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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-1538-CWP-2025 in/and
CWP-10439-2024 (O&M)
Date of Decision: 28.02.2025

Ram Bharose

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sanjiv Kumar Aggarwal, Advocate
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Kshitij Bharati, Advocate
for respondent No.6.

HARSH BUNGER, J. (Oral)

CM-1538-CWP-2025

This is an application filed under Section 151 of the Code of Civil Procedure seeking preponement of date of hearing (03.04.2025) fixed in the main petition being CWP-10439-2024 to some early date.

For the reasons mentioned in the application, the same is allowed and the main case (CWP-10439-2024), which is otherwise fixed for 03.04.2025 is preponed and is taken on board today itself for hearing.

Application is accordingly disposed of.

CWP-10439-2024 (O&M)

Petitioner (Ram Bharose) has filed the instant Writ Petition



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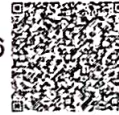
under Articles 226/227 of the Constitution of India *inter alia* seeking issuance of a writ in the nature of Certiorari for setting aside order dated 08.04.2024 (Annexure P-8), passed by respondent No.6-State Election Commissioner, Haryana, whereby the petitioner has been removed from the post of Member, Ward No.14, Municipal Committee, Safidon, District Jind.

2. Briefly, the elections of various Municipal Councils/Committees were held in the State of Haryana on 19.06.2022, wherein the results were declared on 22.06.2022. The present petitioner contested for the post of Member / Councilor, Ward No.14, Municipal Council, Safidon, District Jind and was declared elected therein.

2.1 On 30.09.2022, a complaint was submitted by one Sh. Ajit Kumar s/o Sh. Balwan Singh, wherein he *inter alia* alleged that the petitioner at the time of the aforesaid elections submitted a forged Scheduled Caste Certificate and accordingly demanded cancellation of his membership and other legal action against the petitioner.

2.2 Upon receipt of the aforesaid complaint by the State Election Commissioner, Haryana on 03.10.2022, the same was forwarded to the Deputy Commissioner, Jind vide a letter dated 10.10.2022 for taking necessary action. Another similar complaint submitted by Sh. Ajit Kumar was also forwarded to the Deputy Commissioner, Jind vide letter dated 06.12.2022 with the request that the matter be got enquired through Additional Deputy Commissioner, Jind or some senior officer and enquiry report be sent to the State Election Commissioner, Haryana.

2.3 It transpires that the petitioner preferred a Civil Suit No.63/2023, titled as "*Ram Bharose vs. State of Haryana and others*" in respect of his caste certificate.



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2.4 In the meanwhile, the Scheduled Caste Certificate of the petitioner was cancelled by the Naib Tehsildar, Safidon vide his letter/order dated 24.11.2023 (Annexure P-3). The relevant extract of which reads as under:

"It is clear from the report of the proceedings and the statements of all the departments and the persons joined in this proceeding that the Dhanak caste certificate No. 361/S.C. dated 14.06.2007 of Sh. Ram Bharose son of Sh. Debu Dass has been wrongly issued on the basis of the report of the then Councillor.

Consultation in this matter was done by the Tehsil Office, Safidon with Assistant District Attorney, D.C. Office, Jind vide letter No. 964/T.R.A. dated 08.09.2023, in reply to which the Assistant District Attorney, D.C. Office, Jind suggested to take decision on the basis of own discretion vide letter No. 1004/A.D.A. dated 26.09.2023.

I, Rashvendra Singh, Additional Naib Tehsildar, Safidon cancel the caste certificate No. 361/S.C. dated 14.06.2007 today on 28.11.2023 with immediate effect. Alongwith it, I direct Sh. Ram Bharose that he must submit the caste certificate No. 361/S.C. dated 14.06.2007 in the Tehsil Office, Safidon on or before 28.11.2023. Sh. Ram Bharose must not use the caste certificate No. 361/S.C. dated 14.06.2007 for any work, otherwise legal action would be initiated against you as per rules. This order shall remain effective until the order of the Hon'ble Court.

Sd/- Naib Tehsildar, Safidon

P.No. 1361-1363/T.R.A.

Dated: 24.11.2023"

2.5 It is noticeable that the above referred Civil Suit No. 63/2023 filed by the petitioner was withdrawn and thereafter the petitioner has challenged the aforesaid letter/order dated 24.11.2023 (Annexure P-3) by filing a fresh Civil Suit, however, it has been conceded that till date no stay



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has been granted therein in favour of the petitioner.

2.6 It further transpires that an enquiry was conducted by the Sub Divisional Officer (C), Safidon, which was approved by the Deputy Commissioner, Jind. The relevant extract of the enquiry report dated 28.02.2024, submitted by the Sub Divisional Officer, Safidon reads as under:

"Conclusion:- The undersigned has thoroughly analyzed the inquiry report by the Secretary, Municipal Council, Safidon. It was found upon analyzing the report by Secretary, Municipal Council, Safidon that as per the report by the Secretary, Municipal Council, Safidon, the Scheduled Caste Certificate no. 361/S.C. dated 14.06.2007 of Dhanak caste belonging to Sh. Ram Bharose, Councilor, Ward No. 14, Safidon has been cancelled by Sh. Rashvendra Singh Duhan, Naib Tehsildar, Safidon on 24.11.2023."

2.7 Thereafter, a show cause notice dated 14.03.2024 was issued to the petitioner by the State Election Commissioner, Haryana. In response to the aforesaid show cause notice, the petitioner submitted his reply dated 30.03.2024. Thereafter, a personal hearing was afforded to the petitioner by the Haryana State Election Commissioner on 08.04.2024, wherein he explained that he is a permanent resident of Bihar and belongs to 'Tanti' Caste. He stated that the main profession of 'Tanti' Caste in Bihar is of stitching clothes and the persons belonging to 'Dhanak' Caste in the State of Haryana also do the work of stitching clothes (Jullahe). Therefore, on that basis he had got made the Scheduled Caste Certificate relating to 'Dhanak' Caste.

2.8 The State Election Commissioner, Haryana upon consideration of the matter, passed an order dated 08.04.2024, whereby the petitioner was removed from the post of Member (Ward No.14), Municipal Council, Safidon, District Jind, by observing as under:



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"12. Upon analyzing the enquiry report forwarded by the Sub Divisional Officer (C), Safidon to the Deputy Commissioner, Jind, all the facts/record and the reply produced by Sh. Ram Bharose with respect to the show cause notice as well as the documents produced during the personal hearing, it has been found that Sh. Ram Bharose is related to 'Tanti Caste' in Bihar, which is not included in the list of Scheduled Castes in the State of Haryana. Tanti Caste and Dhanak Caste are different castes. Therefore, he had gotten issued the Scheduled Caste Certificate relating to Dhanak Caste on the basis of wrong facts, which has already been cancelled later on by the concerned officer upon complaint.

13. Upon analysis of the report of Enquiry Officer, the cancellation of Dhanak Caste Certificate No. 361/S.C. dated 14.06.2007 of Sh. Ram Bharose, Councilor, Ward No. 14, Safidon on 24.11.2023 by Sh. Rashvendra Singh Duhan, Naib Tehsildar, Safidon and the Scheduled Caste Certificate No. 361/S.C. dated 14.06.2007 of Dhanak Caste produced by Sh. Ram Bharose alongwith his nomination form, which was issued by Naib Tehsildar, Safidon, has been found to be incorrect. I have reached this conclusion that the Scheduled Caste Certificate which was attached by Sh. Ram Bharose at the time of filing his nomination form for contesting the election for member of Ward No. 14 of Municipal Council, Safidon (which was reserved for Scheduled Caste), that was got issued on the basis of wrong facts. Now it has been cancelled.

14. Keeping in mind the abovementioned facts in the matter, I, Dhanpat Singh, State Election Commissioner, Haryana, exercising the powers vested under Article 243K and 243ZA of the Constitution of India and Section 13A and 131 of the Haryana Municipal Act, 1973, declare that Sh. Ram Bharose had contested this election from Ward No. 14 of Municipal Council, Safidon, District Jind on the post reserved for the post of Scheduled Caste on the basis of getting issued the Scheduled Caste Certificate relating to Dhanak Caste on the basis of



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wrong facts. But, after the enquiry, his Scheduled Caste Certificate has been cancelled. He was declared ineligible at the time of his election for the post of Member and therefore, he is removed from the post of Member, Ward No. 14, Municipal Council, Safidon, District Jind and the said post is declared to be vacant from immediate effect.

15. This order be notified in the official gazette of the State Government and also be provided to all the concerned.

Dated: 08.04.2024

Dhanpat Singh.

Place: Panchkula

*State Election Commissioner,
Haryana"*

3. In the aforementioned circumstances, the petitioner has filed the instant writ petition before this Court.

4. The primary argument raised by the counsel for the petitioner is that the petitioner belongs to 'Tanti' Community of Bihar, which has been declared Scheduled Caste by the Government of Bihar vide notification No.723, dated 02.07.2015. It is stated that 'Tanti' Community is basically indulged in making and weaving of clothes and are locally called as *Bunkar* (weavers), which is also the work of 'Dhanak' Community in the State of Haryana, which has been declared Scheduled Caste by the Government of Haryana. It is submitted that the petitioner was issued a valid Scheduled Caste Certificate dated 14.06.2007 under 'Dhanak' Caste by the Government of Haryana after conducting due enquiry and verification. Accordingly, it is submitted that the 'Tanti' Community of Bihar is a Scheduled Caste Community and the same is equivalent to 'Dhanak' Community of Haryana State. Therefore, the State Election Commissioner has erred in law and fact in passing the impugned order dated 08.04.2024 (Annexure P-8) and removing the petitioner from the post of Member (Ward No.14), Municipal Council, Safidon, District Jind.



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5. On the other hand, learned counsel for the respondents have opposed the submissions made on behalf of the petitioner by submitting that the petitioner does not belong to 'Dhanak' Community and the Scheduled Caste Certificate was got prepared by him on the basis of some report prepared by the then Councilor. It is submitted that the aforesaid Scheduled Caste Certificate issued to the petitioner already stands cancelled by the Naib Tehsildar, Safidon vide his letter/order dated 24.11.2023 (Annexure P-3). It is next submitted that although the petitioner has challenged the aforesaid letter/order dated 24.11.2023 (Annexure P-3) cancelling the Scheduled Caste Certificate of the petitioner by filing a Civil Suit, however, no stay has been granted in his favour and as on date there is no document indicating that the petitioner belongs to the Scheduled Caste Community within the State of Haryana.

6. It is further submitted that recently the Hon'ble Supreme Court of India in the case of *"Dr. Bhim Rao Ambedkar Vichar Manch Bihar, Patna vs. The State of Bihar and others (Civil Appeal No.18802 of 2017, decided on 15.07.2024)"* has clarified that the persons belonging to 'Tanti-Tantwa' Community belong to the original category of extremely backward classes and not the Scheduled Caste category. Accordingly, prayer for dismissal of the instant writ petition has been made.

7. I have heard learned counsel for the respective parties and have perused the paper book with their able assistance.

8. The issue for consideration before this Court is as to whether the 'Tanti' Community (which is a Backward Class Community in the State of Bihar) can be considered equivalent to 'Dhanak' Community of State of Haryana (which is recognised as a Scheduled Caste in the State of Haryana),



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merely on the basis that the primary profession of the persons belonging to the 'Tanti' Community and those of 'Dhanak' Community, is of making / weaving clothes.

9. Before touching the aforesaid issue, it would be apposite to note that in Part XVI of the Constitution of India, special provisions relating to certain classes including Scheduled Castes and Scheduled Tribes have been made, which includes Article 341 and 342 of the Constitution, which reads as follows :-

"341. Scheduled Castes :- (1) The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or group within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or groups, within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

"342. Scheduled Tribes :- (1) The President may with respect to any State or Union Territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification



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issued under the said clause shall not be varied by any subsequent notification."

9.1 On a plain reading of clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which it is specified.

10. The aforesaid provisions contained in Article 341 and 342 of the constitution have been interpreted by Hon'ble Apex Court and some of the important judicial pronouncements in that regards are noticed hereinafter.

10.1. The Hon'ble Apex Court in "*Marri Chandra Shekhar Rao vs. Dean, Seth G.S. Medical College and others (1990) 3 SCC 130*" has observed as under:

"13. It is trite knowledge that the statutory and constitutional provisions should be interpreted broadly and harmoniously. It is trite saying that where there is conflict between two provisions, these should be so interpreted as to give effect to both. Nothing is surplus in a Constitution and no part should be made nugatory. This is well settled. See the observations of this Court in Venkataramana Devaru v. State of Mysore AIR 1958 SC 255, where Venkatarama Aiyer, J. reiterated that the rule of



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construction is well settled and where there are in an enactment two provisions which cannot be reconciled with each other, these should be so interpreted that, if possible, effect could be given to both. It, however, appears to us that the expression 'for the purposes of this Constitution' in Article 341 as well as in Article 342 do imply that the Scheduled Caste and the Scheduled Tribes so specified would be entitled to enjoy all the constitutional rights that are enjoyable by all the citizens as such. Constitutional right, e.g., it has been argued that right to migration or right to move from one part to another is a right given to all- to Scheduled Castes or Tribes and to nonscheduled castes or tribes. But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words "for the purposes of this Constitution" must be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled



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Caste so designated must have right under Articles 14, 19(1) (d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and 342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution."

10.2 Further the Hon'ble Apex Court in "**Action Committee on issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra and another vs. Union of India** reported in (1994), 5 SCC 244" has observed as under:

"16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of



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Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr. Jaipal Singh, Dr Ambedkar answered as under:

"He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present



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Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them...."

"Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin."

10.3 Relying upon the above mentioned judgments of the Hon'ble Supreme Court, the Division Bench of Hon'ble Madhya Pradesh High Court in *"Seema Devi vs. Union of India, 2024 ILR MP 448"* has observed as under:

"Aforesaid view has been followed by Apex Court in Ranjana Kumari v. State of Uttarakhand & Ors. (2019) 15 SCC 664 and Bhadaram v. Jassa Ram & Ors. (2022) 4 SCC 259.

6. From the aforesaid, it is lucid that a person, who migrates from one State to the other does not carry his caste status to the migrating State, even if the same caste is recognized as OBC in both States. The reason is not far to see. There may be caste or sub caste of same name, which are recognized in more than one States in India. However, merely because the caste known by a particular name is recognized in more than one States cannot extend the benefit of reservation in both the States. The recognition of a caste in a particular State as OBC is directly relatable to social, economic and educational backwardness faced by that caste in the home State. This geographical, social and educational backwardness existing in the home State cannot necessarily be the same in the other State.

6.1 Thus, it is not the similarity of name of a particular caste



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in two or more States, which is the deciding factor but it is the social, economic and educational backwardness of that particular caste in a particular State, which recognizes that caste to be a scheduled caste/OBC. The social, economic and educational backwardness are factors, which are never identical or even similar in two different States."

11. From the above referred judgments, the following can be deduced:

- (i) Considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/ Scheduled Tribes or Backward Classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non-existent in another State.
- (ii) Similarity of name of a particular caste in two or more States, is not the deciding factor but it is the social, economic and educational backwardness of that particular caste in a particular State, which recognizes that caste to be a Scheduled Caste/ OBC.
- (iii) Merely because a given caste is specified in State "A" as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State, the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of the Constitution".
- (iv) Merely because the caste known by a particular name is recognized in more than one States cannot extend the benefit of



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reservation in both the States.

(v) A person, who migrates from one State to the other, does not carry his caste status to the migrating State, even if the same caste is recognized as Scheduled Caste/ Scheduled Tribe/ OBC in both the States.

12. When the case in hand is seen in the light of what has been referred above, it leaves no manner of doubt that mere similarity of profession of a particular community in State "A" as that of another community of State "B", which may be recognized as a "scheduled caste" in such State "B", cannot form basis for a person of such community of State "A" to claim status of scheduled caste in State "B".

12.1 Therefore, the petitioner (who belongs to 'Tanti' Community of State of Bihar) cannot be considered as belonging to 'Dhanak' Community of State of Haryana (which is recognised as "Scheduled Caste" in Haryana) merely on the basis that profession of "tanti" Community in State of Bihar and that of "Dhanak" Community in the State of Haryana is the same i.e. of weaving clothes.

13. Further, the Scheduled Caste Certificate issued to the petitioner already stands cancelled. Since the petitioner does not belong to the Scheduled Caste Community in State of Haryana, accordingly, he has no right to hold the position of Member (Ward No.14), Municipal Council, Safidon, District Jind, which was specifically reserved for the 'Scheduled Castes'.

14. Considering the totality of circumstances, I find no illegality or perversity in the order dated 08.04.2024 (Annexure P-8), passed by the State Election Commissioner, Haryana, whereby the petitioner has been removed



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from the post of Member (Ward No.14), Municipal Council, Safidon,
District Jind. Resultantly, the instant writ petition fails and the same is
accordingly dismissed.

15. All pending application(s), if any, shall also stand closed.

28.02.2025

Himani

**(HARSH BUNGER)
JUDGE**

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No