

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.357 OF 2014  
WITH  
MISC. APPLICATION NO.145 OF 2016

DISTRICT : SOLAPUR

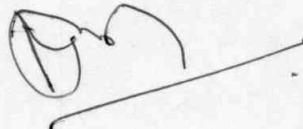
Shri Ravindra S. Hingmire. )  
Aged : 57 Yrs, Occ.: Service (V.R.S), )  
R/o. Plot No.26, Konark Nagar, Near )  
Bharti Vidyapeeth, Vijapur Road, )  
Solapur 413 004. )...Applicant

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Revenue Department, )  
Mantralaya, Mumbai - 400 032. )
2. The Collector of Solapur. )  
Collector Office, Solapur. )
3. The Entertainment Tax Officer, )  
Collector Office, Solapur. )...Respondents

**Shri R.G. Panchal, Advocate for Applicant.**

**Shri N.K. Rajputohit, Chief Presenting Officer for Respondents.**

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**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)**  
**R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 07.10.2016**

**PER : R.B. MALIK (MEMBER-JUDICIAL)**

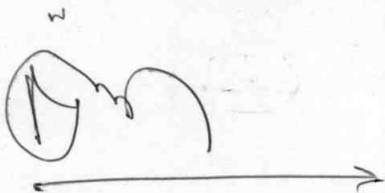
### **JUDGMENT**

1. These two proceedings can be disposed of by this common Judgment. The Original Application (OA) now restricted to Prayer Clause (b) in view of the averments in Para 7 of the Affidavit-in-Rejoinder at Page 56 of the Paper Book (P.B) seeks a declaration that the Applicant stood voluntarily retired on 31.1.2014 because as claimed by the Applicant, his notice for voluntary retirement under Rule 66 of Maharashtra Civil Services (Pension) Rules, 1982 (Pension Rules hereinafter) came to be accepted which is a disputed fact. By way of the MA, the Applicant seeks an order that under the provisions of Section 195 (1)(b) of the Code of Criminal Procedure, Shri Tukaram Munde, the District Collector, Solapur and his predecessor Dr. Praveen Gedam presently working as Commissioner, Nashik Division, Nashik be prosecuted for various offences relating to the alleged acts of omission and commission in the matter of the proceedings in this OA and allegedly having given false evidence in the form of Affidavits.



2. We have perused the record and proceedings and heard Mr. R.G. Panchal, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) for the Respondents.

3. The Applicant at the time relevant hereto was working as Entertainment Tax Inspector. He would have retired on superannuation on 31.5.2014. However, according to him, he tendered a notice of voluntary retirement on 31<sup>st</sup> January, 2014. The cause assigned is health related. It is claimed by the Applicant that his notice of voluntary retirement came to be accepted by the then Collector, Solapur - Dr. Praveen Gedam, who as already mentioned above is the Respondent to the companion MA. To the OA, the 1<sup>st</sup> Respondent is the State of Maharashtra in the Department of Revenue, the 2<sup>nd</sup> Respondent is the Collector, Solapur and the 3<sup>rd</sup> Respondent is the Entertainment Tax Officer, Solapur. However, according to the Applicant, on 13.2.2014, a letter came to be delivered to him which was also dated 31.1.2014 purportedly issued by the Collector - Respondent No.2 whereby his notice for voluntary retirement came to be rejected. A copy thereof is at Exh. 'C' (Page 12 of the OA). It is therein mentioned that on 31.1.2014 itself, papers were presented to the Collector

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showing that the departmental enquiry was under contemplation against him for which the documents as per the schedule thereto annexed were also presented. The Applicant in this OA as initially brought tried to pick several holes in the charge-sheet which was served on him, but then by the averments detailed at the outset in his Affidavit-in-rejoinder, he restricted his claim to only Prayer Clause (b) and mentioned inter-alia that he reserved his rights to bring another OA to challenge the departmental enquiry (DE). It is not necessary for us to mention in details, but it does appear that in the meanwhile, some proceedings in the nature of the DE have been initiated. We express absolutely no opinion thereabout and proceed further herein.

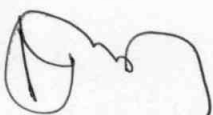
4. The Applicant has further mentioned that the refusal to accept his notice of voluntary retirement was because the 3<sup>rd</sup> Respondent – Entertainment Tax Officer, Solapur had a grudge against him. He had no power to issue charge-sheet to him, he has raised several grounds in support of his claim including the breach of principles of natural justice and the violation of the principles enshrined in Articles 14 and 21 of the Constitution of India and also of the Maharashtra Civil Services Rules.

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5. The issue, therefore, boils down to whether the notice of voluntary retirement was accepted so as to foreclose the possibility of any going back on that aspect of the matter.

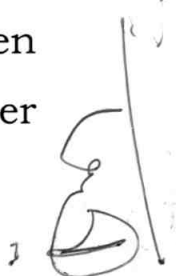
6. It needs to be recalled that the said notice was submitted just about four or five months before the Applicant's due date of retirement on superannuation. There is an element of some acts allegedly constituting the misconduct as far as the Applicant was concerned. The Applicant claims to have been relieved w.e.f. 1<sup>st</sup> February, 2014. It is his case that the acceptance of his notice of voluntary retirement was communicated to him. We shall be presently discussing the Affidavit of the then Collector – Dr. Praveen Gedam, but then the fact that when the matter was under process, the Office of the Collector, Solapur apparently produced before the Collector, both the notings viz. the notice of the Applicant for voluntary retirement as well as the proposed disciplinary action. According to Dr. Gedam, both the letters were being processed simultaneously. Under some mistaken belief, even as he accepted the proposal to reject the V.R.S, he began signing the order as if to accept the V.R.S, but it immediately struck him as to what was what and he cancelled it and completed the signature on that other order directing the



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rejection of the said notice. Admittedly, the rejection was even on Applicant's own showing communicated to him.

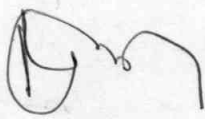
7. There is a communication dated 10<sup>th</sup> or 11<sup>th</sup> February, 2014 from the Applicant to the Revisional Commissioner, Pune (Establishment) wherein he had mentioned as to how he had submitted the notice for voluntary retirement to become effective from 31.1.2014 and as to how the rejection was communicated to him. He made a grievance that for a period of one month, nothing was communicated to him. He further mentioned that the background to the whole matter was that something was being cooked in the form of a proposed departmental enquiry against 5 of the 6 Inspectors and in that connection, he has made allegations against Shri Ramling Chavan, Entertainment Tax Officer and as to how those 5 Inspectors were planning to proceed on mass leave. But they somehow yielded to the persuasions and joined on 19.12.2013. He further stated there that he had submitted his notice for voluntary retirement one month in advance, but nothing was communicated to him till 10.2.2014, when it was informed that his notice was rejected. There are other statements therein which may not be highly relevant herefor, but they are in line with what has been mentioned just now. Now, most pertinently, the letter



under discussion makes the case of the Applicant somewhat suspect because he has nowhere mentioned in a straightforward manner that his notice of voluntary retirement had been accepted and if anything, the contents of the said letter in Marathi which need to be reproduced would suggest as if no such acceptance was communicated.

“मी, दि.३१/१२/२०१३ रोजी स्वेच्छा निवृत्तीसाठी, करमणूक कर अधिका-यामार्फतच रितसर अर्ज सादर केले आणि दि.३१/१/२०१४ पासून म्हणजे एक महिना अगोदर स्वेच्छा निवृत्तीसाठी विनंती केली. तेंव्हा सदरचे अर्जाविषयी दि. १०/२/२०१४ पर्यंत मला काही एक कळविले गेले नाही. मात्र दि.११/२/२०१४ रोजी संदर्भाधिन पत्रान्वये तुमची विनंती अमान्य केली असलेचे कळविले आहे.”

8. Now, as far as the Respondents are concerned, initially the Affidavit-in-reply was filed on behalf of all the 3 Respondents by Shri R.M. Adsul, Assistant Entertainment Officer, Solapur. He did therein give out some details of the manner in which the then Collector handled the matter at his table, but since the then Collector – Mr. Praveen Gedam has filed his own Affidavit and a gist thereof has already been adverted to hereinabove, we shall refer to that Affidavit itself. At this stage, we may only note that at Exh. ‘R-1’ to the Affidavit-in-reply of Shri Adsul, there is a communication from 5 Inspectors including the Applicant to the Collector dated 14<sup>th</sup>/16<sup>th</sup> December, 2013 wherein



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they made a grievance that deliberate attempts with prejudiced mind were being made by the Entertainment Tax Officer against them because they were unable to fulfill his demands, and therefore, they conveyed their desire to proceed on leave. That aspect of the matter has been just now adverted to. What is most significant to note is that in the month of December, 2013 itself, on Applicant's own showing much as he would feign ignorance, some move was there to initiate the DE against him. In Dr. Gedam's Affidavit, this aspect of the matter has been amplified further. This, in our opinion, provides to the whole matter related to the so called acceptance of the notice of VRS, a significant background and the fact that there had been a conscious attempt on the part of the Applicant at least initially to downplay it is also of great moment.

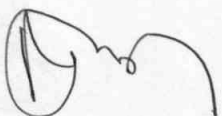
9. Before we proceed further and read the Affidavit of Dr. Gedam, we may mention that the Applicant has heavily relied upon the circumstance that he was not facing any DE because that was made clear by the communication of 13.12.2013 signed by the same Entertainment Tax Officer against whom the Applicant has grievances that no DE was either pending or proposed. We may not deal with or discuss some aspects which are not highly significant, but then it is again a fact borne out by





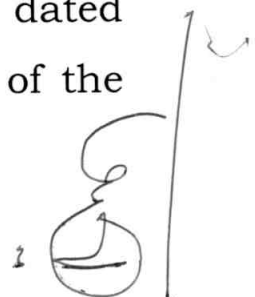
the record that it would appear from a communication of 6<sup>th</sup> September, 2014 from the Office of the Collector, Solapur that the Applicant had already retired on superannuation and the DE was under contemplation, but directions were given with regard to the quantum of his pension. Further, there is material to show that on 31<sup>st</sup> January, 2014, papers were placed before the Collector, Solapur which indicated that the DE may have to be started against the Applicant. Therefore, as on 13.12.2013 on record, there may not have been actually any proposal to initiate the enquiry, but then his normal date of retirement was still a few months away and on that aspect of the matter only, the whole case of the Applicant with regard to the acceptance of his notice cannot be accepted. If he has got any stand to take viz-a-vis, the DE if it goes underway, relying upon this communication of 13.12.2013, he will be free to do so. In this OA, we do not think it necessary to get much detained by that particular letter. That by itself is conclusive neither ways.

10. Turning now to the Affidavit-in-reply of Dr. Praveen Gedam which he filed pursuant to our order dated 21.11.2016 on the Farad. He has accepted the fact that the Applicant had applied for VRS under Rule 66 of the Pension Rules by his notice dated 31.12.2013. But he has

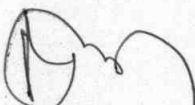
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emphasized the fact that under the said Rule, the period is of three months and not one month. Mr. Panchal, the learned Advocate for the Applicant in stoutly canvassing the case of his client relied upon a certain G.R. which according to him provided that the said period could be curtailed by the Government. It is not necessary for us to examine as to whether that G.R. supplants or supplements the Rule and all such aspect of the matter. We assume that the Government has the power to curtail that period, but then there is not only no document to show that it was curtailed but also there are facts and circumstances that ultimately that show that the notice itself was rejected which has left the Applicant aggrieved.

11. In Para 7 of the Affidavit of Dr. Gedam, he has given out the details of how the things went about. According to him, on 31.11.2014 itself, a note-sheet was submitted to the effect that the proposal to initiate the DE against the Applicant had been submitted by the 3<sup>rd</sup> Respondent, and therefore, his notice for VRS may not be accepted. His orders were sought. It is then stated by him that from the documents, it appeared that the file was inwards in his Office on 6.2.2014. The noting whereof is at Exh. 'R-1' (Page 71 of the PB). However, it was dated 31.1.2014. He approved it on 7.2.2014, in Para 8 of the

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Affidavit, he has mentioned that on 31.1.2014, two draft letters had been typed out, one was accepting the notice of VRS and the other rejecting the same. Normally, only the one draft letter is submitted which was in consonance with the approved noting, but here in this case, both the drafts were submitted. Therefore, he started to put his signature on a draft which was placed first believing that it was in consonance with the noting probably implying that of the rejection of the notice of VRS. However, even before he could complete his signature, he realized that this was not the draft, he had decided to finally approve and therefore, "in same stroke of pen, I struck of the incomplete signature" and he signed the draft which was of rejecting the notice of VRS. According to him, legally the first signature was not a signature and it was not a document that could legally be held to be binding. The said decision was taken by him on 7.2.2014 whereby he rejected the notice of VRS of the Applicant and it was then duly outwards. According to him, somehow or the other, the earlier document in that sense, a certified copy came to be given thereof and now, that he examined the record after his transfer from Solapur to Nashik, he found that the incomplete signature cancelled by him was missing from the file. He has requested the Collector, Solapur to hold enquiry into the matter and take action. In Para 10 of the

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said Affidavit, Mr. Gedam has mentioned that some action was taken by the Collector, Solapur upon his request in that behalf. He has, therefore, denied any sharp practice indulged in by him.

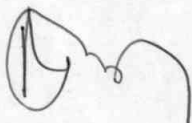
12. In Para 12, he has given out the details of the events that took place just before the events giving rise hereto. According to him, on 6.11.2013 while functioning as Collector, Solapur, he held a meeting of Cable Operators and therein pulled them up for the laxity in their performance because the number of Cable connections were, what can be described as underreported. In that connection, he perhaps wanted to indicate that the seeds were sown for initiation of enquiry against the Applicant as well as some other Inspectors.

13. To the Affidavit of Dr. Gedam, there are other documents annexed which would show that some kind of a charge-sheet may have been served on the Applicant and some documents in that behalf are of June, 2014. But we have already mentioned above, that we shall not examine that aspect of the matter at all lest someone or the other may get prejudiced by the observations.

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14. A very detailed Affidavit-in-rejoinder has been filed by the Applicant to Dr. Gedam's Affidavit which for all practical purposes is also the *teraferma* of his MA for initiating criminal action against Dr. Gedam and Shri Munde.

15. The case of the Applicant is that in the present matter, the decision of accepting his VRS was finalized, and therefore, the Collector, Solapur had no power to review the same. In other words, the action of the Collector amounts to review which could not have been undertaken in this matter. Reliance was placed on **Kalabharti Advertising Vs. Hemant (2010) 9 SCC 437** which held inter-alia that no review could be undertaken in the absence of the statutory enabling provision. Now, we have already discussed the circumstances in which the Collector – Dr. Gedam went about in the matter. It is not necessary to repeat the same all over again. It is very clear that he is right in taking the stand that no order was passed accepting the notice of VRS. In the normal course of office functioning, it is not entirely unknown that such actions do take place. We are unable to agree with the Applicant that the order of acceptance of VRS was finalized. Therefore, the only effective order was rejection thereof and we do not think, it could be successfully



argued that the principles governing the review especially in case the traditional judicial provisions could be bodily lifted and applied in case of an administrative function in which in the set of these facts, it cannot be held that it was a case of review. The Applicant has referred to another case to try and draw a parity in the matter with one Mr. Dingare, Awal Karkun whose similar request was granted. Now, in our view, no two cases generally are the same. The facts of the present matter have been discussed to the extent warranted hereby, and therefore, on that score alone, we cannot compel the Respondents to treat the Applicant like Mr. Dingare. The facts do not merit the said course of action.

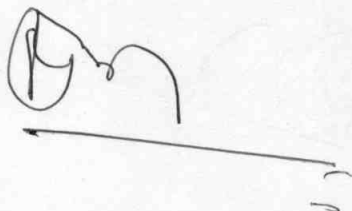
16. It is further stated in the Affidavit-in-rejoinder that no DE was proposed (Para 5). That action is not borne out by the record and we have while keeping safe distance away from the DE already observed as to how a DE could be pending.

17. Thereafter, there is a profuse reference to the various passages from the Affidavits and the same is the basis for the companion MA as well. The Applicant wants to adopt a case that the Collector – Dr. Gedam and may be even his successor Mr. Munde have resorted to tendering



false evidence for which they seek the initiation of criminal action as well as contempt.

18. We have discussed in extenso the Affidavit-in-reply filed by Dr. Gedam and in fact, he has also filed an additional Affidavit in answer to the Affidavit-in-rejoinder of the Applicant. He has controverted the averments of the Applicant. In our opinion, in the context of the present facts, Dr. Gedam has given a detailed account of events as the things happened and it is not possible to conclude that he is guilty of giving false evidence as the said term is understood in the realm of the relevant criminal law enshrined both in IPC as well as Cr.P.C. Under Section 340 of the Code of Criminal Procedure read along with the other relevant provisions, even when the Court (in this case the Tribunal) is called upon to consider as to whether a criminal action needs to be initiated, the Tribunal may not have to enter into a detailed evaluation of material, but even then, regard being had to the fact that it entails serious and momentous consequences, there has to be at least some material to form the satisfaction about existence of *mens-rea* that is a guilty intention to commit the offence. Therefore, in this matter although there is a straightforward account of events given by Dr. Gedam, but assuming and it is only an assumption and not a finding



that even if there was some conflict here and there in his two statements which are not there as a matter of fact, still in the absence of material to suggest the existence of *mens-rea* that by itself would not have been sufficient to make him to face music as they say.

19. The Applicant relied upon the circumstances attended with the manner in which the two notings were dealt with in order to buttress his contention that it was a guilty intent that governed the actions of Dr. Gedam. But in our opinion, there is no substance in the case of the Applicant. For principles, reliance has been placed on case law. The Applicant relied upon **Dalip Singh Vs. State of U.P. (2010) 2 SCC 114** which emphasized the need for the conduct to be truthful in the matters before the Court and the Hon'ble Supreme Court was pleased to denounce a new creed of litigants that did not believe therein. Reliance is also placed on a **Subrata Roy Sahara Vs. Union of India, (2014) 8 SCC 470** wherein Their Lordships were pleased to frown upon the pendency to initiate frivolous litigation. **Rita Markandey Vs. Surjit Singh Arora, (1996) 6 SCC 14** was cited. That was apparently a matter where by filing false Affidavit deliberate attempt was made to impede the administration of justice and thereby the delivery of possession got delayed and the concerned litigant was held

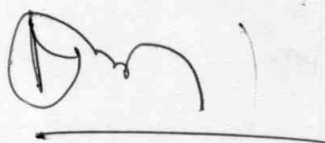




guilty of criminal contempt of Court. **Murray & Co. Vs. Ashok Kumar Newatia, (2000) 2 SCC 367** was cited to highlight the issue of the effect of the false denial in the Affidavit and the further fact that the Courts will be failing in their duties were they not to sternly act in such matters.

20. There are other citations also, but in the meanwhile, as far as the above referred citations are concerned, there can be no doubt that the principles thereof are law of the land and hence binding, but are even otherwise binding for a smooth and methodical running of judicial administration. However, on facts, a case for initiation of any such serious criminal action has not been constituted.

21. On principles, Mr. Panchal is right in contending that for a contemnor, regardless of the post and position that he holds State machinery in the form of State Advocates could not be utilized. But here, that stage is yet not, "arrived". Once the matter was referred to the Court of criminal jurisdiction even if it was and which it will not be, regard being had to the view that we take, then no official machinery could rush to the rescue of the contemnor before this Tribunal and before the Court of criminal jurisdiction, if a complaint was filed there.

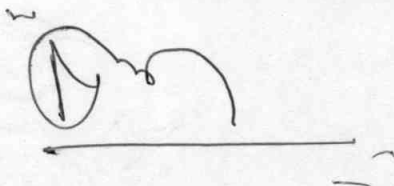


However, in support of his submission, Mr. Panchal referred us to **Kannappan Vs. Abbas and others, 1986 Criminal Law Journal 1022** and **Sudhir M. Vora Vs. Commissioner of Police for Greater Bombay and others, 2004 Criminal Law Journal 2278 (Bombay)** and also **Rameshwar Vs. Gajanan, 2005 ALLMR (CRI) 2392.**

22. For the same principles, Mr. Panchal also referred us to **Afzal Vs. State of Haryana, AIR 1996 SC 2426.**

23. Now, in so far as the matter with regard to making a complaint against the Collectors of Solapur viz. Dr. Gedam and Mr. Munde, our attention was invited to **Pritesh Vs. State of Maharashtra, AIR 2002 (SC) 236,** **CTR Manufacturing Industries Vs. Sergi Transformer Explosion Prevention & Ors, 2013 ALL MR (1) 153,** **Gujrat Pipavav Port Limited Vs. Shasrda Steel Corporation, 2012 Cri.L.J.3681, M. Muthuswamy Vs. Special Police Establishment, 1985 Cri.L.J.420,** **Devinder Mohan Zakhmi Vs. Amritsar Improvement Trust, Amritsar & Anr, 2002 Cri.L.J.4485.** These authorities were cited for the proposition that it is not necessary at this stage for us to even hear what can be described as would be Respondent in a could be contempt

action or would be accused in a could be criminal action. Now, in our opinion, as already discussed above to the extent necessary, the Affidavit of Dr. Gedam became necessary in view of a direction given by us and in any case, he having taken part in the events germane hereto, his Affidavit was even otherwise almost compulsory to be filed and that furnishes material for us to determine as to whether there is an element of *mens-rea* as alluded to hereinabove. That is the material which we are in duty bound to examine and we have no option in the matter. The general principles of Criminal Law cannot be rampantly and blindly applied. If the Tribunal has to make a complaint or initiate a contempt action, then some material has to be there as discussed above and no law, rule or case law mandates that on mere say so and *ipse-dixie* as it were of the Applicant, judicial forum must act. The essence of the case law cited by Mr. Panchal is that it is not necessary to have a detailed enquiry proceeding even before taking steps to make a complaint or initiating contempt action. However, when the allegation is about false evidence in the form of Affidavits and its recitals, then it is not acceptable that even those recitals should not be read or should be read blindly in a committed manner.

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24. Mr. Panchal referred us to **U.P. Resident Employees Cooperative Housing Society Vs. New Okhale Industrial Development (2010) 3 SCC (CRI) 586** for the proposition that filing false Affidavit amounts to contempt and **Mahadev S. Patil Vs. Village Development Officer MANU/MH/3349/2015** for the proposition that alteration in delay application are a serious matter and cannot be ignored. Again, on principles, Mr. Panchal is right but on application to the present facts, we do not think there is any yield.

25. The learned CPO referred us to **Punjab Tractors Limited Vs. International Tractors Limited.** The rest of the details are not clear, but it is a Judgment of the Hon'ble Delhi High Court and it lays down the principles with regard to the actions to be taken in dealing with an application under Section 340 of the CR.P.C. The principles culled out are as follows :

- “1. Whether *prima-facie* case is made out under Section 340 of I.P.C ?
2. Whether attempt was made to mislead the Court by filing and relying upon false evidence ?



3. Whether a person by his alleged act, obtained any advantage ?
4. Whether that act constitute Contempt of Court ?
5. Whether Respondents get benefited ?

26. We have already followed these principles hereinabove as must have become clear from the above discussion.

27. The upshot, therefore, is that neither there is any substance in the OA nor is any case made out to initiate any action in contempt or criminal action against Dr. Gedm or Shri Munde, and therefore, this OA and MA stand hereby dismissed with no order as to costs.

Sd/-

Sd/-

**(R.B. Malik)**  
**Member-J**  
**07.10.2016**

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**07.10.2016**

Mumbai  
Date : 07.10.2016  
Dictation taken by :  
S.K. Wamanse.