



2026 INSC 699

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(s). 8142 OF 2018**

**MANOJ GOYAL**

**.....APPELLANT(s)**

**Versus**

**RAJASTHAN HIGH COURT & ORS. ....RESPONDENT(s)**

**J U D G M E N T**

**PRASANNA B. VARALE J.**

1. This civil appeal, arising out of Special Leave Petition (Civil) No. 19357 of 2018, is directed against the final judgment and order dated 08.02.2018 passed by the Division Bench of the High Court of Judicature for Rajasthan at Jaipur in D.B. Civil Writ Petition No. 2302 of 2015.

2. The High Court chose not to intervene in the selection and appointment process. It ruled that the appellant's challenge to the validity of Rule 41 of the Rajasthan Judicial Service Rules, 2010, had

become purely academic following later legislative amendments, and it declined to disrupt the appointments that were already finalized.

**3.** At the centre of the present *lis* lies the seminal question regarding the validity and constitutional vires of Rule 41 of the Rajasthan Judicial Service Rules, 2010. Specifically, the challenge is directed against the proviso inserted vide the amendment notification dated 10.06.2011, which mandated a minimum qualifying benchmark of 25% marks in the viva-voce (interview) for candidates aspiring to be appointed to the District Judge cadre.

## **BRIEF FACTS**

**4.** The factual matrix that serves as the bedrock of the present appellate proceedings is rooted in the recruitment process for the Higher Judicial Service in the State of Rajasthan, specifically pertaining to the appointment of Additional District Judges from the advocates' quota. The appellant herein, an aspiring candidate for the judicial service, has invoked the extraordinary appellate jurisdiction of this Court to assail the impugned final judgment and order dated 08.02.2018 passed by the Division Bench of the High Court of Judicature for Rajasthan at Jaipur in D.B. Civil Writ Petition No. 2302 of 2015.

5. To appropriately appreciate the contours of this dispute, it is necessary to traverse through the background of the recruitment process for judicial officers. On 21.03.1996, the Government of India, pursuant to the directions of this Court, constituted the First National Judicial Pay Commission, widely known as the Shetty Commission, under the Chairmanship of Hon'ble Justice K.J. Shetty. The mandate of the Commission comprehensively encompassed examining the conditions of service, age, and method of recruitment of judicial officers. Submitting its detailed report, the Shetty Commission noted that it had received innumerable complaints that the selection of candidates based solely on a viva-voce examination had often led to arbitrariness, whimsy, and unjust selections. To instill transparency and objectivity, the Commission recommended a uniform procedure consisting of a written examination carrying 200 marks, followed by a viva-voce test carrying 50 marks. Crucially, the Commission explicitly and emphatically recommended that there shall be no cut-off marks in the viva-voce test, and the merit list ought to be prepared strictly on the basis of the aggregate marks obtained in both the written examination and the viva-voce. This Court, in its authoritative and binding pronouncement in ***All India Judges Association vs. Union of India***<sup>1</sup>,

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<sup>1</sup> (2002) 4 SCC 247

accepted these recommendations, directing all States and High Courts to implement them and frame appropriate service rules accordingly.

**6.** In faithful consonance with this Court's mandate, the State of Rajasthan promulgated the Rajasthan Judicial Service Rules, 2010. Pursuant to the Shetty Commission's recommendations, Rule 41 of the original 2010 Rules did not prescribe any minimum qualifying marks for the viva-voce examination. Subsequently, on 15.04.2010, an advertisement was issued notifying 36 vacancies for the post of Additional District Judge under the advocates' quota. Written examinations were conducted and results were declared. However, owing to widespread agitation and allegations of anomalies, the Rajasthan High Court, acting on its administrative side, cancelled the entire recruitment process on 22.09.2010, resolving to hold the examinations afresh.

**7.** A pivotal juncture in this litigation arose thereafter when, on 10.06.2011, the State of Rajasthan amended Rule 41 and Schedule IX of the 2010 Rules. Through this mid-stream amendment, a controversial proviso was inserted into Rule 41, mandating that no candidate shall be recommended for appointment who fails to obtain a minimum of 25% marks in the interview. Consequently, a fresh advertisement was issued on 19.07.2011 for 39 vacancies. The appellant, harbouring legitimate aspirations for judicial service, participated in this renewed selection process. The written

examinations were held in May 2012, and the appellant secured 161 marks out of 250 (i.e., 64.4%), and was thus declared successful and eligible for the interview round.

**8.** However, when the final results were published on 25.05.2013, the appellant was utterly dismayed to find his name excluded from the final list of selected candidates recommended for appointment. The appellant had secured an aggregate of 168 marks—placing him at the 11<sup>th</sup> rank purely on aggregate merit out of 39 total vacancies but he was awarded 7 marks out of 30 in the viva-voce. Since the amended rules necessitated a minimum of 25% marks in the interview, which mathematically translates to 7.5 marks out of 30, the appellant fell short of the threshold by a mere 0.50 marks. Consequently, despite outperforming several selected candidates in the aggregate score (including respondents who secured aggregate marks of 158.5 and 144 respectively), the appellant was disqualified from appointment solely due to the viva-voce cut-off.

**9.** Aggrieved by this disqualification and the perceived arbitrariness of the rule, the appellant, along with similarly situated individuals, initially approached this Court under Article 32 of the Constitution by filing Writ Petition (Civil) No. 595 of 2013, assailing the vires of the amended Rule 41 and the select list. On 13.10.2014, a coordinate Bench of this Court dismissed the writ petition insofar as it challenged the select list and the consequent appointment orders, but specifically

kept the petition pending with respect to the challenge to the vires of Rule 41 and Schedule IX. Subsequently, the matter was placed before a larger Bench of this Court. Recognizing jurisdictional propriety, this Court, vide order dated 03.12.2014, allowed the appellant to withdraw the Article 32 petition with liberty to approach the High Court. Crucially, this Court expressly directed that “All contentions of the parties are kept open to be agitated before the High Court”.

**10.** Armed with this explicit liberty, the appellant instituted D.B. Civil Writ Petition No. 2302 of 2015 before the High Court of Judicature for Rajasthan. He prayed for a declaration that the amendment introducing the cut-off marks in the viva-voce was unconstitutional, ultra vires, and contrary to the binding dictum of this Court in the ***All India Judges Association (supra)*** case, further seeking a mandamus for his appointment based on his aggregate marks. Interestingly, during the pendency of this writ petition before the High Court, the State of Rajasthan once again amended the Judicial Service Rules on 28.11.2017, completely deleting the contentious proviso that had mandated a minimum of 25% marks in the interview. (Emphasis supplied)

**11.** Taking cognizance of this subsequent 2017 amendment, the Division Bench of the High Court, vide the impugned judgment dated 08.02.2018, summarily dismissed the appellant’s writ petition. The High Court reasoned that since the offending proviso had already been

deleted, adjudicating upon the vires of the amended Rule 41 had become a mere academic exercise. Furthermore, the High Court construed the earlier interim order of this Court dated 13.10.2014 as a final and binding dismissal of the appellant's challenge to the appointments, holding that the subsequent withdrawal order dated 03.12.2014 did not resurrect the challenge against the selected candidates. The High Court also noted that the appellant, having participated in the selection process with his eyes open to the amended rules, was estopped from challenging the same upon being declared unsuccessful. The present appeal has been preferred against this dismissal, raising profound questions regarding the sanctity of Supreme Court directives, the retrospective effect of rules, and the boundaries of administrative discretion in judicial appointments.

## **CONTENTIONS ON BEHALF OF THE APPELLANT**

**12.** The learned counsel appearing on behalf of the appellant vehemently argued the following contentions before this Court:

**12.1** It was vehemently contended that the High Court committed a grave error in law by relying on the earlier order dated 13.10.2014. The appellant submitted that vide the subsequent order dated 03.12.2014, this Court had permitted the withdrawal of the petition with liberty to approach the High Court, explicitly keeping "all contentions open". Relying on the settled legal principles

enunciated in **Messer Holdings Ltd. vs. Shyam Madanmohanruia & Ors.**<sup>2</sup>, and **St. John's School vs. Asha Bhan**<sup>3</sup>, the appellant argued that upon withdrawal of a petition, all orders passed during its pendency automatically lapse and lose legal efficacy, relegating the parties to the exact position they occupied before the petition was filed.

**12.2** The appellant argued that the High Court abdicated its constitutional duty by labelling the challenge to the vires of Rule 41 as an “academic exercise” due to the 2017 amendment. It was submitted that an unconstitutional act is not the law, and if the 2011 amendment is struck down, it remains *void ab initio* and stillborn, as held in **Behram Khurshid Pesikaka vs. State of Bombay**<sup>4</sup> and **Mahendra Lal Jaini vs. State of U.P.**<sup>5</sup> Declaring the rule ultra vires would directly validate the appellant’s right to appointment based on his 11<sup>th</sup> rank in the aggregate score.

**12.3** The appellant contended that the introduction of a minimum cut-off in the viva-voce is in direct conflict of the Shetty Commission Report, which was accorded the sanction of this Court in **All India Judges Association case (supra)**. This settled position was further reaffirmed in **Hemani Malhotra vs. High Court of Delhi**<sup>6</sup>,

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<sup>2</sup> (2016) 11 SCC 484

<sup>3</sup> 2012 SCC OnLine Del 3769

<sup>4</sup> (1954) 1 SCC 240

<sup>5</sup> 1962 SCC OnLine SC 55

<sup>6</sup> (2008) 7 SCC 11

and ***Ramesh Kumar vs. Delhi High Court***<sup>7</sup>, which held that there should be no cut-off marks in the viva-voce test.

**12.4** It was argued that the rule-making authority cannot use its legislative power to override a final judicial pronouncement. Citing ***State of Tamil Nadu vs. K. Shyam Sunder***<sup>8</sup>, the appellant maintained that enacting a provision that in substance overrules a binding judgment of the Supreme Court amounts to encroaching upon judicial power, and is thus ultra vires the Constitution.

**12.5** The appellant emphasized that the 36 vacancies were initially advertised in 2010 when the unamended rules (prescribing no cut-off) were in force. Applying the 2011 amendment retrospectively to these vacancies impaired the vested rights of the candidates. Relying on ***P. Mahendran vs. State of Karnataka***<sup>9</sup> and ***State of Rajasthan vs. R. Dayal***<sup>10</sup>, it was submitted that vacancies must be governed by the rules prevalent at the time they occurred, and amendments cannot be applied retrospectively unless expressly stated.

**12.6** The learned counsel for the appellant by way of an interim prayer also submitted that the appellant in the meantime be appointed as Additional District Judge. The learned counsel invited our

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<sup>7</sup> (2010) 3 SCC 104

<sup>8</sup> (2011) 8 SCC 737

<sup>9</sup> (1990) 1 SCC 411

<sup>10</sup> (1997) 10 SCC 419

attention to Prayer clause B, made in the petition which reads as under:

*“Direct the respondents herein to appoint the petitioner on the basis of aggregate marks with all consequential benefits and seniority in their service from the date of the announcement of the results for the selection of Additional District Judges.”*

**12.7** Finally, it was contended that Rule 41 is wholly arbitrary and violative of Article 14. It permits an absurd outcome where a highly meritorious candidate (scoring 168 aggregate) is disqualified, while a candidate with a significantly lower aggregate score (like 144) is appointed merely by securing the cut-off marks in the interview. Citing ***P.K. Ram Chandra Iyer vs. Union of India***<sup>11</sup>, the appellant argued that such a mechanism makes the subjective viva-voce the sole determining factor, rendering the objective written examination nugatory.

## **CONTENTIONS ON BEHALF OF THE RESPONDENT**

**13. *Per contra***, the learned counsel appearing on behalf of the respondents robustly defended the impugned judgment and the selection process, advancing the following counter-contentions:

**13.1** The respondents primarily contended that the appellant, having participated in the written examination and the interview process under the amended 2011 Rules with open eyes and without any

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<sup>11</sup> 1984 (2) SCC 141

demur, is barred by the principle of estoppel. Once a candidate accepts the terms of the advertisement and takes a calculated chance in the selection process, he cannot be permitted to turn around and assail the rules upon finding his name missing from the successful list.

**13.2** The respondents supported the High Court's view that the challenge to the 25% cut-off had indeed become academic. The offending proviso in Rule 41, which prescribed the minimum marks in the interview, was expressly deleted by a subsequent amendment on 28.11.2017. Thus, the statutory requirement of a minimum cut-off no longer existed on the statute books, making any judicial declaration on its vires unnecessary.

**13.3** It was strongly urged that the coordinate Bench of this Court, vide its order dated 13.10.2014, had explicitly declined to examine the challenge made to the select list dated 25.05.2013 and the consequent appointment orders. The respondents argued that the subsequent withdrawal order dated 03.12.2014 only left open the challenge to the interpretation of Rule 41, and did not resurrect the challenge to the finalized appointments which had attained finality.

**13.4** The respondents contended that the recommendations of the Shetty Commission regarding the absence of a viva-voce cut-off were not rigid statutory mandates. Relying heavily on this Court's

decision in ***Mahinder Kumar vs. High Court of Madhya Pradesh***<sup>12</sup>, it was argued that the Shetty Commission's report can at best be stated to be guidelines. Once statutory rules are framed by the competent authority, the selection must strictly follow those rules.

**13.5** It was submitted that the High Court, as the competent recruiting authority, possesses the absolute liberty and authority to specify minimum benchmarks to maintain the efficiency of the service. Citing ***Ramesh Kumar vs. High Court of Delhi (supra)*** and ***Mehmood Alam Tariq vs. State of Rajasthan***<sup>13</sup>, the respondents argued that unless expressly barred by a prevailing statute, the recruiting authority can prescribe minimum qualifying marks for the interview to adjudge suitability.

**13.6** Finally, the respondents defended the necessity of the interview cut-off, arguing that for a high judicial office such as an Additional District Judge, the interview is the best mode of assessing a candidate's overall suitability. While a written test assesses academic knowledge, the viva-voce discloses essential intellectual and personal qualities such as alertness, resourcefulness, capacity for discussion, and leadership traits, making a minimum benchmark in the interview entirely rational and justified.

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<sup>12</sup> (2013) 11 SCC 87

<sup>13</sup> (1988) 3 SCC 241

## **ANALYSIS**

**14.** We have given our thorough consideration to the arguments advanced at the Bar and the material on record.

**15.** The Hon'ble Rajasthan High Court vide its final order and judgment dated 08.02.2008 in DB Civil Writ Petition bearing No. 2302 of 2015 disposed of the petition and held as under:

*7. "Before proceeding with the matter, it will not be out of place to mention that the order of Supreme Court dated 13.10.2017 is very clear. Second order is very clear the petition qua setting aside appointment and consideration of petitioners' case seeking relief to the petitioner was declined.*

*8. The contention that it was interim order in our considered opinion is mis-conceived in as much as SLP was dismissed and it was pending only for the interpretation of Rule 41. In that view of matter, the interpretation of order of Supreme Court canvassed by counsel for the petitioner. It will not be open for the petitioners to contend that withdrawal of petitions allow them to raise all contentions in these petitioners since the contention which was pending in SLP was interpretation of Rule 41.*

*9. In that view of matter, even if we accept the contention of dismissal of interim order, it is a final order only permission granted was challenge of Rule 41. In our considered opinion, in view of subsequent developments we are not deciding the legality of Rule 41. However, it is made clear that that same issue is pending before the Supreme Court, the same shall be subject to Supreme Court decision."*

*Emphasis supplied.*

**16.** We are entirely unable to find merit in the appellant's case. The order dated 13.10.2014 was not a mere interlocutory administrative directive but it was a conscious, substantive judicial determination by this Court declining to interfere with the finalized appointments. The subsequent withdrawal permitted on 03.12.2014 pertained exclusively to the surviving portion of the writ petition-the academic challenge to the vires of Rule 41. The doctrine of withdrawal cannot be weaponized to magically erase a final substantive dismissal of a specific prayer. The High Court was perfectly justified in holding that the challenge to the appointments had attained finality and could not be resurrected.

**17.** Turning to the substantive legal challenge, the appellant argues that the introduction of a minimum cut-off in the interview violates the recommendations of the Shetty Commission, which were approved by this Court. However, this argument fundamentally misconstrues the nature of the Commission's report and the autonomy of the recruiting authority. As rightly cited and forcefully argued by the learned counsel for the respondents, this Court in ***Mahinder Kumar vs. High Court of Madhya Pradesh***<sup>14</sup>, definitively clarified the legal status of these recommendations. In *Mahinder Kumar*, this Court categorically observed that the prescriptions contained in paragraph 10.97 of the

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<sup>14</sup> (2013) 11 SCC 87

Shetty Commission Report “can at best be stated to be a guideline, which any High Court should keep in mind, while resorting to selection for filling up the posts in the higher judicial service”. Once the competent authority, in its wisdom and legislative competence, frames statutory rules governing the recruitment, the selection must be strictly tethered to those rules.

**18.** Furthermore, the respondents correctly place reliance on ***Syed T.A. Naqshbandi vs. State of J&K***<sup>15</sup>, wherein this Court held that conditions of service are governed by statutory rules, and it is entirely futile to claim that existing statutory rules must yield to overarching policy guidelines until they are formally amended in a manner known to law. This principle was cemented in ***Malik Mazhar Sultan vs. UP Public Services Commission***<sup>16</sup>, reiterating that selections must be conducted in strict accordance with the existing statutory rules.

**19.** The rationale behind prescribing a minimum benchmark for the viva-voce is neither arbitrary nor whimsical but it is rooted in profound administrative necessity. We must remember that the recruitment in question is for the post of Additional District Judge which is a highly reputed and solemn judicial office. As highlighted by the respondents,

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<sup>15</sup> (2003) 9 SCC 592

<sup>16</sup> (2008) 17 SCC 703

relying on ***Mehmood Alam Tariq vs. State of Rajasthan***<sup>17</sup>, both the written examination

and the interview are absolutely essential to the selection process. While a written examination objectively tests a candidate's academic legal knowledge, it is the viva-voce that brings out the essential intellectual and personal qualities required of a judge such as alertness, resourcefulness, dependability, capacity for discussion, and the ability to take decisive action. To suggest that a candidate who fails to demonstrate these minimum essential traits in an interview must nonetheless be appointed merely because of a high aggregate score would severely compromise the calibre of the higher judiciary. The 25% cut-off was a rational, considered benchmark prescribed to preserve the integrity and quality of judicial administration.

**20.** Moreover, the appellant's entire claim is barred by the doctrine of estoppel. It is a well-settled proposition of service jurisprudence that a candidate who participates in a selection process with full knowledge of the prevailing rules, takes a calculated chance, and appears for the interview, cannot be permitted to turn around and assail the rules upon finding his name absent from the successful list. The appellant participated in the written examination and the interview under the

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<sup>17</sup> (1988) 3 SCC 241

amended 2011 Rules with his eyes wide open. Having failed to secure the qualifying marks, he cannot now approbate and reprobate.

**21.** The Supreme Court in ***Om Prakash Shukla vs. Akhilesh Kumar Shukla and Ors.***<sup>18</sup> has held that the person having appeared in the examination and having failed to qualify cannot subsequently turn around and question the same. Para 24 of the said judgment reads as follows:

*“Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination.”*

**22.** In ***Madan Lal and Others vs. State of J & K and Ors***<sup>19</sup>, the Supreme Court in para 10 relying upon the decision in the case of ***Om Prakash Shukla (supra)*** has held as under:

*“10. Therefore, 'the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful.....”*

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<sup>18</sup> (1986) Supp SCC 285

<sup>19</sup> (1995) 3 SCC 486

**23.** In *Dhananjay Malik and Others Vs. State of Uttaranchal and Ors.*<sup>20</sup> the Supreme Court has relied upon its earlier decision in the case of *Madan Lal (supra)* has held in paragraphs 7 as under:

*“7.....Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.”*

### **THE IMPOSSIBILITY OF RELIEF AND THE AVOIDANCE OF A PANDORA’S BOX**

**24.** We must emphasise the aspect of the practical difficulties and the prejudice being caused to the respondent so as to grant any relief to the appellant particularly on the backdrop of the rules which was under challenge no more exists on the Rule book. The recruitment process for the 2011 advertisement was finalized, and the selected candidates were appointed and posted as Additional District Judges as far back as July 2013. These judicial officers have been discharging their solemn duties for over a decade. To appoint the appellant today, based on his aggregate marks, and to grant him retrospective seniority and consequential benefits, would violently disrupt the established seniority matrix of the entire judicial cadre. It would allow the appellant to jump ahead of dozens of currently serving judges who have earned their

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<sup>20</sup> (2008) 4 SCC 171

seniority through years of actual judicial service. Such an outcome would be profoundly unjust to the State Government and the Rajasthan High Court, who conducted the entire recruitment process transparently and in strict adherence to the statutory rules validly in force at that time.

**25.** It is also highly unjust to re-announce the result of a decade-old selection process. Modifying the final select list today would inherently threaten the vested rights of the candidates who were successfully appointed (including Respondents 4 and 5).

**26.** Most crucially, granting relief to the appellant would be manifestly unfair to similarly placed candidates. The appellant was not the only candidate who might have secured high aggregate marks but failed to meet the 25% interview cut-off. There are undoubtedly numerous other candidates across the State who accepted their disqualification under the rules and moved on with their lives. If this Court were to suddenly declare the cut-off invalid and direct appointments based solely on aggregate marks, it would fundamentally alter the rules of the game to the detriment of all those who did not approach the courts.

**27.** Consequently, acceding to the appellant's prayers would effectively open a Pandora's box. The judicial system would be immediately flooded with these types of cases from every unsuccessful candidate from the 2011-2013 batch and potentially other batches demanding the recalculation of their scores, the restructuring of merit

lists, and the granting of retrospective appointments and back wages. The administrative machinery of the High Court and the State would be paralyzed by the need to unscramble a finalized recruitment egg. The law places a high premium on certainty and finality in administrative appointments, precisely to prevent such chaotic unravelling of settled public services.

## **CONCLUSION**

**28.** In light of the foregoing analysis, we find no infirmity whatsoever in the impugned judgment of the High Court. The High Court correctly concluded that the challenge to the vires of Rule 41 was rendered academic by its subsequent deletion, and rightly recognized that the finalized appointments could not be disturbed. The rule prescribing a minimum cut-off in the interview was well within the legislative competence of the State, was rationally connected to the objective of selecting capable judicial officers and was binding upon all candidates who willingly participated in the process.

**29.** The appellant, having failed to secure the minimum qualifying marks in the viva-voce, has no vested right to appointment. The overarching need to preserve administrative finality, protect the settled seniority of serving officers, and prevent the opening of a floodgate of retroactive litigation absolutely precludes the granting of the relief sought.

**30.** There is also merit in the submissions of learned counsel for the respondent that the appellant having participated in the written examination and interview process under the Amended Rules of 2011 with open eyes, without raising any protest cannot turn his back to challenge the rules of the game. We may make a reference to an oftenly quoted judgment of this Court in the matter of ***Om Prakash Shukla vs. Akhilesh Kumar Shukla and Ors.***<sup>21</sup>

**31.** Accordingly, the Civil Appeal is devoid of merit and is hereby dismissed. The impugned judgment and order dated 08.02.2018 passed by the High Court of Judicature for Rajasthan is affirmed.

**32.** Pending applications, if any, shall stand disposed of. There shall be no order as to costs.

.....**J.**  
**[SANJAY KAROL]**

.....**J.**  
**[PRASANNA B. VARALE]**

**NEW DELHI;**  
**JULY 13, 2026.**

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<sup>21</sup> (1986) Supp SCC 285

