



2023:DHC:4023

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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **W.P.(C)15097/2021 & CM APPLs. 47598/2021, 4557/2023,**
10843/2023

Between: -

MR. KISHOR BANDEKAR,
 SECRETARY, GOA CHESS ASSOCIATION,
 R/AT: VILLA NO. 37, AQUA BAY,
 NEAR MES COLLEGE, ZUARINAGAR – 403726.
PETITIONER NO.1

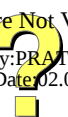
MR. KISHOR BANDEKAR,
 R/AT: VILLA NO. 37, AQUA BAY,
 NEAR MES COLLEGE, ZUARINAGAR – 403726.
PETITIONER NO.2

MR. VINAY TENDULKAR,
 R/AT: DABAL, DHARBANDORA, GOA.
PETITIONER NO.3

MR. SHARENDRA NAIK,
 R/AT: AGAS – MASHEM, LOLIEM,
 CANACONA, GOA.
PETITIONER NO.4

MR. SAMEER NAIK,
 R/AT: FLAT NO. F1, KANTA APARTMENTS,
 SHIVAJI CHOWK, RD CURCHOREM, GOA.
PETITIONER NO.5

MR. KISHORE RAMA GAUNS DESSAI,
 R/AT: H. NO. 7365, BHATWADA,
 KALEM, SANGUEM, GOA.
PETITIONER NO.6



(Through: Mr.Nikhil Nayyar, Senior Advocate with Mr. Ashwin Bhobe, Mr.Sangram Singh R.Bhonsle, Ms. Samridhi S.Jain, Mr. Nrupal Dingankar, Mr. Pushkara A. Bhonsle and Mr. Riway Rai and Mr. Naman Sherstra, Advocates.)

AND

MR. MAHESH CANDOLKAR,
R/AT: HARI TARAS SIDHARUDH SADAN,
ALTINO ROAD, ST. INEZ, PANAJI, GOA.

....RESPONDENT NO.1

MR. ASHESH KENI,
R/AT: H. NO. 729, NEAR DAMODAR,
HOUSING SOCIETY, AQUEM ALTO, MARGAO- GOA.

....RESPONDENT NO.2

MR. VISHWAS PILANKAR,
R/AT: H. NO. 240/9, GAURITANAYA,
MAPUSA, BARDEZ, GOA.

....RESPONDENT NO.3

MR. AMOGH NAMSHIKAR,
R/AT: HILL LANE 4, NEAR
KHADPABANDH GARDEN,
PONDA, GOA.

....RESPONDENT NO.4

MR. SUBHASH SHIRODKAR,
PRESIDING OFFICER,
R/AT: MATA SECONDARY SCHOOL,
NEAR RAILWAY OVERBRIDGE, BAINA,
VASCO-DA-GAMA, GOA.

....RESPONDENT NO.5

K. V. MAHANT,
DEPUTY PRESIDING OFFICER,
R/AT: G1, GROUND FLOOR,
MARISA APARTMENT,
BEHIND DURGA PETROL PUMP,
FATORDA, MARGAO, GOA.

....RESPONDENT NO.6

(Through: Mr.J. Abru Lobo and Mr. Ivo D'Costa, Mr.Gajendra Singh Negi, Advocate. Mr.Sanjay K.Chadha, Advocates for R-1 to 4.)

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Pronounced on: 02.06.2023

J U D G M E N T

1. The petitioners in the instant writ petition seek to challenge the validity of the impugned order dated 14.12.2021 passed by the Appellate Authority (hereinafter 'AA') of the All India Chess Federation New Delhi (hereinafter 'AICF') affirming the decision passed by the Ethics Commission (hereinafter 'EC') dated 14.12.2021, whereby the decision passed by the Presiding Officer (hereinafter 'PO') dated 10.08.2021 rejecting the candidature of respondent nos.1 to 4, was set aside.
2. The facts of the instant case would indicate that the Goa Chess Association (hereinafter 'GCA') which is registered under the **Societies Registration Act, 1860** is a State level sports federation which is affiliated to AICF as well as to the Sports Authority of Goa (hereinafter 'SAG').
3. The GCA is governed by its Memorandum of Association (hereinafter 'MoA') and the Rules and Regulations approved by the general body of the GCA.
4. On 08.01.2017, a special general body was conducted, whereby, an increase in the posts of the Executive Committee was approved from seven to twelve. Accordingly, on 08.01.2017 itself, the constitution of the GCA was amended, increasing the posts of the Executive Committee from seven to twelve.
5. On 22.07.2021, the elections of the Executive Committee were notified as per the rules applicable to the said election. The list of approved nomination forms was published on 05.08.2021 and the time for withdrawal of the nomination form was from 05.08.2021 to

10.08.2021 and the final list of the candidates was declared on 10.08.2021.

6. On 10.08.2021, the PO declared the final list of the candidates wherein, he found that the respondents were contesting the election from the talukas, from where the office bearers were already declared as elected unopposed. The PO, therefore, recorded that as per the information provided to him, there were 12 talukas affiliated to the GCA and as per the resolution passed and the amendments incorporated by the special general body meeting dated 08.01.2017, each taluka was already represented through an unopposed elected candidate, therefore, the candidature from 4 talukas namely, Barder, Tiswadi, Ponda and Salcete were to be rejected. He, therefore, declared the final list of candidates elected unopposed while holding that the private respondents, four in number, are ineligible to contest the election for the office bearers of the GCA.

7. The decision of the PO dated 10.08.2021 was challenged by respondents, before the EC in terms of the code of ethics and the said commission *vide* order dated 19.10.2021 rejected the objections and set aside the decision passed by the PO. The decision passed by the EC dated 19.10.2021 was challenged by the petitioners before the AA and in terms of the impugned decision dated 14.12.2021, the AA has rejected the same, therefore, the petitioners have approached this court.

8. Mr. Nikhil Nayyar, learned senior counsel for the petitioners submits that the decisions passed by the EC and the AA are in contravention of the Rules and Regulations which were amended in terms of the minutes of the special general body meeting dated 08.01.2017. According to him, if Rule 42(I)(a) of the Rules and Regulations is perused, the same would indicate that from one taluka,

only one delegate can contest the election and according to him, such an interpretation has to be given in view of the minutes of the meeting dated 08.01.2017.

9. He submits that the decision dated 08.01.2017 was taken by the general body so as to ensure that all talukas are represented in the Executive Committee of the GCA. He, therefore, states that any other interpretation would amount to nullifying the basic mandate behind the amendment incorporated in the minutes of the meeting dated 08.01.2017 and also the same would violate the mandate of Rule 42(I)(a) of the Rules and Regulations. He clarifies that at the initial stage, there can be two nominees authorised by the concerned taluka. However, before accepting the final nomination form, the PO will have to ensure that only one gets elected from the respective taluka.

10. He, therefore states that if the PO does not ensure at the threshold that there should not be more than one candidate contesting for a particular post, the same would create an anomaly to the extent of having over representation for a particular taluka and non-representation of a specific taluka. According to him, the mandate behind the minutes of the meeting dated 08.01.2017 is to ensure that each taluka gets represented and no taluka shall remain unrepresented.

11. Mr. Nayyar, learned senior counsel for the petitioners while taking this court through the impugned decisions passed by the EC and the AA, submits that the entire understanding of the commission and the AA is *de hors* the mandate of the amendment dated 08.01.2017.

12. Mr. J.A. Lobo, learned counsel who appears for respondent nos. 1 to 4 vehemently opposed the submissions and states that the entire understanding of the petitioners is *de hors* the applicable Rules and Regulations. Learned counsel points out that Rule 42(I)(a) of the

Rules and Regulations will have to be read in its entirety and each and every word used therein must be given its full effect. He, however, suggests that rule 42(I)(a) of the Rules and Regulations will, also have to be read along with 41(I)(c) of the Rules and Regulations. According to him if the entire scheme of the Executive Committee is understood in the right perspective, the same would unequivocally reveal that there cannot be any restriction on having more than one candidate from any taluka to be represented in the Executive Committee of the GCA.

13. He submits that the scheme of the election is in two parts. The first part deals with elected representatives and the second part deals with nominated representatives. According to him, so far as elected representatives are concerned, there is no restriction under any of the Rules to restrict only one candidate to contest the election from one taluka. However, in the case of nominated members, the restriction would apply to the extent that from one taluka there cannot be two representatives.

14. Learned counsel has also submitted that the decisions of the EC and of the AA are in accordance with the law and both the authorities have given due weightage to the language employed under the applicable rules. He also submits that there is no dispute with respect to the authorisation by a particular taluka to two representatives to contest the election of the office bearers in the Executive Committee of the GCA. He, therefore, submits that if the concerned taluka decides to send or appoints two representatives to contest the election, the PO cannot, then decide as to who amongst the two, is ineligible to contest the election. According to him, such a right cannot be conferred upon the PO. He also submits that in the absence of there being an explicit stipulation or restriction to that effect, such an

interpretation, as suggested by the petitioners, is unacceptable. He has also placed reliance on the decision of this court in the case of ***Pondicherry Basketball Association v. Union of India & Ors.***¹, dated 02.05.2023.

15. Mr. Nayyar, learned senior counsel in his rejoinder submission has stated that the arguments made by respondent nos.1 to 4 are unacceptable for the reason that an effort is made by the respondents to read the rules while putting the word 'and' in place of ', '. He submits that the entire decision dated 08.01.2017 and the amendment made consequent thereto will have to be understood in the right perspective as the minutes of the meeting dated 08.01.2017 clearly emphasized the word twelve elected representative. He submits that it is not due to the rejection of the nomination form of the respondents but by virtue of the rule position that the respondents have incurred ineligibility and therefore they are not legally entitled to contest the election. He also states that the rule position as existing today entitles respondents from being eligible.

16. I have heard the learned counsel appearing for the parties and perused the record.

17. The minutes of the special general body meeting of the GCA held on 08.01.2017, where certain amendments were proposed to be incorporated, including the amendments with respect to the number of office bearers would indicate that the general body resolved to increase the post of the elected members of the Executive Committee. Such a decision was taken in view of an increase in the activity of the association and to take more members on the committee who will contribute to the growth of the sport of chess in Goa.

18. The resolution part of the minutes of the meeting dated 08.01.2017 reads as under:-

“RESOLVED THAT the members hereby approve the amendments to the constitution and Rules and Regulations of the Association by amending the elected post of the Executive Committee members a President Secretary. Treasurer. 4 Vice presidents (2 for North Goa and 2 for South Goa) 4 joint Secretaries (2 for North Goa and 2 for South Goa) and 1 Jt Treasurer for the elections to be held 6MMay 2017 for electing the members of the Executive Committee of the Goa Chess Association for the term 2017 to 2021 so as to have representation from all Talukas as elected members as per the detailed proposed amendments annexed hereto as resoled by the Executive committee of the association in its meeting held on 6 November 2016 as per the clause 21 of the constitution. The Goa Chess Association executive committee shall consist of 12 elected members and 1 nominated member of each affiliated Taluka Chess Associations.”

19. On the basis of the resolution, an amendment in the MoA was incorporated and the amended Clause 13 of the MoA reads as under:-

“13. Executive Committee: The General Function of the Association shall be carried out at the discretion of the General Body of the Association by the Executive Committee consisting bi the Following: A President, Four Vice Presidents (2 for South Goa, 2 for North Goa,) A Secretary, Four Joint Secretaries (2 for South Goa, 2 for North Goa), Treasure, Joint Treasure and one delegate representing each affiliated Taluka Association duly authorized in writing and all of them shall be allowed to attend and vote for any matters in the Executive Committee of the Association.

The Co-opted Executive Committee members appointed by the Executive Committee can attend the meeting but shall not have any voting right. The one of the four elected Vice Presidents, shall be designated as Senior Vice President of the association who shall officiate and function as President in the absence of the president of the association for any meetings and functions.”

20. Rule 42 of the Rules and Regulations of the GCA relates to the election of the committee. Rule 42(I) and (II) (a)(b) reads as under:-

“42 (i) Election of members of Committee:

(a) The General Body of the association shall by a majority of votes elect the President, 4 Vice President (2 each from North Goa and South Goa), Hon. Secretary, Treasurer 4 Joint secretaries and 1 Joint Treasurer for a term of 4 years one delegate from each affiliated Taluka Association duly authorized in writing by the said Taluka Association shall be a member of the Executive Committee of the Association.

(b) The Committee shall notify the dates of filing nominations forms, scrutiny of nomination forms, withdrawal of nomination forms and date, time and place of election.

(c) The General Body of the association shall by a majority of votes elect the President, 4 Vice-Presidents (2 each from North Goa and South Goa), Hon. Secretary, Treasurer and 4 Joint Secretaries (2 each from North Goa and South Goa) and 1 Joint Treasurer for a term of 4 years) one delegate from each affiliated Taluka Associations duly authorized in writing by the said Taluka Association shall be a member of the Executive Committee of the association, &

(d) All Committee members shall hold the office for a term of 4 years in the normal course and will be eligible for re-election for any like term/terms.

(e) The Secretary and the Treasurer shall hold the same Office only for 2 terms consecutively. However they are eligible to seek any other Office other than the one they have held presently. They are eligible to contest for the same Office after a gap of 4 years.

(f) The candidate being individual member, he must be a member of the Taluka Association at least for a minimum period of six months.

(g) Any vacancy in the Executive Committee shall be filled up by the election of the particular post by the members in the General Body meeting.

(ii) Mode of Elections of Office Bearers:

(a) Filing of Nomination: Anybody who wishes to contest the election of the Executive Committee has to be a delegate from Taluka Associations with voting rights and should be proposed by a Taluka Association. Any two executive members among nine elected members of the executive members of the affiliated taluka chess associations duly authorized in writing can be nominated to contest and vote for any posts of the executive committee of the Goa Chess Association and such nomination for the post of.

Executive Committee shall be made in the Nomination Form as per Annexure A, at least 14 clear days before the election fixed in the Annual General Body Meeting.

(b) Scrutiny of Nominations

The President and Secretary shall nominate the one Presiding Officer and one deputy Presiding Officer. The Secretary along with the nominated Presiding Officer shall scrutinize the Nominations sent by the Members for the respective posts in the ensuing elections, immediately on the closure of receipt of the Nominations and finalise the list of candidates contesting in the elections for the various posts of Office Bearers and communicate the List of Candidates to all Members at least by giving 7 clear days before the date of elections."

21. The resolution emphasized on an increase in the number of representatives so that the maximum talukas can have adequate

representation. The same cannot be read to mean that twelve representatives must be from all twelve talukas.

22. The amended Clause 13 of the MoA would indicate that the general function of the association shall be carried out at the discretion of the general body of the association by the Executive Committee consisting of office bearers and one delegate representing each affiliated talukas duly authorised in writing and all of them shall be allowed to attend and vote for any of the matters in the Executive Committee of the association.

23. A careful reading of Rule 42 of the Rules and Regulations also nowhere suggests that there is any restriction on any taluka to have more than one office bearer in the Executive Committee. Rule 42 (I)(a) of the Rules and Regulations would only indicate that the general body of the association shall, by a majority of votes, elect the office bearers and one delegate from each affiliated taluka would be the nominated member authorised in writing by the said taluka association. It is thus seen that, Rule 42(I)(a) of the Rules and Regulation speaks about the constitution of the general body which includes the elected representative as well as the nominated representative.

24. The same would not be read to mean that each taluka should be ensured to have representation in the Executive Committee or that no taluka can have more than one representative as an elected member of the Executive Committee. What is required for filling up the nominations to contest the election of the Executive Committee is to have authorisation from the concerned taluka with voting rights. Two executive members amongst the elected members of the executive member of the appellate taluka chess association can be nominated to

contest and vote for any post of the Executive Committee of the GCA. Such an interpretation is reinforced by the language used in Rule 42(II)(a) of the Rules and Regulations.

25. It is thus seen that neither under the MoA nor under the applicable Rules and Regulations is there any restriction on any taluka association to have more than one representative in the Executive Committee of the GCA. A comprehensive reading of the resolution, the amended Clause 13 of the MoA and the scheme of Rule 42 of the Rules and Regulations, does not evince any restriction on the number of representatives that can contest elections from a taluka.

26. The scrutiny of the nominations is provided under Rule 42(II)(b) of the Rules and Regulations which reads as under-

(b) Scrutiny of Nominations

"The President and Secretary shall nominate the one Presiding Officer and one deputy Presiding Officer. The Secretary along with the nominated Presiding Officer shall scrutinize the Nominations sent by the Members for the respective posts in the ensuing elections, immediately on the closure of receipt of the Nominations and finalise the list of candidates contesting in the elections for the various posts of Office Bearers and communicate the List of Candidates to all Members at least by giving 7 clear days before the date of elections."

27. There is no such power vested with the PO that allows for expansion of the scope of scrutiny to the extent of interpreting the clauses of MoA and Rules and Regulations. Admittedly, there was no flaw in the nomination form submitted by respondent nos.1 to 4. There is no express ineligibility mentioned in any of the applicable schemes.

28. This court in the case of **Pondicherry Basketball Association v. Union of India**², while dealing with the justifiability of the rejection of the nomination forms has held as under-

" Section 36(4) of the RP Act requires that the RO shall not reject any nomination paper on the ground of any defect which is not of a substantial character. The defect of substantial character is not defined under the RP Act, however, generally, the same refers to significant error or omission that may disqualify a candidate from being eligible to contest the election. Substance would mean the essence, the essential quality, as opposed to its mere form. The proviso to Section 36 (5) provides that in case an objection is raised by the RO or is made by any other person, the candidates concerned may be allowed to try and rebut it not later than on the next date but the one following date fixed for the scrutiny, and the RO shall then record his decision on the date on which the proceedings have been adjourned. It is thus seen that under the provisions of the Act itself, due care has been taken to ensure that there should not be any arbitrary or illegal rejection without any substantial reason at the stage of scrutiny of the nomination form. If there is any objection raised by any person or even by the RO, the concerned candidate is allowed to rebut it with an appropriate explanation."

29. The extract of the decision of the PO in this case reads as under-

"Note No.1 As per the information provided to me, there are 12 taluka affiliated to Goa Chess Association (GCA). As per the resolution passed and amendments made in Special GB held on 8.1.2017, each taluka will get one post of GCA Executive Committee (EC) so that all talukas can have representations on GCA

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Executive Committee. As in case of 4 talukas that is Barder, Tiswadi, Ponda and Salcete Taluka chess Associations two candidates filed nomination forms for election as per final list of candidates. As only one candidates from each taluka can have post in GCA EC, the unopposed candidate of these four talukas stand elected and other candidates cannot stand for election and forms as declared invalid since not withdrawn. Resultantly, the candidates of Dharendora, Cancona and Mormugao get elected unopposed as per the above chart. The final list of candidates elected unopposed is as under:-

#	Name	Rep. Taluka Chess Association	Post	Remarks
1.	Mr. Ramchandra Parab	Barder	Joint Treasurer	Elected unopposed

2.	Mr. Satyawar Harmalkar	Bicholim	Vice President North Goa	Elected unopposed
3.	Adv. Tukaram Shetye	Pedne	Joint Secretary North Goa	Elected unopposed
4.	Mr. Kalidas Harwalkar	Sattari	Joint Secretary North Goa	Elected Unopposed
5	Mr. Arvind Mhamal	Tiswadi	Vice President North Goa	Elected Unopposed
6	Mr. Sharendra Naik	Cancona	Secretary	Elected Unopposed
7	Mr. Vinay Tendulkar	Dharbandora	President	Elected Unopposed
8	Mr. Kishor Bandekar	Mormugao	Treasurer	Elected Unopposed Refer note-1
9	Mr. Sagar Sakordekar	Ponda	Vice President South Goa	Elected unopposed
10	Mr. Sameer Naik	Quepem	Joint Secretary – South Goa	Elected unopposed
11	Mr. Damodar Zambaulkar	Salcete	Vice President – South Goa	Elected unopposed
12	Mr. Kishore Rama Gauns Dessai	Sanguem	Joint Secretary – South Goa	Elected unopposed

As all are elected unopposed, there is no requirement of voting on 22nd August 2021. The result may be declared in the Annual General Body Meeting of the GCA scheduled on 22nd August, 2022.

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(Mr. K V Mahant)
Presiding Officer

Sd/-
5.25 PM
(Mr. Subhash Shirodkar)
Deputy Presiding Officer

Date : 10.08.2021
Place : Vasco Da Gama, Goa”

30. The understanding of the PO is patently contrary to the MoA, the Rules and Regulations of the GCA and is also beyond the scope of scrutiny that is vested with the PO.

31. To appreciate the justifications for the rejection of the nominations, if for example, one of the talukas i.e., Tiswadi is taken into consideration, the same would indicate that the nomination forms of Mr. Mahesh Candolkar, who submitted his nomination for three posts i.e., President, Secretary and Treasurer were rejected on the ground that from the same taluka, one Mr. Arvind Mhamal was elected unopposed as Vice President. This court has failed to understand as to on what basis such a decision could be taken by the PO to debar eligible candidates to contest the election for a particular post.

32. In the instant case, the right to contest the election for a particular post flows from the applicable bye-laws and the same cannot be taken away by the PO on the ground that the taluka, from which a candidate proposes candidature, is already represented through a different candidate. Such an understanding, which falls foul of the mandate of the applicable rules and regulations, cannot be countenanced.

33. A finding given by the EC in its order dated 19.10.2021 reads as under:-

“10.5 A bare perusal of the above shows that two members from each Taluka can contest and vote in the elections of GCA. Therefore, the ground on which the Presiding Officer has disqualified the Complainants and rejected their nomination papers/ forms is illegal and contrary to the bye laws of GCA. Moreover, no basis of any kind whatsoever existed for the Presiding Officer to reject the nomination papers of the Complainants while allowing the other delegate from the same Taluka Chess Association to contest for some separate post of GCA.

10.6 The action of the Presiding Officer is also violative of the principles of natural justice in as much as no opportunity, reason, notice or intimation was given to the Complainants prior to the issuance of the impugned order dated 10.08.2021

11. In the light of the aforesaid findings arrived at by this Commission, the order dated 10.08.2021 passed by the Respondent No. 1 rejecting the nomination papers of the Complainants is hereby set aside. Resultantly, the Respondent Nos. 1 and 2 are directed to conduct voting for the post of office bearers of the GCA after including the names of the Complainants, within two weeks of receipt of this order.

12. A copy of this order be circulated to all concerned by the Co-ordinator AICF.

13. For the purpose of transmission of the order, it has been agreed between members of the Commission that the same may be electronically dispatched under signatures of one member, Mr. Rajat Navet. However, the original shall be circulated to all members for signatures and kept in the records of the Commission.

MR. RAJAT NAVET MEMBER

MR. SANJAI SINGH JATAV MEMBER

MR. ADITYA DEWAN MEMBER

34. The AA in its concluding paragraph has held as under:-

“From all this, it is clear that any two executive members among 9 elected members of the executive members of the affiliated Taluka Chess Associations, duly authorized in writing could be nominated to contest and vote for any posts of executive committee. There was no justification in rejecting the nominations of respondent 1- 4 therein by the presiding officer, particularly when on scrutiny their nomination papers were found valid. It is not disputed that said candidates were duly authorized/approved by their taluka association. We also agree with the findings of learned Commission holding that said action of Learned Presiding Officer was contrary to principles of natural justice. No proper opportunity was granted to said respondents 1 -4, to be heard. Their nominations were rejected and that on-the last date of withdrawal. We find no illegality in impugned judgment also.

Appeal in hands is thus, dismissed. Interim order Is vacated. Parties to bear their own costs.

Before parting, we would like to thank all of learned counsels for parties for their erudition, submissive behavior and cooperation. Advocates representing appellants, provided us all required materials, including copies of impugned orders, rules/byelaws etc. We appreciate their kindness.

At the outset of this appeal, it was pointed out that some schemes beneficial to players of chess have been hanging in limbo. We professed to decide this appeal at earliest. Even then, it took about one month for us to write judgment, after arguments were completed. We hope that AICF will implement such schemes for the benefit of Chess players, without further delay.

*Pinki
Member*

*Rajender Kumar Shastri
Member*

*Arun Kumar Arya
Member*

35. This court has carefully gone through the reasoning given by the EC and by the AA and finds that the same is strictly in accordance with the applicable MoA, Rules and Regulations, therefore, the same does not call for any interference. Accordingly, the instant petition is *sans* merit and the same is, therefore, dismissed along with pending applications.

**(PURUSHAINDRA KUMAR KAURAV)
JUDGE**

**JUNE 02, 2023
MJ**