the appeal is limited only to these aspects and is confined to the writ petition of the appellant, the Court may pass appropriate orders.

12. Mr.Karthikeyi Balan and Mr.Mohammed Saffiq, learned counsel have been heard on behalf of the State, and Mr.P.Vinod Kumar, learned counsel for the fourth respondent contends that it was on account of the conduct of the appellant that the Court proceeded to refuse withdrawal as well any liberty of any kind and rightly imposed the cost, as a frivolous litigation was being pursued by the appellant.

13. The aforesaid dispute has to be viewed in the light of the principles of Order XXIII Rule 1 of the Civil Procedure Code. At the outset, we may clarify that such principles relating to withdrawal are applicable to writ petitions as well on the ground of public policy, as held by the Apex Court in the case of **Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior and others, (1987) 1 SCC 5**, in paragraph (9), which is extracted herein under:

"9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point

the decision in *Daryao v. State of U.P.* [AIR 1961 SC 1457 : (1962) 1 SCR 574] is of no assistance. But we are of the view that the principle underlying Rule 1 of Order XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however leave this question open."

The aforesaid view in ***Sarguja Transport Service*** (supra) has been reiterated in the case of ***Upadhyay & Co. v. State of U.P. and others, (1999) 1 SCC 81***. Another shade of the said issue has been considered in the case of ***Kandapazha Nadar and others v.***

Chitraganiammal and others, (2007) 7 SCC 65. Further, the limitation on the right of a defendant to object to a withdrawal has been discussed in the case of ***Anil Kumar Singh v. Vijay Pal Singh and others, (2018) 12 SCC 584.***

14. We may further point out that it is subject to the conditions as enunciated in the case of ***Radha Krishna v. State of Rajasthan, AIR 1977 Raj 131,*** and subject to the powers of the Court circumscribed to the extent as contained in Sub-Rule (4) of Order XXIII Rule 1 of the Civil Procedure Code.

15. There are certain exceptions to this Rule which should also be taken into consideration, namely, that the petition filed is a bona fide attempt and not a mala fide attempt to consume the time of the Court by way of forum shopping. While explaining the judgment in the case of ***Sarguja Transport Service*** (supra), the Apex Court in the case of ***Sarva Shramik Sanghatana (KV) v. State of Maharashtra, (2008) 1 SCC 494,*** in paragraphs (12) to (18), held as under:

"12. We have carefully examined the decision of Sarguja Transport Service case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] . In the said decision it is mentioned in para 8 as follows: (SCC p. 11)

'8. ... It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel to permit the petitioner to withdraw the writ petition without seeking permission to institute a fresh writ petition. A court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition.'

In para 9 of the said decision, it is also mentioned as follows: (SCC p. 12)

'9. ... But we are of the view that the principle underlying Rule 1 of Order 23 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in Bench-hunting tactics.'

(emphasis supplied)

We are of the opinion that the decision in *Sarguja Transport case* [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] has to be understood in the light of the observations in paras 8 and 9 therein, which have been quoted above. The said decision was given on the basis of public policy that, if while hearing the first writ petition the Bench is inclined to dismiss it, and the learned counsel withdraws the petition so that he could file a second writ petition before what he regards as a more suitable or convenient Bench, then if he withdraws it he should not be allowed to file a second writ petition unless liberty is given to do so. In other words, Bench-hunting should not be permitted.

13. It often happens that during the hearing of a petition the court makes oral observations indicating that it is inclined to dismiss the petition. At this stage the counsel may seek withdrawal of his petition without getting a verdict on the merits, with the intention of filing a fresh petition before a more convenient Bench. It was this malpractice which was sought to be discouraged by the decision in *Sarguja Transport case* [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] .

14. On the subject of precedents Lord Halsbury, L.C., said in *Quinn v. Leatham* [1901 AC 495 : (1900-1903) All ER Rep 1 (HL)] : (All ER p. 7 G-I)

"Before discussing *Allen v. Flood* [1898 AC 1 : (1895-1899) All ER Rep 52 (HL)] and what was

decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before—that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.”

(emphasis supplied)

We entirely agree with the above observations.

15. *In Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213]* (vide SCC p. 221, para 18) this Court observed:

'18. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.'

16. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* [(2003) 2 SCC 111] (vide SCC p. 130, para 59) this Court observed:

'59. ... It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.'

(emphasis supplied)

17. As held in *Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani* [(2004) 8 SCC 579 : AIR 2004 SC 4778] a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed: (SCC pp. 584-85, paras 9-12)

'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words

of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761), Lord MacDermott observed: (All ER p. 14 C-D)

'The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge, ...'

10. In Home Office v. Dorset Yacht Co. Ltd. [1970 AC 1004 : (1970) 2 WLR 1140 : (1970) 2 All ER 294 (HL)] Lord Reid said,

'Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.' (All ER p. 297g)

Megarry, J. in Shepherd Homes Ltd. v. Sandham (No.2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] , observed: (All ER p. 1274d)

'One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;'

And, in British Railways Board v. Herrington [1972 AC 877 : (1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

'There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.'

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT [AIR 1962 SC 680] , AIR p. 688, para 19)

'19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.'

...

'Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches

else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.' " (emphasis supplied)

18. We have referred to the aforesaid decisions and the principles laid down therein, because often decisions are cited for a proposition without reading the entire decision and the reasoning contained therein. In our opinion, the decision of this Court in *Sarguja Transport case* [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] cannot be treated as a Euclid's formula.

16. In the said decision, the Court held that the application for withdrawal of the first writ petition had been made bona fide, as the company was trying to bring about an amicable settlement. The assumption of any forum shopping does not arise in this case, as the pursuit of an application before the Advance Ruling Authority is a separate remedy, which may or may not have a bearing on the claim of the appellant in the present proceedings, but the writ petition was filed with regard to an award of tender, the forum of which was before the learned Single Judge. This is not a case where the appellant had withdrawn any earlier claim with regard to the tender process to institute a fresh proceeding. We may further point out that it appears that the reason for approaching the Advance Ruling Authority might have been in order to clarify the status of applicability of Goods and

Service Tax, as the appellant appears to have quoted rates by adding Goods and Service Tax, whereas the fourth respondent had succeeded in offering a lesser rate without adding the component of Goods and Service Tax. This, in our opinion, was a bona fide pursuit on behalf of the appellant.

17. The law relating to withdrawal of a claim in the light of the word "abandon" used in Order XXIII of the Civil Procedure Code came to be considered by a learned Single Judge of the Allahabad High Court in the case of **Bhajan Lal and others v. Rajmala, 2013 (2) ALJ 476**, where in paragraphs (23), (24), (30) and (31), the following observations have been made:

"23. This provision was amended with the word "abandon" appearing in the Section which was previously a little different from the present context. To abandon means to relinquish or give up one's claim. It is a sort of renunciation and unless taken to be otherwise, a voluntary resignation or disowning of a claim. It is at times in the interest of another and it seeks to repudiate one's rights. A person casts off his vow to continue doing something and is a formal declaration thereof. The person abandoning a claim is voluntarily surrendering or sacrificing his claim. It is a disclaimer or forsaking of a right. The action taken is sought to be

retracted from and is, therefore, an absolute unconditional withdrawal of one's right to pursue any further claim.

24. The provision of Order XXIII is, however, hedged with limitations on this right of absolute withdrawal even where it is unilateral and voluntary. The Court retains the powers of imposing costs on terms & conditions even where the withdrawal is unconditional. The other side of the coin is that there can be cases where such abandonment is a result of threat, coercion, fraud and misrepresentation. In short, it is not voluntary or unilateral and, therefore, it cannot be said to be an absolute withdrawal. There can be a contingency where such expression of withdrawal can be alleged to be not in a sound state of mind or even under a mistaken belief or wrong advice. It is in such contingencies that the inherent power of the Court under Section 151, CPC has to be adverted to in order to rectify any mischief or fraud or even correction of legally permissible mistakes. Thus, the right of a litigant may be absolute for withdrawing from a litigation but it is hedged with the aforesaid limitation and, therefore, can be said to be subject to any orders passed or adjudication before the withdrawal is treated to be absolute. The intention, therefore, expressed to withdraw from a Suit may require me passing of an order of the Court before finality is attached to the same.

.....

30. The contention raised that Order 21, Rule 89(2) has similar wordings and the order of the Court is not

necessary, is not attracted, as the ingredients of Order XXIII are entirely different as discussed hereinabove. A litigant can surrender his right to contest a matter which is the essence of Order XXIII. The right to withdraw such an intention of surrender or revoke the same which can arise in the circumstances as discussed hereinabove is a different issue. These ingredients, therefore, in relation to the entire disclaimer of the claim is not comparable with the provisions of Order 21, Rule 89(2) in a matter arising out of execution.

31. There is yet another aspect which requires consideration namely the consequences of such withdrawal which are unilateral and voluntary. A litigant is precluded for all times to come from raising any similar issue or claiming any similar right. The consequences are, therefore, so absolute that before any opinion is expressed thereon, the legal right to waive a claim has to be assessed. It is true that a litigant has a right and an unqualified right to withdraw from a litigation but it is subject to certain conditions. The right to contest or seek a judicial remedy partakes the nature of the basic structure of the Constitution. It is controlled by law made by the Parliament and the right to seek a judicial remedy, therefore, cannot be denied to a litigant. Similarly, the remedy already sought can be abandoned which is also permitted by law. In my opinion, before an order is passed by a Court formally terminating the litigation, this right to revoke a withdrawal can also be exercised and to this extent, the power of the Court is preserved in order to do

complete justice between the parties. The reason is that a voluntary termination of a litigation has drastic consequences. It is severing one's hands for all times to come. To avoid any injustice, the right of a litigant to change the intent should be saved to conserve any possible lawful claim, till an order terminating the litigation is formally passed by the Court. This would in no way prejudice any right of the defendant, and the damage if any, can be rectified by the Court while passing the formal order. The procedure, therefore, would enure to the benefit of both parties. The Court should, however, at the very outset, if such an application is filed, proceed to decide the same so that it does not leave the parties in a state of indecisiveness. This would also help in terminating unnecessary litigation."

18. Thus, the right to withdraw a claim is available in almost an absolute form subject to and hedged by the limitations referred to in the said decisions. As to what is absolute withdrawal has also been considered in a later judgment cited by the learned counsel for the appellant in the case of **Anurag Mittal v. Shaily Mishra Mittal, (2018) 9 SCC 691**, where this issue was discussed in paragraphs (17) and (18), which are extracted herein under:

"17. The High Court of Bombay in *Anil Dinmani Shankar Joshi v. Panvel Municipal Council*, 2003 SCC OnLine Bom 24,; AIR 2003 Bom 238, followed the judgment of this Court in *Shiv Prasad v. Durga Prasad*, (1975) 1 SCC 405 and held that the said judgment is applicable to suits also. The High Court recognised the unconditional right of the plaintiff to withdraw his suit and held that the withdrawal would be complete as soon as the plaintiff files his purshis of withdrawal.

18. Order 23 Rule 1(1) CPC enables the plaintiff to abandon his suit or abandon a part of his claim against all or any of the defendants. Order 23 Rule 1(3) CPC requires the satisfaction of the Court for withdrawal of the suit by the plaintiff in case he is seeking liberty to institute a fresh suit. While observing that the word abandonment in Order 23 Rule 1(1) CPC is "absolute withdrawal" which is different from the withdrawal after taking permission of the court, this Court held as follows *K.S. Bhoopathy v. Kokila*, (2000) 5 SCC 458] , SCC pp. 463-64, para 12:

'12. The law as to withdrawal of suits as enacted in the present Rule may be generally stated in two parts:

(a) a plaintiff can abandon a suit or abandon a part of his claim as a matter of right without the permission of the court; in that case he will be precluded from suing again on the same cause of action. Neither can the plaintiff abandon a suit or a

part of the suit reserving to himself a right to bring a fresh suit, nor can the defendant insist that the plaintiff must be compelled to proceed with the suit; and

(b) a plaintiff may, in the circumstances mentioned in sub-rule (3), be permitted by the court to withdraw from a suit with liberty to sue afresh on the same cause of action. Such liberty being granted by the court enables the plaintiff to avoid the bar in Order 2 Rule 2 and Section 11 CPC."

19. In the present case, in our opinion, the appellant was seeking judicial review on the principles of administrative law, and the present proceedings in relation to an award of tender, which may have been on erroneous grounds or otherwise, with which we are not concerned, but the fact remains that at the intermediate stage of the proceedings before the learned Single Judge, the order dated 14.11.2019 does take notice of the pendency of an application before the Advance Ruling Authority and it was left open to the said authority to decide the said application, which was not being decided by the Advance Ruling Authority and was kept pending till the matter was finally heard.

20. Mr.Saffiq, learned counsel has clearly submitted that normally in such matters when a writ petition or any other such proceeding is pending before the High Court, the Advance Ruling Authority awaits the disposal thereof and, therefore, the Advance Ruling Authority had not proceeded to dispose of the matter. It is thus clear that in spite of the observation of the Court on 14.11.2019, the Advance Ruling Authority had kept the matter pending and this aspect of the matter has not been taken into consideration by the learned Single Judge while assuming that the appellant had unnecessarily pursued the writ petition before this Court. In our opinion, there was a justification, yet the appellant, in his wisdom, rightly instructed the counsel to withdraw the writ petition, which endorsement was made in open court.

21. It is the contention of the learned counsel that the Court did not refuse permission when the endorsement was made and the counsel was under the impression that the same would be considered favourably in the circumstances indicated above, but the appellant was taken by surprise when the writ petition came to be dismissed, that too even with the imposition of Rs.5 Lakhs costs and refusing

permission to withdraw the writ petition and liberty to pursue his application before the Advance Ruling Authority.

22. On the said issue, we find that the learned Single Judge in order to draw a curtain on the litigation at that stage had already been offered an opportunity to dismiss the writ petition as withdrawn. In our view, once such a request has been made, and unless there are any unrepresented third party rights that may be affected, or any of the contingencies mentioned in the judgments referred to herein above exist, it is always ordinarily an acceptable position that the Court should not proceed to adjudicate the matter and permit withdrawal on such conditions that may be necessary.

23. In the instant case, we find no party unrepresented in the litigation being affected by the appellant seeking liberty to pursue his application before the Advance Ruling Authority. To this extent, the fourth respondent cannot have any objection, in as much as he has no locus to question the moving of an application by the appellant before the Advance Ruling Authority and pursuing the same, which application

admittedly was not disposed of due to the pendency of the writ petition itself.

24. In such circumstances, we also do not find any valid reason for imposing costs on the appellant. We are making these observations only in relation to the appellant who had filed W.P.No.24412 of 2019, which petition, in the facts narrated above, stands on a different footing from the other writ petition, where the petitioner does not appear to have filed any appeal questioning the impugned judgment.

25. The appellant, therefore, had a right to withdraw the writ petition and having exercised that right, there was no legal impediment in granting permission to the appellant to withdraw the writ petition. We, therefore, do not find the directions and the observations made in paragraphs (41) and (42) of the impugned judgment to be justified on the peculiar facts and circumstances of the present case, as indicated above, and the same are also not supported in law, as the withdrawal was in tune with the legal provisions that have been enunciated in the judgments referred to above. We,

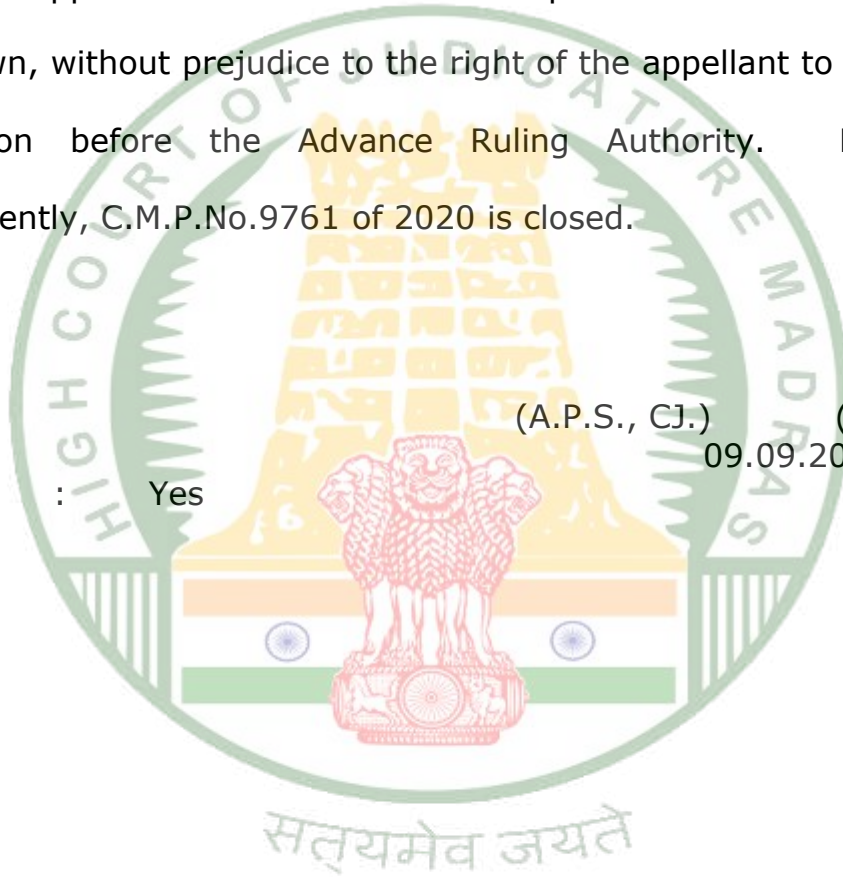
therefore, allow the appeal only to the extent that paragraphs (41) and (42) in so far as the present appellant is concerned would stand set aside.

The appeal is allowed and the writ petition stands dismissed as withdrawn, without prejudice to the right of the appellant to pursue his application before the Advance Ruling Authority. No costs. Consequently, C.M.P.No.9761 of 2020 is closed.

Index
sasi

: Yes

(A.P.S., C.J.) (S.K.R., J.)
09.09.2020



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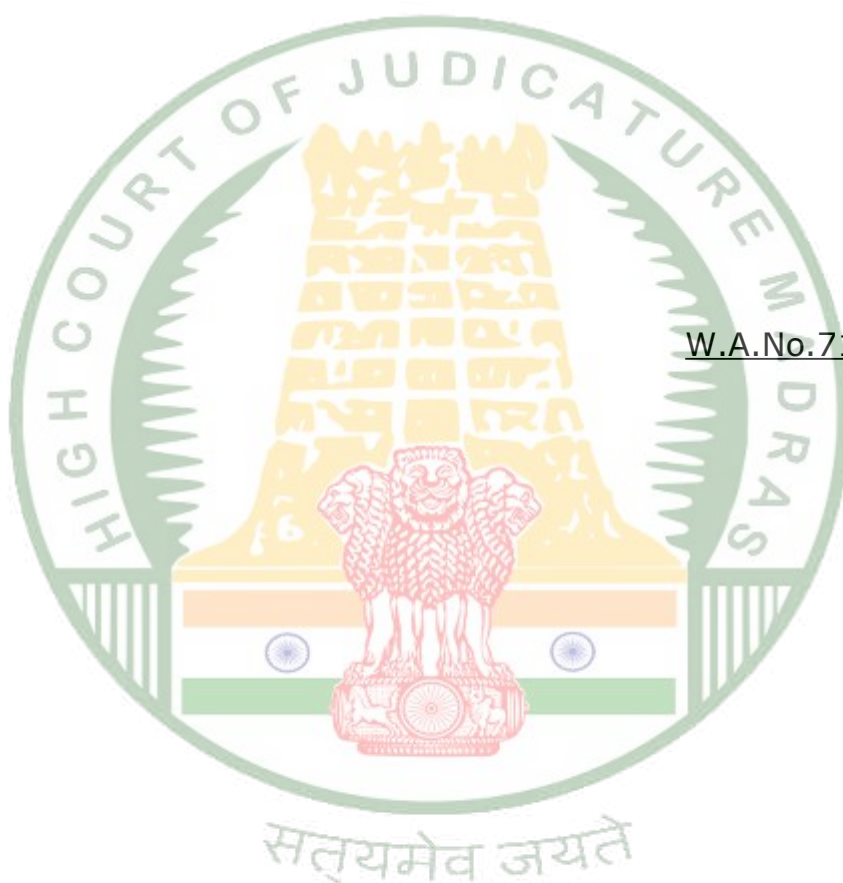
To:

- 1 The Tamil Nadu Medical Service Corporation
(A Government of Tamil Nadu undertaking)
No.417 Pantheon Road Egmore
Chennai - 600 008.
- 2 The Director of Medical Education
Directorate of Medical Education
Kilpauk, Chennai - 10.
- 3 The Assistant Commissioner GST
Chennai North Commissionerate
No.2054, I Block, Newry Towers
12th Main Road, 2nd Avenue
Anna Nagar, Chennai - 600 040.
- 4 The Assistant Commissioner (CT)
State GST, Koyambedu GST Circle
CMDA Administration Building
2nd Floor, Koyambedu
Chennai - 600 107.
- 5 Tamil Nadu Advance Ruling Authority
PAPJM Buildings, II Floor
No.1, Greams road
Chennai.

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THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY,J.

(sasi)



W.A.No.711 of 2020

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