



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: May 16, 2024

+ W.P.(C) 11850/2023 & CM APPL. 46274/2023

(28) SARJEET SINGH

..... Petitioner

Through: Mr. Saurabh Pandey and
Mr. Shivam Kumar, Advs.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Abha Malhotra, Sr. PC with
Ms. Amita Sony, Adv. for UOI
Mr. Naresh Kaushik, Sr. Adv. with
Mr. Ravinder Agarwal, Adv. for
R-2/UPSC

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE RAVINDER DUDEJA

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the petitioner with the following prayers:-

“I. Issue a writ order or direction in the nature of mandamus directing the Respondent No.2 to include the petitioner in the select list dated 07.08.2023 issued for the Recruitment of Central Armed Police Forces (Assistant Commandants), 2022 and to consider his candidature in Economically Weaker Section Category based on the final marks secured by him.

II. Pass any other order as this Hon'ble Court deems fit and proper in view of the aforesaid facts and circumstances.”



2. The case of the petitioner as urged by his counsel is that the UPSC/respondent No.2 notified recruitment to the Central Armed Police Forces (Assistant Commandants) on April 20, 2022 by holding a written examination on August 07, 2022. The petitioner applied against the said examination notice. On August 07, 2022, he appeared in the written examination and cleared the same. Thereafter, he applied for the next stage by filling a '*Detailed Application Form*' for his physical and medical evaluation which was conducted on March 13 and 14, 2023.

3. During the said process, the documents of the petitioner were examined and were accepted as it is. Thereafter, the petitioner was summoned for personality test on July 20, 2023, and the petitioner appeared there with all his documents and Counter Signed the same. This time the petitioner appeared with Income & Asset Certificate for the financial year 2021-22 counter signed by the Tehsildar on digitally generated certificate. During the process the documents of the petitioner were examined and were accepted as it is. On August 07, 2023, the final result was declared and the name of the petitioner was not in the list of finally recommended candidates.

4. According to him, the cutoff for the Economically Weaker Section Category was set at 329 marks when the result of the petitioner was finally uploaded on August 11, 2023 on the website. It was found that the petitioner has secured 335 marks in total i.e., above the cutoff marks of 329. Immediately thereafter, the petitioner addressed an email dated August 12, 2023 i.e., to the respondent authorities asking them, as to how he was not recommended even after securing higher marks than



the cutoff. The aforesaid was followed by another representation dated August 16, 2023. Unfortunately, no reply to the same has come resulting in the filing of the present petition.

5. He submits that the respondent No.2 has illegally not recommended the petitioner even he has secured sufficient marks under the Economically Weaker Section Category ('EWS', for short). According to him, upon efforts made by the petitioner, he was orally intimated that the EWS Certificate is not valid as the same has been issued by an authority other than the Tehsildar i.e Naib Tehsildar.

6. He states that the stand of the respondents is totally untenable because the Tehsildar and Naib Tehsildar are the Key Officers in the Revenue Administration and perform the functions of Sub-Registrar. Even otherwise the certificate issued by the Naib Tehsildar has been ratified by the Tehsildar on July 13, 2023, and in that sense this '*ratification*' shall make this EWS Certificate issued for the financial year 2021-2022, as valid.

7. He submits that the respondent did not dispute the genuineness of the certificate issued by the Naib Tehsildar. In any case, the petitioner acted *bona fide* as he was under right impression that Naib Tehsildar is competent to issue such a certificate. He further submits that, in any case, now instructions have been issued by the UPSC itself on March 11, 2024, that, if an Income and Assets Certificate is counter signed by the competent authority i.e., Tehsildar or the above authority after the closing date, then the same is treated as valid.

8. He by conceding that the communication dated March 11, 2024, was in the context of Civil Services Examination, 2023, states



that signing of certificate by the Tehsildar on July 13, 2023 must be construed as justified, making the certificate valid and hence, he need to be appointed on the post of Assistant Commandant by treating his case under the EWS category.

9. The counsel for the petitioner relies upon the judgment in the case of *Municipal Commissioner, Jamnagar Municipal Corporation and Anr. v. R.M. Doshi, Civil Appeal No. 6069/2012* decided on *May 02, 2023* and *Maharashtra State Mining Corporation v. Sunil S/o Pundikaro Pathak, Appeal (Civil) 2228/2006* decided on *April 24, 2006*.

10. On the other hand, Mr. Naresh Kaushik, learned Senior Counsel appearing for the UPSC would contest that the submissions of the learned counsel for the petitioner, by relying on the notification issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training dated January 31, 2019, wherein in paragraph 5.1 reads as under:-

“5.1 The benefit of reservation under EWS can be availed upon production of an Income and Asset Certificate issued by a Competent Authority. The Income and Asset Certificate issued by any one of the following authorities in the prescribed format as given in Annexure-I shall only be accepted as proof of candidate's claim as belonging to EWS:-

- (i) District Magistrate/Additional District Magistrate/Collector/ Deputy Commissioner/Additional Deputy Commissioner/1st Class Stipendary Magistrate/ Sub-Divisional Magistrate/ Taluka Magistrate/ Executive Magistrate/Extra Assistant Commissioner*
- (ii) Chief Presidency Magistrate/Additional Chief Presidency Magistrate/ Presidency Magistrate*
- (iii) Revenue Officer not below the rank of Tehsildar and*



(iv) *Sub-Divisional Officer or the area where the candidate and/or his family normally resides.*”

11. It is his submission that the aforesaid mandatory requirement is reiterated by the communication dated October 11, 2023 of the UPSC, which also reads as under:-

“I am directed to refer to the Commission’s letter D.O.No.03/01/2023-E.XIX(Part-I) dated 27th September 2023 on the subject mentioned above on the subject mentioned above and to say that DoPT instructions clearly provide that Revenue Officer, not below the rank of Tehsildar, is competent to issue such certificates. Hence, it may not be appropriate to accept any caste/community certificate or Income and Asset Certificate, which has been issued by an officer lower than the rank of Tehsildar. Therefore, only those certificates may be accepted which have been issued by the authorities prescribed in the OM dated 24.4.1990 and 15.11.1993 (in respect of SC/ST/OBC) and 31.1.2019 (in respect of EWS) . However, if a certificate has been issued by an officer, which is not the prescribed authority, but has been countersigned by an authority, prescribed in the aforementioned OMs/Instructions/communication, such certificate may be accepted.”

12. In view of the above, the mandate of the notifications cannot be diluted in favor of an individual as the same would infract Article 14 & 16 of the Constitution of India qua the other candidates. This would also violate the sanctity of the statutory notification as per the *dicta* of the Supreme Court in ***Ashok Kumar Sharma and Others v. Chander Shekhar and Another, (1997) 4 SCC 18.***

13. He by relying upon the advertisement submits that the candidates seeking reservation/relaxation benefits available for SC/ST/EWS/OBC must ensure that they are entitled to such



reservation/relaxation as per eligibility prescribed in the Rules/Notice. He states that the candidates are required to be in possession of all the requisite certificates in the prescribed format in support of their claim as stipulated in the Rules/Notice for claiming benefits by the Closing date of the application.

14. He states that, a candidate for CAPF (ACs) Exam, 2022 will be eligible to get the benefit of the EWS reservation only in the case where candidate meets the criteria prescribed by the Central Government and is in possession of requisite Income & Asset Certificate based on the income for Financial Year (FY) 2021-2022.

15. Mr. Kaushik has heavily relied upon the judgment of the Supreme Court in the case of *Divya v. Union of India and Ors., (2024) 1 SCC 448* and *Union Public Service Commission v. Gaurav Singh & Ors., Civil Appeal No. 4152 of 2022, decided on May 18, 2022.*

16. Having heard the counsel for the parties, the short issue which arises for consideration is whether the EWS certificate issued to the petitioner on April 22, 2022, by the Naib Tehsildar which was signed by the Tehsildar on July 13, 2023 can be construed as a valid certificate to enable the respondents consider the same in favor of the petitioner for the purpose of his appointment on the post of Assistant Commandant. The answer to the issue has to be in negative. Though the petitioner had the certificate on May 10, 2022 (last date for submitting the application form), but the same was a certificate issued by the Naib Tehsildar and not by Tehsildar, who is the competent authority.



17. The plea of the learned counsel for the petitioner is that the Tehsildar had on July 13, 2023, ratified the certificate dated April 22, 2022, issued by the Naib Tehsildar. On such ratification, the certificate becomes valid from the date of issuance i.e., April 22, 2022.

18. We are unable to accept the plea of ratification advanced by the counsel for the petitioner for the simple reason that the Tehsildar does not say so that, he has ratified the contents of the certificate dated April 22, 2022. Such a declaration is necessary to ratify any act which has been done in past.

19. The doctrine of ratification shall not be applicable in the facts of this case, more particularly, when we are concerned with the validity of EWS certificate which was to be issued for a particular financial year, i.e., 2021-2022 but before May 10, 2022. Whereas, the Tehsildar has so-called “*ratified*” the said document only on July 13, 2023.

20. The reliance placed by learned counsel for the petitioner on the judgment in the case of *Municipal Commissioner, Jamnagar Municipal Corporation (supra)* is misplaced. The same has no applicability. In the said case, the Supreme Court was concerned with the facts wherein the respondent was charge sheeted for certain misconduct. The same resulted in the initiation of disciplinary proceedings. The Inquiry Officers submitted his report on October 06, 1995, pursuant to which, on December 07, 1998, the Commissioner of Municipal Corporation passed an order of dismissal of the respondent from the services. The said order was challenged by the respondent before the High Court.



21. The learned Single Judge has set aside the order of the dismissal passed by the Commissioner on the ground that the Commissioner had no authority and/or power to impose any major penalty upon the respondent. The learned Single Judge also observed that the Resolution No. 51 dated November 20, 1998, conferred power upon the Commissioner for initiating action for irregularities with respect to the purchases only and not with respect to any other misconduct and/or irregularity. The learned Single Judge also held that the subsequent ratification by the General Board would not confer any authority upon the Commissioner and the subsequent ratification of the action by the Board would not save the action. The judgment of learned Single Judge became the subject matter of intra Court appeal being LPA 726/2006.

22. The Division Bench dismissed the appeal resulting in the challenge to the same before the Supreme Court. The Supreme Court by applying the law laid down in the *National Institute of Technology and Anr. v. Pannalal Choudhury and Anr.*, (2015) 11 SCC 669, has set aside the order of the learned Single Judge by further stating in paragraphs 7.1 to 7.3, as under:-

“7.1 Now, insofar as the submission on behalf of the appellant Corporation that vide Resolution No. 51 dated 20.11.1998, the Commissioner was authorized to take action against any officer with regard to the lapses and/or negligence on the part of the officers in various works and purchases is concerned, on going through the Resolution No. 51, it appears that though the issue raised was with regard to the lapses and negligence on the part of the officers in various works and purchases and was discussed, however, ultimately, what was resolved was to empower the



Commissioner to take proper and necessary action against those erring officers, who committed lapses and carelessness in various works in purchases and take action as per the rules and regulations, wherever, necessary. Therefore, the Commissioner was authorized to take action against the erring officers with respect to the lapses and carelessness with various works in purchases only. Therefore, both the learned Single Judge as well as the Division bench of the High Court have rightly observed and held that the Resolution No. 51 did not authorize and/or confer any power upon the Commissioner to take action with respect to any other lapses other than the purchases. However, at the same time, it is required to be noted that the decision of the Commissioner was placed before the General Board and the General Board vide its Resolution No.56 dated 15.12.1998 as amended by subsequent Resolution dated 30.12.1998, ratified the decision of the Commissioner dismissing the respondent from service. Learned counsel appearing on behalf of the respondent has relied upon the decision of this Court in the case of Marathwada University (supra) and relying upon paragraph 27, it is submitted that as observed and held by this Court a decision ab initio void cannot be ratified. However, the said decision shall not be applicable to the facts of the case on hand. The decision of the Commissioner cannot be said to be per se void ab initio. It is to be noted that even otherwise, in the present case, the General Board had the power to pass an order of dismissal, which is not even disputed by the learned counsel appearing on behalf of the respondent. The decision of the Commissioner was placed before the General Board and the General Board had ratified the said decision. Therefore, thereafter, the dismissal can be said to be an order passed by the General Board. At this stage, the decision of this Court in the case of Pannalal Choudhury (supra) on ratification is required to be referred to. On discussing the entire law on ratification, thereafter in paragraph 33, it is observed and held as under:-



“33. Applying the aforementioned law of ratification to the facts at hand, even if we assume for the sake of argument that the order of dismissal dated 16-8-1996 was passed by the Principal and Secretary who had neither any authority to pass such order under the Rules nor was there any authorisation given by the BoG in his favour to pass such order yet in our considered view when the BoG in their meeting held on 22-8- 1996 approved the previous actions of the Principal and Secretary in passing the respondent's dismissal order dated 16-8- 1996, all the irregularities complained of by the respondent in the proceedings including the authority exercised by the Principal and Secretary to dismiss him stood ratified by the competent authority (Board of Governors) themselves with retrospective effect from 16- 8-1996 thereby making an invalid act a lawful one in conformity with the procedure prescribed in the Rules.”

*7.2 Applying the law laid down by this Court in the case of **Pannalal Choudhury (supra)** to the facts of the case on hand, any irregularity complained of by the respondent on the authority exercised by the Commissioner to dismiss him stood ratified by the competent authority (General Board) thereby making an invalid act a lawful one in conformity with the procedure prescribed under the Act and the Rules.*

7.3 In that view of the matter, the impugned judgment and order passed by the Division Bench of the High Court as well as the learned Single Judge quashing and setting aside the order of dismissal are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. However, at the same time, it is directed that any amount paid to the respondent, namely, Rs. 10,000/- per month w.e.f. 01.04.2012 pursuant to the order passed by this Court be not recovered from the respondent despite



allowing the present appeal and restoring the order of dismissal.”

23. So, from the above, it is noted that the Supreme Court has by referring to the Resolution of the General Board No.56 dated December 15, 1998, ratified the action taken by the Commissioner. So in that sense, the resolution is very clear that, it ratified the decision taken by the Commissioner to dismiss the respondent.

24. There is no such resolution by the Tehsildar in the case in hand. He has only put his signature at the most it can be construed as a rectification of the certificate and not ratification, but the same was in the year 2023.

25. Insofar as the judgment relied upon by the learned counsel for the petitioner in the case of *Maharashtra State Mining Corporation (supra)* is concerned, the same is with regard to an authority, who was not competent to issue the order of dismissal. The Supreme Court held that the high court is entirely wrong in holding that, such an invalid act cannot be subsequently rectified by ratification of the Competent Authority. The ratification by definition means the making valid of an act already done. The said judgment has no applicability to the facts of this case for the reasons stated in paragraphs 18 and 19 above.

26. In the present case, the issue is with regard to the EWS Certificate for the financial year 2021-2022 issued by the Naib Tehsildar which was '*rectified/counter-signed*' by the Tehsildar at a later date i.e., on July 13, 2023. This rectification cannot be construed as valid for the reason, the EWS Certificate which was submitted by the petitioner at the time of submitting his application had no validity as it



was not in the prescribed format / not issued by the Competent Authority. Moreover, the advertisement has categorically stated that the candidates seeking reservation/relaxation shall be in possession of the requisite certificates by the closing date of the application. In this case the last date for filing the application has been prescribed as the cut-off date in the Rules (paragraph 22 of Advertisement/Notification No.1-45023/43/2022-PP dated April 20, 2022, Ministry of Home Affairs). We may reproduce the relevant part of the advertisement dated April 20, 2022, as under:-

“Candidates seeking reservation/relaxation benefits available for SC/ST/EWS/OBC must ensure that they are entitled to such reservation/relaxation as per eligibility prescribed in the Rules/Notice. They should also be in possession of all the requisite certificates in the prescribed format in support of their claim as stipulated in the Rules/Notice for such benefits by the Closing date of the application. A candidate of CAPF (ACs) Exam, 2022 will be eligible to get the benefit of the Economically Weaker Section reservation only in case the candidate meets the criteria issued by the Central Government and is in possession of requisite Income & Asset Certificate based on the income or Financial year (Fy) 2021-2022.”

(Emphasis supplied)

27. We find that Mr. Kaushik is justified in relying upon the judgment in the case of *Divya (supra)*, wherein in paragraphs 41, 42, 45, 49, 82, 84, 89 and 94, Supreme Court has held as under:-

“Questions for consideration

41. In the light of the pleadings and the contentions set out above, the following main questions arise for consideration:

41.1. (a) What is the eligibility criterion for a candidate to stake a valid claim under the EWS category as per the CSE Rules, 2022 read with OM dated 19-1-2019 and 31-1-2019?



41.2. (b) Was UPSC justified in prescribing the cut-off date for possession and for uploading of the I&AC certificates in the prescribed format to stake a valid claim under the EWS category, as done in the instant case?

41.3. (c) Are the CSE Rules, 2022 enforceable in law?

41.4. (d) Are Rules 13, 27(3) and 28 of the CSE Rules, 2022 constitutionally valid?

41.5. (e) Was UPSC justified in rejecting the claim of the petitioners for consideration under the EWS category?

Reasons and conclusion

Eligibility for EWS category candidates for CSE-2022

42. As is clear from the Office Memoranda issued by the DoPT dated 19-1-2019 and 31-1-2019, the benefit of reservation under EWS category can be availed only upon possession of I&AC issued by a competent authority. The OM also makes it clear that crucial date for submission of I&AC by the candidate may be treated as the closing date of receipt of applications except where the crucial date is fixed otherwise. Insofar as the EWS candidates are concerned, Rule 27(3) of the CSE Rules, 2022 is very clear when it states that a candidate will be eligible to get the benefit of the Economically Weaker Section reservation only in case the candidate meets the criteria issued by the Central Government and is in possession of requisite I&AC based on the income for FY 2020-2021.

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45. It is very clear that an EWS candidate acquired eligibility to be an EWS candidate for the purpose of CSE-2022 only if the candidate met the criterion prescribed by the Central Government and is in possession of the requisite I&AC based on the income for FY 2020-2021. Read with Rule 28, the candidate should also be in possession of the certificate as on 22-2-2022. So it is beyond cavil that one cannot decide for oneself that the candidate is an EWS candidate and only on the fulfilment of the criteria and the issuance of the certificate before 22-2-2022 will the eligibility as an EWS candidate, enure to the benefit of the candidate for the CSE-2022. The argument of Shri K. Parameshwar, learned counsel, that being



from the “EWS” category is a status and the I&AC to be produced is only a proof and as such the I&AC can be produced at any stage cannot be accepted in the teeth of the clear prescription in the Office Memoranda read with the CSE-2022 Rules. Further, as required under Rule 13, at the stage of DAF-I the document had to be submitted online before the prescribed date (in the present case for CSE-2022 the date was 15-7-2022) and that any delay in submission of DAF-I or document beyond the prescribed date was not allowed. These clear stipulations run counter to the submissions of the learned counsel that on the rectification of a certificate it relates back to the date of the certificate.

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49. In Gaurav Singh case [UPSC v. Gaurav Singh, (2024) 2 SCC 605 : 2022 SCC OnLine SC 2116] , it has been categorically held that assets for the particular financial year, prior to the year of submission, go to the root of eligibility of the candidate in the EWS category. It has been further held therein that the candidates whose I&ACs are not in order did not have any legal right to be considered. It has also been held that no candidate can claim any legal right for reconsideration of the candidature by submitting a fresh certificate and/or a rectified certificate.

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82. Could we fault this exercise of UPSC in rejecting their candidature under the EWS category, is the question that arises for consideration? We are constrained to conclude that we cannot fault the method adopted by UPSC. This is for the reason that UPSC has strictly acted in accordance with the mandate of Rule 13 read with Rules 27 and 28. They had an obligation to scrutinise the forms as uploaded with DAF-I. Rules 13, 27 and 28 of the CSE Rules, 2022 are to be read with the Office Memoranda of 19-1-2019 and 31-1-2019 especially Clause 5 of the Office Memorandum of 31-1-2019. The examining body has not considered the defects as insignificant. If this is so, then we have no option but to reject the writ petitions of all the petitioners.

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84. In *T. Jayakumar v. A. Gopu*, it has been held that the defect in the application form which renders the candidate ineligible even if overlooked in the initial screening and even if the candidate is called for the interview, does not disentitle the examining body to hold the candidate ineligible for selection at a later stage, once the defect in the application comes to light.

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89. In *Gaurav Singh* case also the distinction between a defect that is material and not material and the right of the examining body to condone has been noticed. We hold that UPSC was justified, in the case of the petitioners, in denying the benefit of categorisation as EWS candidates.

Conclusion

94. Based on the above discussion, our conclusions are as under:

94.1. The candidates claiming benefit of EWS category for the purpose of CSE-2022, acquire eligibility only if they meet the criterion prescribed by the Central Government in the OM dated 19-1-2019 and 31-1-2019 and are in possession of the required Income and Asset Certificate ("I&AC"), based on the income for the year 2020-21. Further, as required under Rule 28 of the CSE Rules, 2022 read with the OM of 19-1-2019 and 31-1-2019 the candidate should have been in possession of the Income and Asset Certificate ("I&AC") as on 22-2-2022. Any candidate not in possession of the I&AC in the prescribed format as mentioned hereinabove cannot claim the benefit of EWS category. Equally, as required under Rule 13 of the CSE Rules, 2022 at the stage of DAF-I, the document in possession as on 22-2-2022 in the prescribed format, had to be submitted online before the prescribed date. UPSC was justified in rejecting the candidature of those candidates claiming benefit under the EWS category if they had submitted their I&AC beyond the stipulated deadline. This conclusion has to be read with the reasoning in the judgment, particularly in paras 42 to 45 under the heading "Eligibility for EWS category candidates for CSE-2022".



94.2. As a sequel to the conclusion in para 94.1 above, we record that UPSC was justified in prescribing the cut-off date for possession and for uploading of the I&AC in the prescribed format for claimants claiming benefits under the EWS category. This flows from the OM dated 19-1-2019 and 31-1-2019 read with Rules 13, 27(3) and 28 of the CSE Rules, 2022 and the long line of judgments in which principles for prescription of cut-off for eligibility are laid down.

94.3. For the reasons set out in paras 52 to 57 hereinabove under the sub-heading “Legal Status of the CSE-2022 Rules”, we hold that the CSE-2022 Rules have the force of an enforceable law. They are traceable to the All India Services Act, 1951 read with the Indian Administrative Service (Recruitment) Rules, 1954 read with the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955 and all this read with Article 73 of the Constitution of India.

94.4. Rules 13, 27(3) and 28 of the CSE Rules, 2022 are constitutionally valid for the reasons set out in para 68 hereinabove under the sub-heading “Validity of the CSE Rules, 2022 — Validity of the cut-off date”.

94.5. UPSC was justified in rejecting the claim of the petitioners, for consideration under the EWS category in CSE-2022.”

28. Insofar as the reliance placed by the counsel for the petitioner that, on March 11, 2024, the communication of the respondent No.2 to its Advocate, state that the respondent No.2 has permitted the candidates whose Income & Assets Certificates were issued by Naib Tehsildar etc.(that is below the competent authority), before the closing date of Civil Services (Pre) Examination, 2023, i.e., February 21, 2023, and get their certificates signed by competent authority i.e., Tehsildar or above authority after the aforesaid closing date of Civil Service (Pre)



Examination, 2023 by March 28, 2024, and as such the benefit thereof need to be extended to the petitioner for the purpose of CAPF Examination, 2023 is concerned, the same is a misplaced plea. We agree with the submission of Mr. Kaushik that the same was only confined to the Civil Services Examination, 2023 and not as a matter of Rule for all times to come.

29. In view of the position of law discussed above, we are of the view that the petitioner though acted *bona fide*, is not entitled to any relief as sought by him in the present petition. The petition along with pending application is dismissed. No costs.

V. KAMESWAR RAO, J

RAVINDER DUDEJA, J

MAY 16, 2024/ds