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

Judgment reserved on: 08.08.2023

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Judgment delivered on: 29.08.2023

+ **W.P.(C) 10448/2023 & CM APPL. 40505/2023**

ABHISHEK KUMAR & ORS.

..... Petitioners

Through: Mr. Arun Kumar Varma, Senior Advocate with Mr. Aslam Ahmed, Mr. Rohit Jain, Ms. Shabiesa Nabi and Mr. Hari Lal S., Advocates.

versus

THE SECRETARY DENTAL COUNCIL OF INDIA

& ANR.

..... Respondents

Through: Mr. T. Singhdev, Mr. Abhijit Chakravarty, Mr. Bhanu Gulati, Mr. Aabhas Sukhramani, Mr. Tanishq Srivastava, Mr. Anum Hussain and Ms. Ramanpreet Kaur, Advocates for respondent No.1.
Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Mr. Madhav Bajaj & Ms. Shreya V. Mehra, Advocates for Respondent No.2/ NBE.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The Petitioners before this Court are six persons holding professional degrees in dentistry i.e., Bachelor of Dental Surgery (“BDS”)/ Master of Dental Surgery (“MDS”)/ Doctor of Dental Surgery (“DDS”) or equivalent qualifications from foreign universities. The Petitioners have filed the



present writ petition challenging the constitutional validity of Regulation 11 of the Dental Council of India Screening Test Regulations, 2009 (the “**Regulations**”).

2. The details regarding the Petitioners’ qualifications, accomplishments and work experience are highlighted as under:

<i>“Petitioner</i>	<i>Qualifications</i>	<i>Other Accomplishments</i>	<i>No. of years of practice in Dentistry</i>
<i>Abhishek Kumar</i>	<i>Bachelor of Dental Surgery (BDS) from BP Koirala Institute of Health Sciences, Dharan. Nepal in 2007</i> <i>Master of Dental Surgery (MDS) from Kathmandu University in 2011</i>	<i>Worked as an Assistant Professor in BP Koirala and Associate Professor in KIST Medical College, Kathmandu</i> <i>Several certificates of appreciation and participation in Dental conferences</i>	<i>16 years with provisional license to practice and teach dentistry in Nepal</i>
<i>Kriti Rathi</i>	<i>Bachelor of Dental Surgery (BDS) (2013-2019) from College of Medical Sciences,</i>	<i>Internship at College of Medical Sciences, Nepal (2019-2020)</i> <i>Volunteer at Annual Joint Meeting of</i>	<i>0</i>



	<i>Bharatpur, Nepal</i>	<i>Nepalese association of Oral & Maxillofacial Surgeons in joint collaboration with Japanese society of Oral & Maxillofacial Surgeons in the year 2020.</i>	
<i>Shweta Singh</i>	<i>Bachelor of Dental Surgery (BDS) from M.B. Kedia Dental College, Chhapkaiya, Birgunj-2, Nepal (2007-2012)</i>	<i>Internship from M.B. Kedia Dental College, Nepal (2012-2013)</i>	<i>Practiced as a dentist in Birgunj, Nepal (2013-2014)</i>
<i>Manjot Kaur</i>	<i>Doctor of Dental Surgery (DDS) from Howard University College of Dentistry 2012-2016, Washington DC, USA</i>	<i>Advanced Education in General Dentistry (AEGD) from Virginia Commonwealth University 2016- 2017 Virginia, USA <i>Attended several continuing education courses, seminars and</i></i>	<i>Practiced as a General Dentist for 5 years (2017-2022) in Virginia and California, USA</i>



		<i>dental conferences.</i>	
<i>Anisha Garg</i>	<i>Bachelor of Dental Surgery (BDS) from People's Dental College and hospital Kathmandu, Nepal (2016-2021)</i>	<i>Internship from People's Dental College and hospital (2021-2022)</i> <i>Several certificate of participation in hands on workshops</i>	<i>Volunteered at a clinic for few months in Nepal</i>
<i>Neha Sharan</i>	<i>Bachelor of Dental Surgery (BDS) from College of Medical Sciences, Bharatpur, Nepal (2013-2019)</i>	<i>Internship at College of Medical Sciences, Nepal (2019-2020)</i> <i>Certificates of appreciation and participation in Endodontic rotary instrument workshop</i>	<i>Volunteered at a clinic for 2 years in Nepal."</i>

3. The Petitioners' have stated that they have obtained their professional degrees from foreign universities. Resultantly, the Petitioners must undergo and pass the Foreign Dental Screening Test ("FDST") envisaged under the 2009 Regulations in order to become eligible for registration with a State Dental Council in India.



4. The scheme of the FDST as per Regulation 11 of the Regulations contemplates 2 (two) written examinations and a Viva-Voce examination (“**Viva**”). Regulation 11 provides that a candidate must score 50% marks in both the written tests, i.e., Paper-I for a total of 100 marks and Paper-II for a total of 150 marks, individually, which would make the candidate eligible for appearing in the Viva. It is further provided that a candidate must score 50% marks separately in the Viva. It is only after obtaining 50% marks in the both the written examinations, individually, as well as scoring 50% marks in the Viva, that a candidate passes the FDST.

5. It is stated that a notification was issued on 11.10.2022 by the Dental Council of India (“**DCI**”)/ Respondent No.1 for conducting the FDST 2022. The Petitioners participated in the written examination and the result thereof was declared on 08.02.2023. Out of the 22 candidates who appeared in the written examination, 11 cleared the same, including all the Petitioners.

6. Thereafter, the Petitioners appeared for the Viva conducted on 05.04.2023. The results for the Viva were declared on 19.04.2023. All the Petitioners failed to meet the requirement of 50% marks in the Viva, and therefore, they were declared unsuccessful in clearing the FDST.

7. On 21.04.2023, Petitioner No. 4 submitted an application under the Right to Information Act, 2005 (“**RTI Act**”) seeking information related to FDST 2022 examination, including the results for the Viva conducted on 05.04.2023, and a separate RTI was filed to obtain the results of the candidates who had appeared in the FDST exams in the past 3 (three) years.



8. On 28.04.2023, the Petitioners requested the DCI to permit them to re-appear for the Viva so that they could clear the FDST. However, Petitioners were not granted any relief by the DCI, and in those circumstances, the Petitioners came up before this Court by filing the present Writ Petition praying for the following reliefs:

“a) issue an appropriate writ, order or direction, inter alia, declaring the Regulation 11 of Dental Council of India Screening Test Regulations, 2009 as illegal, arbitrary and being in gross violation of the Article 14, 19 and 21 of the Constitution of India;

b) issue an appropriate writ, order or direction, inter alia, declaring the notice dated 19th April 2023 as illegal and non-est;

c) Issue an appropriate writ of or in the nature of Mandamus and/or orders or directions holding and declaring that the action of the Respondents in relation to considering the Viva-voce examination as the sole determining factor as arbitrary and illegal, being in gross violation of the Article 14, 19 and 21 of the Constitution of India, hence waive the score of viva and declare all petitioners pass based on written exam results itself as an exceptional case;

d) Issue a Writ of or in the nature of Certiorari and/or orders or directions of like nature directing the Respondent No. 1 and Respondent no. 2 to consider the aggregate marks of all Petitioners and notify them pass and eligible to practice dentistry in India;

e) Allow the petitioners to appear for Viva-voce without having to reappear for the written exam;

f) Issue an appropriate writ thereby directing the Respondent No.1 to not to carry out viva-voce as a part of selection process as in the case of MBBS;



g) to call the entire record from Respondent No. 2 of all candidates who appeared for viva- voce on 05.04.2023 to find the facts on the instructions and process followed; and

h) Pass such other and further order or orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case and in the interest of justice.”

9. Learned counsel for the Petitioners has vehemently argued before this Court that the procedure prescribed in Regulation 11 of the Regulations is arbitrary to the extent that it mandates 50% marks in the Viva separately for the purpose of registration with a State Dental Council. He argues that this renders the Viva as the sole factor of determination in the second leg of the FDST. He has further argued that undue weightage is given to the Viva and the candidates who have qualified in the written examination cannot be denied their right to register as dentists in India. Heavy reliance has been placed by the Petitioners upon the judgment delivered in the case of **Anvita Singh Vs. Union of India & Ors**, 2012 III AD (Delhi) 133; and **Praveen Singh Vs. State of Punjab & Ors.**, AIR 2001 SC 152, to buttress his contentions.

10. Learned counsel for the Petitioners has vehemently argued before this Court that the process of Viva as prescribed under Regulations 11 of the Regulations is arbitrary; it is without sufficient safeguards; no proper record is maintained; the process of interview sabotages purity of proceedings; and a person cannot be declared unsuccessful based only upon their performance in the Viva. He places reliance upon the judgment delivered in the case of **Dr. J.P. Kulshrestha & Others Vs. Chancellor, Allahabad University & Others**, (1980) II LLJ 175 SC, in support of his contention.



11. Heard learned counsel for the Petitioners at length and perused the record. The Petitioners in the present case are praying for quashing of Regulation 11 of the Regulations on the ground that the same is, *inter alia*, arbitrary, discriminatory and in violation of Articles 14, 19 & 21 of the Constitution of India.

12. DCI with the prior sanction of the Central Government has brought out the Regulations in exercise of powers conferred upon it under the Dentists Act, 1948. The Regulations provide for a screening test, i.e., FDST, and prescribes the pattern of examination of the FDST. Regulation 11 of the Regulations reads as under:

“11. Examination Pattern of Screening Test:

Distribution of subject and marks for MDS/PG Diploma for Paper-I

Subjects	Oral & Maxillofacial Surgery	Ortho	Oral Med	Perio.	Prosthodontics	Oral Patho.	Public Health Dentistry	Paed. & Prev Dentistry	Cons & Endo
Anatomy	10	20	10	20	10	10	10	10	10
Physiology	10	20	10	20	10	10	10	10	10
Biochemistry	10	Nil	10	10	05	10	10	10	10
General pathology	10	10	10	10	05	10	10	10	10
General Microbiology	10	Nil	10	10	05	10	10	10	10
Oral Pathology	10	Nil	10	10	05	10	10	10	10
	Nil	10	10	05					
Pharmacology	10	15	10	10	05	10	10	10	10
General Medicine	10	Nil	10	Nil	05	10	10	10	10
General Surgery	10	Nil	10	Nil	05	10	10	10	10
Applied Dental Materials	10	35	Nil	Nil	40	10	10	10	10
Total No. Of Questions	100	100	100	100	100	100	100	100	100



MDS/PG Diploma Paper II- Speciality Questions in the respective subjects – 150

(i) Duration of Paper-I is 120 Minutes & paper II is 180 Minutes

(ii) Each question carries one mark.

(iii) There will be no negative marking.

(iv) There will be no grace marks.

(v) The candidate has to score 50% in each paper individually to qualify for appearing in the viva-voce examination.

(vi) The standard of DCI Screening Test Exam in respect of MDS/PG Diploma and BDS degree holder would be at par with the standard prescribed for Indian universities.

MDS/PG Diploma– Viva-voce examination - 50

The candidate has to separately score 50% in the viva-voce examination.

Examiners for Viva-Voce Examination for MDS/PG Diploma

There shall be two examiners for Viva-Voce; out of whom, one internal from examining university and one external from any other university which awards recognized Undergraduate and Postgraduate Dental qualification.

Compulsory Clinical Competence Training (Applicable only to Post-Graduate degree)

The candidate who qualifies the Screening Test for recognition of his MDS Degree/ PG Diploma shall, before issue of the necessary passing certificate to him/her, have to undergo a compulsory clinical competence training for a period of 12 weeks under the guidance of a specialist in the concerned



speciality at a recognised Government dental institution which would be near the resident of the candidate. Such Government dental institution shall impart Compulsory Clinical Competence Training free of cost to the candidate.

Distribution of subject and marks for BDS graduates

<i>Subject</i>	<i>No. of MCQs for BDS</i>	<i>Subject</i>	<i>No. of MCQs for BDS</i>
	<i>Paper I</i>		<i>Paper II</i>
<i>Anatomy</i>	<i>10</i>	<i>Dental Anatomy & Histology</i>	<i>10</i>
<i>Physiology</i>	<i>10</i>	<i>Dental Materials</i>	<i>10</i>
<i>Biochemistry</i>	<i>10</i>	<i>Oral Pathology</i>	<i>10</i>
<i>Microbiology</i>	<i>10</i>	<i>Oral Microbiology</i>	<i>10</i>
<i>Pathology</i>	<i>10</i>	<i>Oral Medicine</i>	<i>10</i>
<i>Pharmacology</i>	<i>10</i>	<i>Oral Radiology</i>	<i>10</i>
<i>General Medicine</i>	<i>20</i>	<i>Oral Surgery</i>	<i>10</i>
<i>General Surgery</i>	<i>20</i>	<i>Periodontics</i>	<i>10</i>
		<i>Orthodontics</i>	<i>10</i>
		<i>Community/Public Health Dentistry</i>	<i>10</i>
		<i>Pedodontics and Preventive Dentistry</i>	<i>10</i>



		<i>Prosthodontics Crown & Bridge</i>	20
		<i>Conservative Dentistry & Endodontics</i>	20
<i>Total Questions</i>	<i>100</i>	<i>Total Questions</i>	<i>150</i>

BDS Paper II- Speciality Questions in the respective subjects - 150

- (i) Duration of Paper-I is 120 Minutes & paper II is 180 Minutes.*
- (ii) Each question carries one mark.*
- (iii) There will be no negative marking.*
- (iv) There will be no grace marks.*
- (v) The candidate has to score 50% in each paper individually to qualify for appearing in the viva-voce examination.*

BDS- Viva-voce examination - 50

The candidate has to separately score 50% in the viva-voce examination.

Examiners for Viva-Voce Examination for BDS

There shall be two examiners for Viva-Voce, out of whom, one internal from examining university and one external from any other university. The qualification of examiners appointed for Viva-Voce for recognition of foreign UG/PG dental qualification would be at par with the qualification prescribed for examiners in the DCI Revised BDS Course Regulations,



2007 and MDS Course Regulations, 2007 and 2017, as amended from time to time.

The criteria to declare pass the Screening Test

The candidate shall have to pass both the theory paper and Viva-Voce separately. In case, any candidate does not qualify a theory paper shall not be allowed to appear in the Viva-Voce and the candidate who fails in Viva-Voce or in one paper of theory shall have to reappear in both the theory paper and Viva-Voce also. The PG students who have to undergo and complete the 12th weeks Compulsory Clinical Competence Training shall be entitled for his add on qualification for its registration with respective State Dental Council.

13. The aforesaid Regulation provides that a candidate must score 50% marks in each written test individually to qualify for appearing in the Viva, which is for a total of 50 marks. In order to clear the FDST, a candidate must not only clear the two written tests individually, but also separately score 50% marks in the Viva.

14. The issue of obtaining 50% marks in each of the written tests under the FDST individually and scoring 50% marks in the subsequent Viva as per Regulation 11 of the Regulations has been recently considered by this Court in the case of ***Shaikh Shabir Ali & Others Vs. Dental Council of India & Another***, 2023 SCC OnLine Del 1425. In the said judgment, this Court in paragraphs 10 to 18 has held as under:

“10. A perusal of the Regulation 11 of the Screening Test Regulations, 2009 shows that as far as graduates who desire to register themselves with State Dental Council are concerned, they have to clear a Screening Test which is divided into two parts. The first part being a written examination and the second part being a viva voce. The written examination is further



divided into two papers, i.e., Paper-I consisting of subjects like Anatomy, Physiology, Biochemistry, Microbiology, Pathology, Pharmacology, General Medicine, General Surgery. These papers are generic in nature and deal with the entire body. Paper-II consists of specific subjects directly concerned with dentistry like Dental Anatomy & Histology, Dental Materials, Oral Pathology, Oral Microbiology, Oral Medicine, Oral Radiology, Oral Surgery, Periodontics, Orthodontics, Community/Public Health Dentistry, Pedodontics and Preventive Dentistry, Prosthodontics Crown & Bridge, Conservative Dentistry & Endodontics.

11. As stated above, the subjects are carefully demarcated into two parts and Paper-I dealing with general subjects and Paper-II specifically dealing with subjects connected with dentistry. The total number of questions in Paper-I is 100 and Paper-II which is more specific to dentistry has 150 questions. The said Regulation specifies that a candidate has to score 50% in each paper individually and only then is a candidate will be eligible to appear in the viva voce examination. A perusal of the material on record also shows that a candidate can take any number of attempts to appear for the Screening Test.

12. The Dental Council of India is a Statutory Body incorporated under the Dentists Act to regulate dental education and profession of dentistry throughout the country. The purpose of Dentists Act is to regulate dental education, dental profession and dental ethics.

13. Regulation 3 of the Screening Test Regulations, 2009 states that the purpose of conducting the screening test is to determine the eligibility of a candidate for his or her registration to the State Dental Council. This Court can take judicial notice of the fact that in many countries mode of instruction is in the native language of the concerned foreign country. It can also be said that in certain countries, the standard of education is much lower than the standard of education in this country. The experts in the field of dentistry



have, therefore, formulated this test to ensure that only persons who have obtained degrees outside the country who can match up to the dental education in the country and that they understand various concepts and parameters of dental education as imparted in India should be permitted to get registered themselves with the State Dental Council. The purpose of the test is to ensure the ability of a candidate to objectively diagnose and treat dental patients.

14. The Dental Council of India consists of experts in the field of dentistry and those experts have decided on the pattern of examination, the papers, the marks to be allotted in each of the paper and this decision has been taken to ensure that persons who have obtained degrees from outside the country match up to the standard of our country. It is well settled that Courts should normally refrain themselves from interfering in matters wherein opinions have been rendered by experts and deference should be given to their knowledge on a subject matter. In Basavaiah (Dr.) v. Dr. H.L. Ramesh and Ors., (2010) 8 SCC 372, the Supreme Court had observed this proposition that Courts have to show deference and consideration to the recommendations of the Expert Committee consisting of distinguished experts. The relevant portion of the said judgment reads as under:-

21. It is the settled legal position that the courts have to show deference and consideration to the recommendation of an Expert Committee consisting of distinguished experts in the field.....”

15. The Supreme Court in State of Tamil Nadu v. K. Shyam Sunder and Ors., (2011) 8 SCC 737, notes that Courts lack expertise especially in disputes relating to policies of purely academic matters by relying upon a series of judgements that have already cemented this view. The paragraph reiterating this observation is as follows:-

“V. Interference by the Court with expert body's opinion



42. Undoubtedly, the court lacks expertise especially in disputes relating to policies of pure academic educational matters. Therefore, generally it should abide by the opinion of the expert body. The Constitution Bench of this Court in *University of Mysore v. C.D. Govinda Rao* [AIR 1965 SC 491] (AIR p. 496, para 13) held that “normally the courts should be slow to interfere with the opinions expressed by the experts”. It would normally be wise and safe for the courts to leave such decisions to experts who are more familiar with the problems they face than the courts generally can be. This view has consistently been reiterated by this Court in *Neelima Misra v. Harinder Kaur Paintal* [(1990) 2 SCC 746 : 1990 SCC (L&S) 395 : (1990) 13 ATC 732 : AIR 1990 SC 1402] , *Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity* [(2010) 3 SCC 732 : AIR 2010 SC 1285] , *Basavaiah (Dr.) v. Dr. H.L. Ramesh* [(2010) 8 SCC 372 : (2010) 2 SCC (L&S) 640] and *State of H.P. v. H.P. Nizi Vyavsayik Prishikshan Kendra Sangh* [(2011) 6 SCC 597] .” (emphasis supplied)

16. Similarly, in a Judgement dated 28.02.2022 in *Mahesh Kumar v. Staff Selection Commission and Anr.*, SLP No. 1951/2022, the Supreme Court upheld a Judgement of this Court and stated that the High Court had rightly refused to entertain the writ petition by observing that “when the conscious decisions has been taken by the experts and the courts have no expertise in the matter and academic matters are best left to academics, we see no reason to interfere with the same”.

17. It is settled law that High Courts while exercising its jurisdiction under Article 226 of the Constitution of India cannot sit in appeal over a decision taken by experts in the manner of conducting examination and fixing marks/ qualifying marks in the examination. Other than stating that fixing a



minimum of 50% marks in each of the papers is arbitrary, there is nothing in the writ petition to demonstrate as to why it is arbitrary. As stated earlier, the purpose of Screening Test is to ensure that only persons who are well versed in the field of dentistry are registered with the Dental Council of India and the decision of the Dental Council of India to fix a minimum of 50% marks in each of the written test cannot be interfered with by Courts while exercising its jurisdiction under Article 226 of the Constitution of India.

18. With the above observations, the Writ Petition is dismissed, along with pending application(s), if any.”

15. The aforesaid judgment makes it very clear that a similar challenge in respect to constitutional validity of Regulation 11 of the Regulations has been looked into by this Court in the said case. This Court has declined to interfere in the matter by taking cognizance of judgments delivered by the Hon’ble Supreme Court which state that Courts lack expertise in disputes relating to policies in purely academic matters.

16. A Division Bench of this Court in the case of ***Dr. Tanmay Srivastava &Ors. Vs. Dental Council of India &Anr.***, 2010:DHC:151-DB, while deciding a similar controversy has held in paragraphs 13 & 14 as under:

“13. The second grievance is in respect of the provision for viva-voce examination. The requirement is of a minimum of 50 per cent marks in each of the two written test papers of 100 & 150 marks each and any person meeting this eligibility condition would have to appear in the viva-voce where also 50 per cent marks would have to be obtained. It has been explained by the counsel for respondent No.1 by reference to the counter affidavit that the Dental Qualifications are often obtained from foreign dental institutes in the native language of the concerned foreign country after going through a primary language course in the language of that country. It has, thus,



been found necessary that such candidates be examined by way of viva-voce so as to ensure that they understand various concepts/parameters of dental education as imparted in India since their knowledge and skills have to be implemented to treat dental patients in India. The ability of a candidate to objectively diagnose and treat dental patients in India is also determined in this viva-voce to ensure that there is no communication gap with the patient in this process.

14. We also find that out of the total marks of 300, only 50 marks are reserved for viva-voce. It is not a large percentage. We find no infirmity in either prescribing a viva-voce for the reasons set out hereinabove or the requirement of a minimum benchmark of 50 per cent in each of the test papers as also the viva-voce.”

17. In **Dr. Tanmay Srivastava (Supra)**, again the requirement of minimum benchmark of 50% in each test paper as also Viva-Voce has been looked into and the Division Bench has held that there is no infirmity in either prescribing a Viva-Voce, or the requirement of a minimum benchmark of 50% in each of the test papers as also the Viva-Voce. The said judgment also explains the necessity for conducting a Viva-Voce examination for those candidates who have obtained their qualifications from foreign dental institutes, as is the case for the Petitioners-herein.

18. It is needless to mention that the DCI is an expert body. The DCI consists of experts in the field of dentistry and those experts have decided on the pattern of examination, the marks to be allotted in each of the examinations, if any, as well as the cut-off marks required by a candidate to clear the FDST. Therefore, in the considered opinion of this Court, when a conscious decision has been taken by the experts and the Courts have no expertise in the matter, academic matters should be left to the experts and



should not be interfered with by the High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India.

19. During the course of the hearing, learned counsel for the DCI has submitted before this Court that the FDST is held after every six months and the petitioners can again appear in the examination in question, and they have not been deprived of an opportunity to clear the FDST. The grievance of the Petitioners that the DCI has denied their request to conduct a fresh viva and re-appear for the same thus, does not hold any ground.

20. The Petitioners have failed to show how Regulation 11 of the Regulations is arbitrary or in violation of Articles 14, 19 and 21 of the Constitution of India and have thus, not been able to make out any ground for declaring Regulation 11 of the Regulations as unconstitutional. This Court finds no infirmity in the examination pattern of the FDST and the same has been decided by a body of experts and there is no reason for this Court to interfere with the same in exercise of its writ jurisdiction under Article 226 of the Constitution of India. This Court does not find any reason to grant relief to the Petitioners as prayed for. Accordingly, the present writ petition stands dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SAURABH BANERJEE)
JUDGE

AUGUST 29, 2023

W.P.(C.) No.10448/2023

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Signature Not Verified

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B.S. Rohella

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