



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

Date of decision: 04th JULY, 2023

IN THE MATTER OF:

+ **W.P.(C) 6811/2021 & CM APPL. 21465/2021**

CHAALAK SHAKTI & ORS

..... Petitioners

Through: Mr. Aman Agarwal, Mr. Madhav Bhatia, Advocates

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Santosh Kumar Tripathi, Standing Counsel with Mr. Arun Panwar, Mr. Pradyumn Rao, Ms. Mehak Rankawat, Mr. Karthik Sharma, Advocates and ASI Kanwar Singh, Pairvi Officer, Traffic Police

Mr. T.P. Singh, Senior Central Govt. Counsel for R-2/ UOI

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioners have filed the instant writ petition stating that the drivers of auto rickshaws and taxis are being prosecuted and heavily *challaned* for not wearing uniforms when there is no clarity on the colour of uniform, specification of fabric, design and the nature of fabric to be used by the drivers.
2. Petitioner No.1, Chaalak Shakti, which claims to be a trade union of drivers, is a society registered under the Societies Registration Act, 1860.



The Petitioners have filed the instant writ petition with the following prayers:-

"1) Strike down Rule 7 of Delhi Motor Vehicles Rules, 1993.

2) Strike down permit conditions as notified vide S.O. 415(E) dated 8-6- 1989 issued under section 88(11)(ii) of the Motor Vehicles Act, 1988.

3) Quash any condition of any permit issued by respondent no. 1 in relation of uniform required to be worn by the drivers of transport vehicles.

4) Direct the respondents to pay legal costs to the petitioners. "

3. It is stated by the Petitioners that Respondent No.1 has brought out the Delhi Motor Vehicle Rules, 1993 (*hereinafter referred to as 'the DMV Rules'*) and Rule 7 of the DMV Rules prescribes that the driver of a public service vehicle other than driver of State Transports Undertaking, while on duty, shall wear khaki uniform with a name plate in Hindi affixed on it.

4. On the other hand, the permit conditions dated 23.05.2013 which have been specified by the Deputy Commissioner, Auto Rickshaw Unit, which is the Regional Transport Authority has prescribed that the driver shall wear uniform in Grey colour as prescribed by the State Transport Authority, Delhi and the driver shall wear a Public Service Vehicle Badge on his/her left side of the uniform.

5. It is further stated that *vide* S.O. No. 415 E dated 08.06.1989, permit conditions were being issued under Section 88(11) (ii) of the Motor Vehicles Act (*hereinafter referred to as 'the MV Act'*) wherein it is prescribed that drivers of tourist vehicles shall wear white uniform in summers and blue or grey uniform in winters.



6. It is further stated that in view of lack of clarity on the subject, Rule 7 of the DMV Rules which mandates khaki uniform to be worn by the drivers with a name plate in Hindi affixed on it must be struck down and also the permit conditions notified in S.O. No. 415 E dated 08.06.1989 under Section 88(11) (ii) of the Motor Vehicles Act must be struck down. It is contended that no uniform is necessary for the drivers of auto rickshaws and taxis and only they should be asked to wear badges to disclose their identity.

7. It is contended that the purpose of prescribing a uniform is only for identification. It is pointed out that apart from the fact that there is a lack of clarity on the colour of the uniform, i.e., whether it should be khaki or grey or white, there can also be confusion on the shade of grey or khaki which will also lead to the drivers being unnecessarily fined by the authorities. It is, therefore, contended that the rules and the permit conditions apart from being completely vague and manifestly arbitrary, there is no reasonable nexus between the rules/permit conditions and the object that is sought to be achieved, which is identification of the driver.

8. The Petitioners have also contended that there is also lack of clarity regarding the type of garment that is whether it should be pant-shirt, safari-suit or kurta-pajama, the fabric that is to be used, details of trimmings and the requirements of accessories etc. It has also been pointed out that forcing the drivers of autos and taxis to wear uniform is an affront to the constitutional freedom under Article 14, 19 and 21 of the Constitution of India.

9. *Per contra*, it is stated by learned Counsel for the Respondent/State that Section 74 of the MV Act gives power to the Regional Transport Authority to grant a contract carriage permit and can lay down conditions for grant of such permits. He has further drawn the attention of this Court to



Section 88 of the MV Act and contends that the Regional Transport Authority under Section 88 (9) read with Section 88 (11) (2) (i) of the MV Act can grant permits in respect of tourist vehicles valid for whole of India or in such contiguous States not being less than three in number including the State in which the permit is issued. He therefore states that S.O. No. 415 E dated 08.06.1989 which has been issued under Section 88(11) (ii) of the MV Act is only for the purpose of tourist vehicles is valid. He further states that Rule 7 of the DMV Rules which is for the State carriage vehicles plying within Delhi has been passed by the State Legislature in exercise of the powers conferred under Section 28(2) (d) of the MV Act is a valid exercise of power. He states that the S.O. No. 415 E dated 08.06.1989 which has been issued under Section 88(11) (ii) of the MV Act and Rule 7 of the DMV Rules operate in entirely different fields.

10. Heard learned Counsel for the parties and perused the material on record.

11. The relevant Sections of the MV Act which are necessary for adjudicating the *vires* of Rule 7 of the DMV Rules and S.O. No. 415 E dated 08.06.1989 read as under:

"1. Short title, extent and commencement.—

(1) This Act may be called the Motor Vehicles Act, 1988.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different State and any reference in this Act to the commencement of this Act shall, in relation to a State,



be construed as a reference to the coming into force of this Act in that State.

2. Definitions.

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(43) "tourist vehicle" means a contract carriage constructed or adapted and equipped and maintained in accordance with such specifications as may be prescribed in this behalf;"

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"28. Power of State Government to make rules.—

(1) A State Government may make rules for the purpose of carrying into effect the provisions of this Chapter other than the matters specified in section 27.

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(2) (d) the badges and uniform to be worn by drivers of transport vehicles and the fees to be paid in respect of badges;"

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"74. Grant of contract carriage permit.-

(1) Subject to the provisions of sub-section (3), a Regional Transport Authority may, on an application made to it under section 73, grant a contract carriage permit in accordance with the application or with such modifications as it deems fit or refuse to grant such a permit: Provided that no such permit shall be granted in respect of any area not specified in the application.

(2) The Regional Transport Authority, if it decides to grant a contract carriage permit, may, subject to any rules that may be made under this Act, attach to the permit any one or more of the following conditions, namely:—



(i) that the vehicles shall be used only in a specified area or on a specified route or routes;
(ii) that except in accordance with specified conditions, no contract of hiring, other than an extension or modification of a subsisting contract, may be entered into outside the specified area;

(iii) the maximum number of passengers and the maximum weight of luggage that may be carried on the vehicles, either generally or on specified occasions or at specified times and seasons;

(iv) the conditions subject to which goods may be carried in any contract carriage in addition to, or to the exclusion of, passengers;

(v) that, in the case of motor cabs, specified fares or rates of fares shall be charged and a copy of the fare table shall be exhibited on the vehicle;

(vi) that, in the case of vehicles other than motor cabs, specified rates of hiring not exceeding specified maximum shall be charged;

(vii) that, in the case of motor cabs, a special weight of passengers' luggage shall be carried free of charge, and that the charge, if any, for any luggage in excess thereof shall be at a specified rate;

(viii) that, in the case of motor cabs, a taximeter shall be fitted and maintained in proper working order, if prescribed;

(ix) that the Regional Transport Authority may, after giving notice of not less than one month,—

(a) vary the conditions of the permit;



(b) attach to the permit further conditions;

(x) that the conditions of permit shall not be departed from save with the approval of the Regional Transport Authority;

(xi) that specified standards of comfort and cleanliness shall be maintained in the vehicles;

(xii) that, except in the circumstances of exceptional nature, the plying of the vehicle or carrying of the passengers shall not be refused;

(xiii) any other conditions which may be prescribed."

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"88. Validation of permits for use outside region in which granted.—

(1) Except as may be otherwise prescribed, a permit granted by the Regional Transport Authority of any one region shall not be valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of that other region, and a permit granted in any one State shall not be valid in any other State unless countersigned by the State Transport Authority of that other State or by the Regional Transport Authority concerned:

Provided that a goods carriage permit, granted by the Regional Transport Authority of any one region, for any area in any other region or regions within the same State shall be valid in that area without the countersignature of the Regional Transport Authority of the other region or of each of the other regions concerned:

Provided further that where both the starting point and the terminal point of a route are situate



within the same State, but part of such route lies in any other State and the length of such part does not exceed sixteen kilometres, the permit shall be valid in the other State in respect of that part of the route which is in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State:

Provided also that—

(a) where a motor vehicle covered by a permit granted in one State is to be used for the purposes of defence in any other State, such vehicle shall display a certificate, in such form, and issued by such Authority, as the Central Government may, by notification in the Official Gazette, specify, to the effect that the vehicle shall be used for the period specified therein exclusively for the purposes of defence; and

(b) any such permit shall be valid in that other State notwithstanding that such permit has not been countersigned by the State Transport Authority or the Regional Transport Authority of that other State.

(2) Notwithstanding anything contained in sub-section (1), a permit granted or countersigned by a State Transport Authority shall be valid in the whole State or in such regions within the State as may be specified in the permit.

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(9) Notwithstanding anything contained in sub-section (1) but subject to any rules that may be made by the Central Government under sub-section (14), any State Transport Authority may, for the purpose of promoting tourism, grant permits in respect of tourist vehicles valid for the whole of India, or in such contiguous States not being less than three in number including



the State in which the permit is issued as may be specified in such permit in accordance with the choice indicated in the application and the provisions of sections 73, 74, 80, 81, 82, 83, 84, 85, 86 [clause (d) of sub-section (1) of section 87 and section 89] shall, as far as may be, apply in relation to such permits.

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(11) The following shall be conditions of every permit granted under sub-section (9), namely:—

(i) every motor vehicle in respect of which such permit is granted shall conform to such description, requirement regarding the seating capacity, standards of comforts, amenities and other matters, as the Central Government may specify in this behalf;

(ii) every such motor vehicle shall be driven by a person having such qualifications and satisfying such conditions as may be specified by the Central Government; and

(iii) such other conditions as may be prescribed by the Central Government."

12. Section 28 of the MV Act gives power to the State Government to make Rules for the purpose of giving effect to Chapter II of the MV Act. Chapter II of the MV Act deals with licensing of drivers of motor vehicles, if those matters which are provided in Section 27 of the MV Act. Section 27 of the MV Act enumerates the subjects on which only Central Government can make Rules. Section 28 (2) (d) of the MV Act gives specific power to the State Government to make Rules prescribing badges and uniform to be worn by drivers of transport vehicles and fees to be paid in respect of badges for the purpose of the drivers who are driving contract carriage within the State. The power of the State Government to make Rules in respect of



badges and uniform for drivers of transport vehicles within the State, therefore, cannot apply to other States.

13. Section 88 of the Motor Vehicles Act, 1988 deals with permits for transport vehicles which are used within the State and outside the State. Section 88 of the MV Act states that a permit granted by the Regional Transport Authority of any region is not valid in any other region, unless the permit has been countersigned by the Regional Transport Authority of the other region in which the vehicle would ply, and a permit granted in one State shall not be valid in any other State unless countersigned by the State Transport Authority of the other State or by the Regional Transport Authority in which the transport vehicle would ply. A reading of the Sections 28 and 88 of the MV Act shows that both the Sections operating entirely in a different spheres. Section 28 deals with permit for transport vehicles plying within the State whereas Section 88 deals with permits which are issued for transport vehicles plying in more than one State. In view of the aforesaid, Rule 7 of the Delhi Motor Vehicles Rules, 1993 need not be struck down as being not contravening any of the provisions of the Motor Vehicles Act, 1988.

14. In All Kerala Distributors Association, Kottayam Unit, Represented by its Secretary v. State of Kerala and Another, **2022 SCC OnLine SC 919**, the Apex Court has held as under:

“33. We may usefully also refer to the decision in Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust⁴⁹ wherein the Court observed in paragraph 26 as follows:

“26. It cannot, therefore, be said that the test of two legislations containing contradictory provisions is the only criterion of repugnance.



Repugnancy may arise between two enactments even though obedience to each of them is possible without disobeying the other if a competent legislature with a superior efficacy expressly or impliedly evinces by its legislation an intention to cover the whole field. The contention of Shri Sanghi that there is no repugnancy between the proviso to Section 5(5) of the Medical University Act and Section 10-A of the Indian Medical Council Act because both can be complied with, cannot, therefore, be accepted. What has to be seen is whether in enacting Section 10-A of the Indian Medical Council Act, Parliament has evinced an intention to cover the whole field relating to establishment of new medical colleges in the country.”

34. *Keeping in mind the exposition of this Court in the aforementioned decisions, we would immediately turn to the Act enacted by the Parliament in 1988. This Act had repealed the erstwhile Motor Vehicles Act, 1939. The Parliament has obviously enacted the 1988 Act in reference to Entry 35 in List III - Concurrent List which concerns the mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied. Notably, the 1988 Act provides for procedure of Regional Transport Authority in considering application for stage carriage permit as predicated in Section 7150 of the 1988 Act. The Authority while considering an application for grant of a stage carriage permit is obliged to have regard to the objects of the 1988 Act including about the satisfactory performance of the applicant as a stage carriage operator and payment of tax [Section 71(3)(d)(ii)]. The other relevant provision for considering the subject-matter of this appeal is Section 81 dealing with duration and renewal of permits. It postulates that the permit issued by the Authority under the Act shall be effective from the date of issuance or renewal thereof for a period of five years. The proviso*



to sub-section (1) envisages that where the permit is countersigned under sub-section (1) of Section 88, such countersignature shall remain effective without renewal for such period so as to synchronise with the validity of the primary permit. We are not concerned with the effect of the proviso in the present case. The relevant sub-section dealing with the power of the Authority to reject an application for the renewal of a permit is subsection (4) of Section 81. It provides for the grounds on which the renewal of a permit can be rejected. The same includes plying any vehicle without payment of tax due on such vehicle; and on any unauthorised route. Besides these provisions, there is nothing in the 1988 Act to deal with the manner of levy of vehicle tax or the collection thereof. In other words, the law made by the Parliament does not occupy the field of manner of levy of vehicle tax and collection thereof. If so, it is not possible to hold that there is direct conflict between the two provisions, namely, in the law made by the Parliament and by the State Legislature. Furthermore, on analysing the legislative intent and the efficacy of the impugned provisions enacted by the State Legislature concerning the manner of levy of vehicle tax and collection thereof, it will be amply clear that obedience to each of the laws (made by the Parliament and State Legislature) is possible without disobeying the other. We shall elaborate on this aspect while dealing with efficacy of the law made by the State Legislature a little later. Suffice it to observe that the argument regarding repugnancy is devoid of merit.

40. Considering the scheme of the State legislations, it is incomprehensible to countenance the argument that the two provisions (of 1988 Act on the one hand and of 1976 Act and 1985 Act on the other) are inconsistent in any manner whatsoever. Whereas, the State enactments are complementary and can be given effect to without



any disobedience to the Central legislations. As aforementioned, the 1988 Act does not cover the field of the manner of levy of vehicle tax and collection thereof. The same is covered by the State legislations.”

15. The second submission of the Petitioners that the power of prescribing uniform for drivers of auto rickshaws and taxi is *per se* arbitrary and violative of Article 14, 19 and 21 of the Constitution of India also cannot be accepted. Specific powers have been given to the State Government and the Central Government to lay down conditions subject to which permits can be issued.

16. The purpose of prescribing a uniform is for identification. The fact that there are different shades available in the same colour and, therefore, this leads to vagueness and is manifestly arbitrary also cannot be accepted. The colour and the description of the uniform for the drivers of vehicles running within the State is prescribed under Rule 7 of the DMV Rules and the colour and the uniform as specified in S.O. No. 415 E dated 08.06.1989 which has been issued under Section 88(11) (ii) of the MV Act are specific and there is no ambiguity.

17. The validity of a legislation primary or subordinate are primarily challenged on the ground of legislative competence or whether legislation is *ultra vires* to the provisions of the Constitution or in case of plenary legislation or being *ultra vires* to the parent statute in case of a subordinate legislation. An executive order and for that matter even a legislation can also be challenged as unreasonable if it violates the principles of equality as laid down in our Constitution or it restricts any of the Fundamental Rights guaranteed in Part III of our Constitution. The Petitioners have not been able to make out any case as to how Rule 7 of the DMV Rules is so manifestly arbitrary. Only by stating that there can be several shades of khaki or that it



does not state whether it should be a pant-shirt or kurta-pajama or the nature/details of stitching etc., does not make the provisions vague. Rule 7 of the DMV Rules only prescribes that a driver shall wear a khaki uniform with a name plate. Similarly, S.O. No. 415 E dated 08.06.1989 which has been issued under Section 88(11) (ii) of the MV Act prescribes for the colour of a uniform for a driver of tourist vehicle for summer and winter months. It cannot be said that Rule 7 of the DMV Rules or S.O. No. 415 E dated 08.06.1989 which has been issued under Section 88(11) (ii) of the Motor Vehicles Act is arbitrary or violative of Article 14, 19 and 21 of the Constitution of India.

18. It is contended by the Petitioner that Rule 7 of the DMV Rules and S.O. No. 415 E dated 08.06.1989 are manifestly arbitrary. The test of manifest arbitrariness has been explained by the Apex Court in Shayara Bano v. Union of India & Ors., **2017 (9) SCC 1**, wherein the Apex Court has held as under:-

"100. To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore, violative of Article 14 of the Constitution. In Cellular Operators Assn. of India v. TRAI [Cellular Operators Assn. of India v. TRAI, (2016) 7 SCC 703] , this Court referred to earlier precedents, and held: (SCC pp. 736-37, paras 42-44)

"Violation of fundamental rights

42. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. [See Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express



Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] , SCC at p. 689, para 75.]

43. The test of “manifest arbitrariness” is well explained in two judgments of this Court. In Khoday Distilleries Ltd. v. State of Karnataka [Khoday Distilleries Ltd. v. State of Karnataka, (1996) 10 SCC 304] , this Court held: (SCC p. 314, para 13)

‘13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the Rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] , this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; “unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary”. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, “Parliament never intended the authority to make such rules; they are unreasonable and ultra vires”. In India,



arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.'

44. Also, in *Sharma Transport v. State of A.P.* [*Sharma Transport v. State of A.P.*, (2002) 2 SCC 188], this Court held: (SCC pp. 203-04, para 25)

'25. ... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.' "

(emphasis in original)

101. *It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641: 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature*



capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.

102. Applying the test of manifest arbitrariness to the case at hand, it is clear that Triple Talaq is a form of talaq which is itself considered to be something innovative, namely, that it is not in the Sunna, being an irregular or heretical form of talaq. We have noticed how in Fyzee's book [Tahir Mahmood (Ed.), Asaf A.A. Fyzee, Outlines of Muhammadan Law, 5th Edn., 2008.] , the Hanafi School of Shariat law, which itself recognises this form of talaq, specifically states that though lawful it is sinful in that it incurs the wrath of God."

19. The challenge to Rule 7 of the DMV Rules and S.O. No. 415 E dated 08.06.1989 which has been issued under Section 88(11) (ii) of the MV Act, does not meet with the test as laid down by the Apex Court in Shayara Bano (supra). The Central Government has power to make rules under Section 88 of the MV Act and the State Government has power to make rules under Section 28 of the MV Act.

20. As discussed above, the competence of the Central Government to issue notifications under Section 88 of the MV Act for tourist vehicles and the competence of State Government to lay down rules for uniform to be worn by drivers of transport vehicles in Delhi by exercising its powers under Section 28 of the DMV Rules cannot be questioned. The contention of the Petitioners that there is no requirement of a uniform and the prescription of



uniform is vague or arbitrary and is violative of Article 14, 19 and 21 of the Constitution of India, cannot be accepted.

21. This Court, therefore, does not find any reason to strike down Rule 7 of the DMV Rules and S.O. No. 415 E dated 08.06.1989 which has been issued under Section 88(11) (ii) of the MV Act.

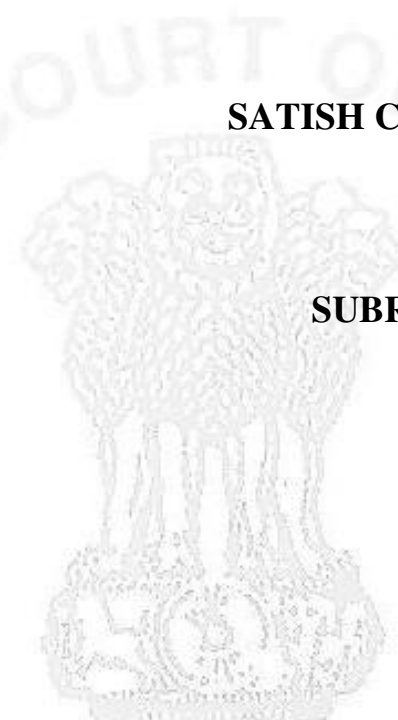
22. The petition is dismissed, along with pending applications.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

JULY 04, 2023

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