

Rudresha Vs. The Management

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Court : Karnataka

Decided On : Apr-05-2023

Judge : Suraj Govindaraj

Appeal No. : WP 52668/2014

Appellant : Rudresha

Respondent : The Management

Judgement :

- 1 - WP No.52668 of 2014 C/W WP No.37496 of 2014 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE5H DAY OF APRIL, 2023 R BEFORE THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ WRIT PETITION NO.52668 OF2014(L-RES) C/W WRIT PETITION NO.37496 OF2014(L-RES) IN W.P.NO.52668/2014 BETWEEN: RUDRESHA S/O LATE NARASIMHA SETTY, AGED55YEARS, RESIDING AT # 774, REVENUE LAYOUT, 1ST MAIN, 5TH CROSS, 2ND STAGE, HEBBAL MYSORE-570001. ... PETITIONER (BY SRI. ABHINAY Y.T., ADVOCATE) AND: THE MANAGEMENT OF M/s TVS MOTOR COMPANY POST BOX NO.1, BYATHALLI, JAYAPURA HOBLI, MYSORE TALUK & DISTRICT-570001 REP BY P.S. PONNNAPPA VICE-PRESIDENT-EMPLOYEE RESOURCE MANAGEMENT RESPONDENT (BY SRI. K. KASTURI, SENIOR COUNSEL FOR SMT. SHUBHA ANANTHI, ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE AWARD - 2 - WP No.52668 of 2014 C/W WP

No.37496 of 2014 OF THE LABOUR COURT DATED 05TH MARCH 2014 PASSED BY THE LABOUR COURT AT MYSORE IN I.D. NO.121/2007 (ANNEXURE M) IN SO FAR AS IT RELATES TO THE IMPOSITION OF PUNISHMENT OF WITHHOLDING OF TWO ANNUAL INCREMENTS FOR A PERIOD OF TWO YEARS WITHOUT CUMULATIVE EFFECT AND ALSO IN SO FAR AS IT RELATES TO DENIAL OF FULL BACKWAGES AND CONSEQUENTIALLY DIRECT THE MANAGEMENT TO REINSTATE THE PETITIONER WITH ALL CONSEQUENTIAL BENEFITS INCLUDING FULL BACKWAGES AND ETC. IN W.P.NO.37496/2014 BETWEEN: THE MANAGEMENT OF M/s TVS MOTOR COMPANY POST BOX NO.1, BYATHALLI, JAYAPURA HOBLI, MYSORE - 571311 REP BY P.S. PONNNAPPA, 61 YEARS VICE-PRESIDENT-EMPLOYEE RESOURCE MANAGEMENT ... PETITIONER (BY SRI. K. KASTURI, SENIOR COUNSEL FOR SMT. K. SHUBHA ANANTHI, ADVOCATE) AND: SHRI RUDRESHA S/O LATE NARASIMHA SETTY, AGED 54 YEARS, RESIDING AT # 774, REVENUE LAYOUT, 1ST MAIN, 5TH CROSS, 2ND STAGE, HEBBAL MYSORE-570001. RESPONDENT (BY SRI. ABHINAY Y.T., ADVOCATE FOR SRI. N. BYREGOWDA, ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF - 3 - WP No.52668 of 2014 C/W WP No.37496 of 2014 CERTIORARI/WRIT/

ORDER

/DIRECTION OF APPROPRIATE NATURE, QUASHING THE AWARD DATED 05.03.2014 AT ANNEXURE-O IN I.D.NO.121/2007 ON THE FILE OF THE LABOUR COURT AT MYSORE AND ETC. THESE WRIT PETITIONS COMING ON FOR

ORDER

S AND HAVING BEEN RESERVED FOR

ORDER

S ON 03.02.2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

1 The workman is before this Court in W.P.No.52668/2014 seeking for the following reliefs: a) Quash the Award of the Labour Court dated 05th March 2014 passed by the Labour Court at Mysore in IID No.121/2007 (Annexure M) in so far as it relates to the imposition of punishment of withholding of two annual increments for a period of two years without cumulative effect and also in so far as it relates to denial of full backwages and consequentially direct the Management to reinstate the petitioner with all consequential benefits including full backwages and b) Pass such other orders as this Hon'ble Court deems fit 2. The employer is before this Court in W.P.No.37496/2014 seeking for the following reliefs: I. Issue a Writ of Certiorari/Writ/Order/Direction of appropriate nature, quashing the Award dated 05.03.2014 at Annexure-O in I.I.D.No.121/2007 on the file of the Labour Court at Mysore. II. Issue a Writ/Order/Direction of appropriate nature granting such other relief/s as this Hon'ble Court deems fit in the facts and circumstances of this - 4 - WP No.52668 of 2014 C/W WP No.37496 of 2014 case, including the cost of this proceedings, in the interest of justice.

3. The workman is an Ex-Serviceman who worked in the Army for 17 years having discharged combat duty in Kargil and other forward sectors viz., Poonch and Tawang and had received Long Service and Good Conduct Medal. The workman joined the service with the employer as a Security Guard on 22.04.1999.

4. On 14.08.2006, a complaint was filed by a Security Officer alleging that the workman did not show respect to him in the canteen by not saluting him.

5. On 16.08.2006, when the workman was on duty at the main gate, he allowed the Truck Bearing No.AP- 29-U-205 to pass through the main gate after checking the invoice at 0045 hours. Alleging that the workman has not checked the truck properly due to which one additional two wheeler which had been loaded on the truck was allowed to pass, a show - 5 - WP No.52668 of 2014 C/W WP No.37496 of 2014 cause notice dated 25.08.2006 came to be issued alleging negligence in work on part of the workman. The workman replied to the said notice. The management issued a show cause notice on 11.09.2006 alleging that on 13.08.2006 and 20.08.2006, the workman had not given respect to his superior by not saluting them and talking to them casually with disrespect. The workman

submitted his reply on 15.09.2006 denying the allegations.

6. A single domestic enquiry was conducted in respect of both notices. The Enquiry Officer submitted his report on 05.03.2007 holding that all the charges against the workman had been proved. A second show cause notice dated 16.06.2007 was issued calling upon the workman to show cause why he should not be dismissed from service, which was replied to by the workman on 23.06.2007. The Disciplinary Authority proceeded to accept the report of the Enquiry Officer and imposed the punishment of - 6 - WP No.52668 of 2014 C/W WP No.37496 of 2014 dismissal of the workman. Aggrieved by the same, the workman had challenged the order of punishment. The Labour Court proceeded to set aside the punishment of dismissal and imposed punishment of withholding two increments with cumulative effect and awarded 25% backwages.

7. It is aggrieved by the same, the workman has filed W.P.No.52668/2014 seeking for setting aside the punishment imposed and for grant of full backwages.

8. The employer is before this Court in W.P.No.37496/2014 contending that entire award is required to be quashed and order of punishment imposed by the Disciplinary Authority is required to be confirmed.

9. Sri.K.Kasturi, learned Senior Counsel for the employer submits that:

9. 1. It is the duty and obligation on part of the workman who was discharging his duties as a - 7 - WP No.52668 of 2014 C/W WP No.37496 of 2014 Security Guard at the main gate to have verified the number of vehicles which have been loaded into the truck, cross-check the same with the invoice and only thereafter allow the truck to pass through. It is on account of the negligence of the workman that one extra scooty pep which had been loaded into the truck escaped undetected and it is only on account of the dealer informing about the excess scooty pep received by him that the employer came to know about the negligence on part of the workman.

9.2. The workman being appointed as a Security Guard to safeguard the interest of the employer, it is the duty of the workman to have cross-checked each and every vehicle in the truck and only then, let the truck pass through. Not having done that, it has been categorically established that one extra scooty pep had - 8 -

WP No.52668 of 2014 C/W WP No.37496 of 2014 passed through. The employer has lost confidence in the workman and it is for that reason that the punishment of dismissal has been imposed which is proportionate to the gross negligence on part of the workman. 9.3. There is gross dereliction of duty on part of the workman in allowing one excess vehicle to be transported out of the factory premises. The cost of the vehicle being Rs.30,000/- would have been the loss which would have been caused to the employer if the dealer had not informed the employer about the excess vehicle received. Once the employer contends that the employer has lost confidence in the services of the workman, the Labour Court ought not to have reinstated the workman into service of the employer. In this regard, he relies upon the decision in the case of L.Michael & another - 9 - WP No.52668 of 2014 C/W WP No.37496 of 2014 vs. M/s.Johnson Pumps Limited¹ more particularly Para 19 thereof, which is reproduced hereunder for easy reference:

19. The above study of the chain of rulings brings out the futility of the contention that subsequent to Murugan Mills' case [Murugan Mills v. Industrial Tribunal, AIR 1965 SC1496: (1965) 2 SCR148: (1965) 1 Lab LJ422 colourable exercise of power has lost validity and loss of confidence has gained ground. The law is simply this: The Tribunal has the power and, indeed, the duty to X-ray the order and discover its true nature, if the object and effect, if the attendant circumstances and the ulterior purpose be to dismiss the employee because he is an evil to be eliminated. But if the management, to cover up the inability to establish by an enquiry, illegitimately but ingeniously passes an innocent- looking order of termination simpliciter, such action is bad and is liable to be set aside. Loss of confidence is no new armour for the management; otherwise security of tenure, ensured by the new industrial jurisprudence and authenticated by a catena of cases of this Court, can be subverted by this neo-formula. Loss of confidence in the law will be the consequence of the Loss of Confidence doctrine. 9.4. There was another misconduct on part of the workman apart from the above inasmuch as the workman had misconducted himself and 1 AIR (1975) SC661- 10 - WP No.52668 of 2014 C/W WP No.37496 of 2014 misbehaved with his superior officers, as regards which, another notice had been issued. The workman being grossly negligent having misconducted himself and misbehaved with his superior, and the employer not having confidence in the workman, he ought not to have

been reinstated by the Labour Court. 9.5. The Enquiry Officer has submitted a report and the finding of the Labour Court being that there being no finding of the Labour Court that the enquiry was perverse, the Labour Court ought not to have set aside the decision of the Disciplinary Authority. 9.6. The finding of the Labour Court that the employer had not taken action against the supervisor and the loader for having loaded an extra vehicle is not correct inasmuch as the loader who was the contract worker and the contractor had been warned about the excess loading. Be that as it may. He submits that - 11 - WP No.52668 of 2014 C/W WP No.37496 of 2014 irrespective of someone having loaded a vehicle extra, it was for the workman to have properly checked the truck before letting it pass. Merely because somebody has loaded some extra vehicle, the workman cannot contend that it is not his responsibility. The Labour Court has misconstrued and come to a conclusion that there is discrimination as against the workman when in fact the workman himself had not pleaded discrimination. What the Labour Court ought to have seen is whether there was misconduct on the part of the workman and not whether the employer had initiated action against another workman. 9.7. There is a high degree of discipline required of security guards inasmuch as the security guards are responsible for the safety of men and material of the employer and if one of the security guards were to behave in an insubordinate manner with the head of security, - 12 - WP No.52668 of 2014 C/W WP No.37496 of 2014 and the security guard were not to comply with the directions given by the head of security, which would amount to insubordination, the entire security infrastructure of the employer would be brought down and rendered useless. Thus, he submits that both on account of gross negligence in allowing extra vehicle to pass through the main gate without properly checking the truck in which an extra vehicle was loaded as also on account of insubordination, the Disciplinary Authority had rightly dismissed the workman from service. 9.8. He therefore submits that the award passed by the Labour Court is required to be set aside and the order passed by the Disciplinary Authority be confirmed.

10. Sri.Abhinay Y.T., learned counsel for the workman would submit that: - 13 - WP No.52668 of 2014 C/W WP No.37496 of 2014 10.1. The vehicles are loaded in the warehouse where there is also a security guard stationed. The number of vehicles, which are loaded is supervised by the Supervisor and certified by the

Supervisor and cross-checked by the security guards and certified. The trucks transporting two-wheelers have two compartments. One at the lower deck and another at the upper deck. Normally, 25 vehicles are placed in the upper deck and 25 vehicles in the lower deck. The upper deck is closed by a tarpaulin and the lower deck has a ceiling of steel or the upper deck has a flooring of steel. The height of both decks is a little more than the height of the vehicle. If the number of vehicles loaded onto the truck has to be manually checked, then the truck would have to be stopped at the main gate, the doors opened, the tarpaulin removed, and the security guard has to enter both compartments - 14 - WP No.52668 of 2014 C/W WP No.37496 of 2014 to count the vehicles. Insofar as the upper compartment is concerned, removal of the tarpaulin would be sufficient but insofar as the lower deck is concerned, the vehicles loaded would have to be physically removed at least to some extent to verify the number of vehicles loaded. This is not what was being done by the workman in the last several years since his employment. If that kind of procedure is adopted, then, there would be a huge delay in trucks passing through the main gate, and there would be a pileup of trucks going out of the factory. 10.2. It is for this reason, he submits that the certification of the security guard at the loading area of the figures given by the supervisor is taken into consideration by the security guard at the main gate and what is verified at the main gate is whether there was an invoice accompanying the transport and a copy of the - 15 - WP No.52668 of 2014 C/W WP No.37496 of 2014 said invoice was collected at the gate and sent to the management and it is impossible to physically check the number of vehicles in the truck. 10.3. The workman has discharged his duties by verifying the invoice and only then letting the truck pass. The entire disciplinary proceedings were initiated against the workman solely on account of the security officer being unhappy with the workman not saluting him in the canteen. The action taken against the workman has nothing to do with excess loading otherwise. Infact, he submits that the number of vehicles loaded is mentioned as 51 and subsequently, the same has been overwritten reducing the number to 50. The said overwriting, unfortunately, has not taken into account the numbers mentioned besides viz., 30 + 6 scooty pep and 15 aapache. The over writing is only to try and fix the workman and - 16 - WP No.52668 of 2014 C/W WP No.37496 of 2014 for no other reason. The workman has

discharged all his duties properly. The initiation of show cause notice, enquiry, and conduct of enquiry is completely biased. 10.4. The workman having performed his duties in the Indian Army was not given to cajoling or otherwise, the security officer which has resulted in the workman being targeted. 10.5. On these grounds, he submits that the punishment which has been awarded by the Labour Court is required to be set aside. The workman is required to be reinstated with full backwages.

11. Heard, Sri.Abhinay Y.T., learned counsel for the workman, Sri.K.Kasturi, learned Senior Counsel for employer and perused the papers.

12. The points that would arise for consideration by this Court are: - 17 - WP No.52668 of 2014 C/W WP No.37496 of 2014

1) In all case of dismissal, whether wrongful or otherwise, if the employer were to plead loss of confidence in the workman, would the Labour Court be prevented from passing an order of reinstatement?.

2) Whether, in the present case, the employer has been able to establish gross negligence or insubordination on part of the workman?.

3) Whether the award passed by the Labour Court suffers from any legal infirmity requiring interference at the hands of this Court?.

4) What order?.

13. I answer the above points as under:- 14. Answer to Point No.1: In all case of dismissal, whether wrongful or otherwise, if the employer were to plead loss of confidence in the workman, would the Labour Court be prevented from passing an order of reinstatement?. 14.1. It is based on the decision of the Honble Apex Court in the case of Johnson Pumps matter that Sri.K.Kasturi, learned Senior Counsel for the employer has contended that once there is a loss of confidence by the employer with the conduct of the workman, the workman ought not to be reinstated.-. 18 - WP No.52668 of 2014 C/W WP No.37496 of 2014 14.2. In my considered opinion, there cannot be such a straight jacket formula. If that were to be accepted, then in all cases, the employer would come before the Labour Court

and/or Industrial Tribunal and contend that the employer has no confidence in the workman resulting in the Labour Court and/or the Industrial Tribunal being prevented from ordering for reinstatement in all matters. 14.3. In my considered opinion the contention of the employer that it has lost confidence is required to be examined. Though the loss of confidence is a subjective feeling and an individual reaction as held by the Honble Apex Court, it is only when objective set of facts and motivations give rise to loss of confidence, that the same would have to be considered by the Labour Court. 14.4. The Honble Apex Court has held that in a reasonable case of a confidential and - 19 - WP No.52668 of 2014 C/W WP No.37496 of 2014 responsible post being misused or a sensitive or strategic position being abused, once suspension has commenced, termination could be effected. 14.5. It is in the above background that the aspect of loss of confidence would have to be examined in the present matter. The contention of Sri.K.Kasturi, learned Senior counsel is that the security guard being incharge of the security of the factory on account of gross negligence on part of the security guard in allowing one extra vehicle to pass through the gate, the employer has lost confidence in the workman. 14.6. A perusal of loading ledger Ex.M19 at Sl.No.8 would indicate that the concerned truck bearing No.AP-29-0205 was loaded with 50 vehicles. The contention of Sri.Abhinay Y.T., being that earlier there was 51 written which has been changed to 50 numbers. The contention of Sri.K.Kasturi being that it is only a mistake - 20 - WP No.52668 of 2014 C/W WP No.37496 of 2014 which was rectified to 50 and the same cannot be found fault with. 14.7. A perusal of the loading register would indicate that there were 30 + 6 scooty peeps loaded and 15 aapache vehicles loaded, that is to say, total vehicles shown to be loaded is 51. Thus, the number which had been written as 51 was the proper number and I am of the considered opinion that over writing made to correct the number of vehicles from 51 to 50 is completely misconceived and fraudulent. 14.8. The aspect of the employer losing confidence in the employee would have to be taken into consideration if all actions taken by the employer being proper and correct and the actions of the workman give rise to suspicion. In the present case, the contention of the workman is that the loading having been supervised by a supervisor, certified by a security guard and the same was accepted by - 21 - WP No.52668 of 2014 C/W WP No.37496 of 2014 the workman and the truck was allowed to pass.

The number of vehicles loaded being 51, is properly shown in the loading ledger and it is for the supervisor and the security guard to have taken note of the same and taken action thereon, this not having been done, the employer has let to go of them with a warning but has victimized the present workman. 14.9. The said submission being established by a perusal of the ledger gives rise to situation where the employers conduct is in doubt inasmuch as knowing fully well that it was $30 + 6 = 36$ scooty peeps and 15 aachees loaded on to the truck totaling to 51 has sought to contend that everything was done properly and has accepted the apology on the part of the supervisor and security guard at the loading area and now sought to impose the obligation and duty on the workman to have cross - 22 - WP No.52668 of 2014 C/W WP No.37496 of 2014 checked the number of vehicles loaded on to the truck. 14.10. In such a situation, I am of the considered opinion that the contention of the employer that it has lost confidence in the workman due to the workman allowing one extra vehicle to pass through the main gate is completely misconceived. The employer having let to go of the Supervisor and the security guard as also the contract labourers who had loaded the vehicles into the truck who are primarily responsible for loading the extra vehicle in my considered opinion could not have proceeded only against the workman. 14.11. In light of these facts, it cannot be said that in all cases where the employer expresses loss of confidence in the workman, the Labour Court or the Industrial Tribunal is barred from ordering reinstatement. The Labour Court or the Industrial Tribunal would have to consider the - 23 - WP No.52668 of 2014 C/W WP No.37496 of 2014 contention of the employer in the light of the surrounding facts and circumstances to ascertain if such a suspicion is based on objective set of facts and motivations and not on the basis of any other extraneous factor. 14.12. In the present case, having come to a conclusion that suspicion is for an extraneous circumstances, and not borne out by the records, more so, the loading ledger, the contention of Sri.K.Kasturi, learned Senior Counsel that the employer lost confidence in the workman is liable to be rejected.

15. Answer to Point No.2: Whether in the present case, the employer has been able to establish gross negligence or insubordination on part of the workman?. 15.1. Photographs of the truck have been produced. The submission of Sri.Abhinay Y.T, learned counsel for the workman is also stated hereinabove and

is not repeated for the sake of brevity. A perusal of the photographs would - 24 - WP No.52668 of 2014 C/W WP No.37496 of 2014 support the contention of Sri.Abhinay Y.T., learned counsel for the workman inasmuch as the lower deck of the truck is enclosed area, the upper deck though open is covered by a tarpaulin. The vehicles in the upper deck could probably be checked in the day time and the vehicle in the lower deck even in the day time if to be checked would require a person go into the lower deck which the workman cannot do without removing some of the vehicles. 15.2. Admittedly, the vehicles have passed through the security gate at 0045 hours that is at midnight. There being no particular facility which had been provided at the spot, the number of trucks passing through being quite a large number, as could be seen from the ledger itself that there are nearly 13 trucks which have passed through the security gate around that particular point of time. It would well be impossible for a security guard to stop each of - 25 - WP No.52668 of 2014 C/W WP No.37496 of 2014 the vehicles and examine the same after unloading a few vehicles. 15.3. Be that as it may, the employer has not produced any instructions given to the security guard to inspect and count the number of vehicles despite the same being certified by the loading area supervisor and loading area security guard. Since the contention of Sri.K.Kasturi, learned Senior counsel is that the same is included in the manner of discharge of service by a security guard at the gate, it would now be required for the employer to issue detailed instructions in that regard and the said instructions be affixed in the security guard room at the main gate for compliance by the security guard. 15.4. There is credence in the submission made by Sri.Abhinay Y.T., learned counsel for the workman that it is on account of the workman not saluting the security officer in the canteen - 26 - WP No.52668 of 2014 C/W WP No.37496 of 2014 on 14.08.2006 that this allegation has been made on 16.08.2006. More so when the case of the workman is that even on earlier occasion there was no physical checking of number of vehicles loaded in the truck which pass through the main gate. 15.5. In that background, the manner in which the proceedings have been conducted, the over writing in the ledger, the expectation of the employer and the statements made during the enquiry as also before the Labour Court, I am of the considered opinion that there is a victimization of the workman by the employer when no action has been taken against the supervisor and the security guard at

the loading area. 15.6. I answer point No.2 holding that the employer has not been able to establish gross negligence or insubordination on part of the workman.-. 27 - WP No.52668 of 2014 C/W WP No.37496 of 2014 16. Answer to Point No.3: Whether the award passed by the Labour Court suffers from any legal infirmity requiring interference at the hands of this Court?. 16.1. In view of the findings on Point Nos.1 and 2 above, the Labour Court taking into consideration all the above facts, I am of the considered opinion that the award passed by the Labour Court is not proper and correct inasmuch as the Labour Court in the award could not have come to a conclusion that there is negligence on part of the workman by permitting a vehicle in excess to go through the main gate having come to a conclusion that the workman was not responsible for loading the same and it is in that background that the Labour Court could not have come to a conclusion that the punishment of dismissal was harsh and shockingly disproportionate to the misconduct committed by the workman - 28 - WP No.52668 of 2014 C/W WP No.37496 of 2014 and thereafter imposed a punishment of reducing 2 annual increments. 16.2. Having come to a conclusion that there is no negligence on part of the workman and that there is no loss of confidence which can be objectively pleaded by the employer, I am of the considered opinion that there can be no misconduct said to have committed by the workman requiring any punishment to be imposed on him. Though not relevant, there is also no allegation against the workman of having enriched himself by way of misconduct and the vehicle has also been accounted for by the dealer. 16.3. I answer point no.3 by holding that the award passed by the Labour Court suffers from legal infirmities as afore mentioned requiring interference at the hands of this Court.-. 29 - WP No.52668 of 2014 C/W WP No.37496 of 2014 17. Answer to Point No.4: What order?. 17.1. For all the aforesaid reasons, I am of the considered opinion that the award passed by the Labour Court even on the basis of the conclusion arrived at by the Labour Court is not proper and correct. As such, I pass the following:

ORDER

i. W.P.No.37496/2014 filed by the employer is dismissed. ii. W.P.No.52668/2014 filed by the workman is partly allowed. iii. The punishment imposed by the Labour Court in award dated 05.03.2014 in I.I.D No.121/2007 directing withholding of two annual increments for the period of two years, without cumulative effect, is set

aside. iv. The award insofar as awarding 25% backwages is not disturbed taking into consideration that the workman did not work during that time.-. 30 - WP No.52668 of 2014 C/W WP No.37496 of 2014 v. The workman having superannuated, the employer is directed to settle all the dues of the workman as if no punishment had been imposed on the workman with continuity of service with consequential benefits as also 25% backwages within a period of 60 days from the date of receipt of copy of this order. Sd/- JUDGE PRS List No.:

1. SI No.:

6.

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