IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO(S). 4078-4079/2023

ACHINTA KUMAR MONDAL & ORS. ETC. PETITIONER(S)

VERSUS

LAXMI TUNGA & ORS. ETC. RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 2422/2023, SPECIAL LEAVE PETITION (CIVIL) NO(S). 4637-4638/2023, 5811/2023, 7014/2023, CIVIL APPEAL NO(S).2419-2420/2023, 2421/2023, 2482/2023 SPECIAL LEAVE PETITION (CIVIL) NO(S). 8262/2023, 7172/2023, DIARY NO(S). 18494/2023, DIARY NO(S). 19822/2023, SPECIAL LEAVE PETITION (CIVIL) NO(S).12995/2023, 16111/2023, 16112/2023, 17765/2023, 18742/2023, 21416/2023, 23618/2023, 23708/2023 AND 20363-20364/2023.

O R D E R

1. The present set of proceedings arises out of controversy in selection/appointment of three categories of employees in different State funded schools in the State of West Bengal. These are (i) non-teaching staffs belonging to Groups 'C' and 'D', (ii) Assistant Teachers and Teachers of classes 9 and 10 and (iii) Assistant Teachers of classes 11 and 12. Recommendations were made by the West Bengal Central School Service Commission ("the Commission") in the years 2017-2018 for appointment to these posts. The recruitment

Signature Not Verified
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Date: 2023.11.10 19:09:17 IST
Reason:

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process for these posts was initiated in the year 2016. Several unsuccessful/wait-listed candidates who had participated in the said recruitment process had approached the High Court at Calcutta questioning sanctity of the selection process for these posts. These writ petitions were instituted in the years 2021-22 and the unsuccessful candidates questioned the recruitments on the ground of several irregularities.

2. Orders have been passed by the High Court from time to time cancelling the appointments of several such candidates on the ground that their appointments were made illegally by manipulating the evaluation process. The subject of the writ petitions before the High Court giving rise to the present proceedings before us falls broadly in two categories. Termination of services of some candidates were directed by the Court itself whereas in some cases, it was by the Commission invoking their power under Rule 17 of the West Bengal School Service Commission (Selection for Appointment to the Posts of Teachers for Classes IX and X in Secondary and Higher Secondary School) Rules, 2016 and the West Bengal School Service Commission (Selection for Appointment to the Posts of Teachers for Classes XI and XII in Higher Secondary Schools) Rules, 2016 and Rule 18 of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009. The Commission had directd withdrawal of recommendation of some candidates subsequent to certain orders were passed by the High Court. Before us, however, Commission is taking a stand that they had taken the decision to invoke the "Withdrawal Rule" at the instance of the learned Single Judge of the High Court only. We

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find it rather unusual that a statutory body is taking such a stand. In any event, invoking such "withdrawal of recommendation" power impacts the services of the appointed candidates and they have the right to question the power of the concerned authority to pass orders under the aforesaid provision.

3. The High Court had directed the Central Bureau of Investigation ("the CBI") to conduct investigation into the recruitment process and today before us, Mr. Raju, learned Additional Solicitor General has submitted that altogether four reports, which were all interim in nature, have been submitted. The investigation is yet to be concluded.

4. This Court has passed orders staying the termination of individual candidates, which were directed by the Court or in respect of whom recommendations were withdrawn. It has come to the notice of this Court that orders are being passed from time to time terminating the services of candidates who have already been appointed, resulting in generation of a large body of litigations. Before us today, altogether 21 petitions/appeals have been listed, out of which in two matters the petitioners/appellants allege contempt of orders of this Court. We shall deal with the contempt actions independently.

5. The main argument, so far as this batch of proceedings are concerned, has revolved around the admissibility of certain scanned copies of OMR Sheets. The High Court found substantial difference between the evaluation records lying with the authorities and the performance of the candidates reflected in these scanned OMR sheets. CBI claims to have recovered the pen-drive from an ex-

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employee of the agency which was entrusted with the task of evaluation of the OMR Sheets. The employees, whose services are sought to be terminated question the authenticity of these scanned images and it is also their case that these materials are inadmissible in evidence, citing the provisions of Section 65B of the Indian Evidence Act, 1872. Another point urged before us is on the power of the educational authority to invoke the aforesaid Rules to withdraw their recommendations. These recommendations were made in the year 2017 onwards. Allegations of breach of the principles of natural justice has been made as the said Rules appear to have had been invoked without giving opportunity of hearing to the candidates whose appointments stood invaldiated in that process. Mr. Bhattacharya, learned senior counsel assisted by Mr. Rahim, learned counsel has emphasized that appointment of those, whose services were terminated, was by practicing fraud and in such a situation, no opportunity of hearing was necessary. It has also been argued before us that for withdrawing recommendations under the aforesaid Rules, prior opportunity of hearing to the candidates, who would be subjected to such withdrawal action, is not necessary. These arguments are contested by Mr. Rohtagi, Mr. Patwalia representing the appointed candidates. In some of the writ petitions, the vires of aforesaid Rules are also under challenge.

6. Civil Appeal Nos.2482/2023 and SLP(C)No.8262/2023 relate to controversy over termination of 842 Group "C" employees, mainly based on mismatch of data comparing the mirror images of OMR sheets which the CBI claims to have recovered. Authenticity of these electronically stored materials, however, is yet to be established.

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SLP(C)Nos.7014, 4078-4079, 4637-4638 and 5811 of 2023 involve termination of services of 1911 Group "D" employees, again on the basis of data mismatch revealed from the content of the said images. SLP(C)No.12995/2023 arises out of proceeding initiated by certain serving assistant teachers in Class 9 and 10 level mainly to preclude these OMR sheets from being considered in these proceedings. Similar points are involved in SLP(C)No.12995/2023 and Civil Appeal No.2421/2023. A learned Single Judge of the High Court had directed posting of the OMR sheets of all 5500 candidates on website and certain ancillary directions were issued by an order passed on 07.07.2023 in WPA No.5406 of 2022, and legality of this order has been challenged in SLP(C)Nos.16111, 17765, 16112, 21416, 18742 and 20363-20364 of 2023. In SLP(C)Nos.7172/2023 and 23618/2023, the power of the Commission to invoke Rule 17 and the extent of exercise of such power have been questioned by the petitioners/appellants.

7. We have heard the submissions made by the learned senior counsel and learned additional solicitor general, appearing for the respective parties and are of the view that substantive hearing of all the proceedings which have generated this set of appeals/petitions before this Court ought to be conducted by the High Court only. We are apprised that all the writ petitions from which these proceedings arise, except WP No.2967/2023 are still pending before the High Court. We have briefly described the nature of orders being passed by the High Court at the interim stage earlier in this order.

8. In our opinion, piece-meal proceedings are not warranted in

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relation to the disputes of this dimension and termination of service of candidates at the interim stage before final disposal of the writ petitions also ought to have been avoided having regard to the nature of the controversy involved in these proceedings. It was necessary for the High Court to examine admissibility of the OMR sheet images recovered by the CBI before placing full scale reliance on them in directing termination of services of the concerned employees. We are not suggesting that in cases of gross irregularities detected in appointment of certain individuals, termination at the interim stage is altogether impermissible. If some grave error in the appointment process can be demonstrated before the Court at the interim stage, services of such illegally appointed persons can be terminated at the interlocutory stage only. But in the present set of proceedings, at this stage the unsuccessful candidates have not been able to make out such outstanding case at the interim stage. Investigation by the CBI is yet to be completed. The argument of corrupting the original OMR sheets is yet to be supported by cogent evidence. In none of the orders impugned before us, these is no clear cut finding that there was distortion in OMR sheet evaluation.

9. The question of exercise of power under the aforesaid Rules also arise out of discovery of electronically stored OMR sheets. Serious allegations have been made of manipulation of records in exchange of money, but these allegations would have to be established through evidence. It is also our opinion, considering the importance of the points of law involved in these cases, the number of persons who are likely to be affected by the outcome of

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these proceedings and also having regard to the fact that majority of the writ petitions giving rise to these proceedings have strong attributes of Public Interest Litigations (PIL), this Court would consider it preferable to have these proceedings heard by a Division Bench of the High Court.

10. In course of hearing before us, Mr. Patwalia has raised a point that the Division Bench had come to a finding that there was no necessity of hearing while applying power under Rule 17 of the aforesaid Rules. Having regard to the quality of evidence that was there before the Division Bench while taking that view, we are of opinion that this question also ought to be examined afresh. We are not accepting such a finding of the Division Bench of the High Court. Let this question also be addressed by the Division Bench of the High Court afresh, ignoring its earlier finding on this issue.

11. We, accordingly, request the Hon'ble Chief Justice of the High Court at Calcutta to constitute a Division Bench and all the writ petitions and appeals from which this set of proceedings arise be assigned to the Bench to be constituted in the light of this order for early adjudication. So far as 19 petitions/appeals pending before us are concerned, we dispose of the same with an observation that in the cases where termination orders or withdrawal of recommendations have been directed involving the appointees described in the first paragraph of this order, such terminations or withdrawal orders shall not be given effect to until the Division Bench of the High Court to be constituted in pursuance of this order adjudicates the matters on merit The direction of the Single Judge to upload the CBI recovered OMR sheets shall stand

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invalidated, and the Division Bench may consider issuing a similar order only after the authenticity of these images are established before it by applying the prevailing Rules of evidence. We have consciously avoided in this order giving any finding on merits of the individual cases, lest such observation or findings influence the Bench to be constituted for hearing the subject-controversy.

12. We are, however, passing the order protecting the employment of those already in service as we are of the view that some element of status quo should be maintained for a limited period to enable the Division Bench of the High Court to address the issues concerning the legitimacy of their recruitment process and adjudicate upon them.

(i) We accordingly direct the CBI to complete the investigation within two months and submit its report before the High Court. The CBI shall also be at liberty to take such steps as may be lawful in pursuance of their investigation.

(ii) We also direct that protection to the appointments which is being accorded today in this order shall continue for a period of six months to enable the Division Bench to finally adjudicate on the subject-disputes. The Division Bench shall examine all the points that may be raised before it including the question of maintainability of the proceedings.

(iii) The proceedings in which petitioners/appellants have

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approached this Court directly without being impleaded as parties to the proceedings before the High Court shall also have right of audience before the High Court but for that purpose, appropriate application(s) shall have to be filed before the High Court.

(iv) As we foresee the possibility of a large number of litigants approaching the Division Bench of the High Court, we leave it to the Division Bench to formulate its own procedure for regulating the manner in which hearing shall be conducted by it. The Division Bench may explore the possibility of hearing the parties in representative capacity, so that there is no multiple hearing on the same point of law or fact.

13. We expect the learned Advocates for the parties to assist the High Court so that hearing of these matters is not protracted in any way and concluded within the timeframe suggested above. The writ petitions, if any, which have been disposed of by the High Court in relation to the specific issues covered by this order, shall revive. The orders impugned in these proceedings shall stand modified in the above terms.

14. With these observations, the present set of petitions/appeals are disposed of and all the matters are remitted to the High Court, except the two petitions registered as Diary Nos.18494 and 19822 of 2023. These are contempt petitions and shall be placed before us for disposal after four weeks.

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Pending application(s), if any, shall stand disposed of.

.....J.
[ANIRUDDHA BOSE]

.....J.
[BELA M. TRIVEDI]

New Delhi;
November 09, 2023.

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ITEM NO.101+20 COURT NO.6 SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 4078-4079/2023
(Arising out of impugned final/interim judgment and orders dated 16-02-2023 in MAT No. 274/2023 & MAT No. 259/2023 passed by the High Court At Calcutta)

ACHINTA KUMAR MONDAL & ORS. ETC. Petitioner(s)

VERSUS

LAXMI TUNGA & ORS. ETC. Respondent(s)

(IA No. 41528/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 192730/2023 – INTERVENTION/IMPLEADMENT, IA No. 88443/2023 – INTERVENTION/IMPLEADMENT, IA No. 56231/2023 – INTERVENTION/IMPLEADMENT & IA No. 46649/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

C.A. No. 2422/2023 (XVI)
(IA No. 60188/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT & IA No. 60633/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 4637-4638/2023 (XVI)
(IA No. 92159/2023 - DISCHARGE OF ADVOCATE ON RECORD, IA No. 47274/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 213284/2023 – INTERVENTION/IMPLEADMENT, IA No. 80554/2023 – INTERVENTION/IMPLEADMENT & IA No. 47275/2023 - PERMISSION TO FILE LENGTHY LIST OF DATES)

SLP(C) No. 5811/2023 (XVI)
(IA No. 46400/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT & IA No. 47288/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 7014/2023 (XVI)
(IA No. 64921/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT & IA No. 64917/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

C.A. No. 2419-2420/2023 (XVI)
(IA No. 59526/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 184025/2023 – INTERVENTION/IMPLEADMENT, IA No. 169624/2023 – INTERVENTION/IMPLEADMENT, IA No. 142497/2023 – INTERVENTION/ IMPLEADMENT, IA No. 120152/2023 – INTERVENTION/ IMPLEADMENT, IA No. 84470/2023 – INTERVENTION/IMPLEADMENT, IA No. 84464/2023 – INTERVENTION/IMPLEADMENT, IA No. 193762/2023 –

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INTERVENTION/IMPLEADMENT, IA No. 193381/2023 – INTERVENTION/IMPLEADMENT, IA No. 60649/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES & IA No. 64697/2023 - STAY APPLICATION)

C.A. No. 2421/2023 (XVI)
(IA No. 59498/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 60605/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES & IA No. 67097/2023 - STAY APPLICATION)

C.A. No. 2482/2023 (XVI)
(IA No. 60440/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 62560/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES & IA No. 61485/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(C) No. 8262/2023 (XVI)
(IA No. 71592/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 200540/2023 – INTERVENTION/IMPLEADMENT 7 IA No. 88020/2023 – INTERVENTION/IMPLEADMENT)

SLP(C) No. 7172/2023 (XVI)
(IA No. 84610/2023 - CONDONATION OF DELAY IN FILING THE SPARE COPIES & IA No. 71628/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Diary No(s). 18494/2023 (XVI)

Diary No(s). 19822/2023 (XVI)

SLP(C) No. 12995/2023 (XVI)

SLP(C) No. 16111/2023 (XVI)
(IA No. 135892/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT & IA No. 157165/2023 – INTERVENTION/IMPLEADMENT)

SLP(C) No. 16112/2023 (XVI)
(IA No. 137562/2023 - EXEMPTION FROM FILING C/C OF I/JUDGMENT)

SLP(C) No. 17765/2023 (XVI)

SLP(C) No. 18742/2023 (XVI)

SLP(C) No. 21416/2023 (XVI)

SLP(C) No. 23618/2023 (XVI)
(FOR ADMISSION and I.R. and IA No.216203/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(C) No. 23708/2023 (XVI)
(FOR ADMISSION, I.R., IA No.217391/2023-EXEMPTION FROM FILING C/C OF I/JUDGMENT & IA No.218086/2023-PERMISSION TO FILE ADDL.DOCS./FACTS/ANNEXURES)

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SLP (C) No(s). 20363-20364/2023 (ITEM NO.20)
(IA No.180411/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 09-11-2023 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ANIRUDDHA BOSE
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Parties **Mrs. Devyani Ashra, Adv.**
Mr. Utkarsh Kaushik, Adv.
Mr. Mohit Yadav, Adv.
Mrs. Aarti Pal, Adv.
Mr. Chand Qureshi, AOR

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Partha S. Deb Burman, Adv.
Mr. Anindo Mukherjee, Adv.
Mr. Rameshwar Prasad Goyal, AOR

Mr. Mukul Rohatgi, Sr.Adv.
Mr. Abhratosh Majumdar, Sr.Adv.
Mr. Siddhartha Banerjee, Adv.
Mr. Nikhil Rohatgi, Adv.
Mr. Rajib Mullick, Adv.
Mr. Abhishek Bora Das, Adv.
Ayantika Saha, Adv.
Sudipta Nayan Ghosh, Adv.

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Partha S. Deb Barman, Adv.
Mr. Partha S Deb Barman, Adv.
Mr. Nikhil Rohatgi, Adv.
Ms. Misha Rohatgi, AOR
Mr. Nakul Mohta, Adv.
Mr. Shashank Khurana, Adv.
Mr. Muthu Thangathurai, Adv.
Ms. Alina Merin Mathew, Adv.
Mr. Aviral Kumar Mishra, Adv.

Mr. Puneet Bali, Sr.Adv.
Mr. Aditya Soni, Adv.
Mr. Rajat Gautam, Adv.
Mr. Chand Qureshi, AOR

Ms. Jyotika Kalra, AOR
Mr. Joydeep Mukherjee, Adv.
Mr. Shakti, Adv.

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Mr. P S Patwalia, Sr. Adv.
Mr. Mukul Rohatgi, Sr. Adv.
Mr. S Guru Krishnakumar, Sr. Adv.
Mr. Anindya Lahiri, Adv.
Mr. Partha Sil, AOR
Mr. Tavish Bhushan Prasad, Adv.
Mr. Ruchir Mishra, Adv.
Ms. Sayani Bhattacharya, Adv.
Ms. Pranati Das, Adv.
Mr. Abhiraj Choudhary, Adv.
Mr. Samrat De Paul, Adv.
Mr. Pushpal Chakraborty, Adv.
Mr. Puspal Chakraborty, Adv.
Mr. Mainak Ganguly, Adv.
Mr. Argha Chowdhury, Adv.
Mr. Samrat De Pal, Adv.
Mr. Anirban Sen, Adv.

Mr. Kiran Kumar Patra, AOR
Mr. Chandrashekhar Padhi, Adv.
Mr. Chandan Maity, Adv.
Mr. Sanjiv Joshi, Adv.
Mr. Surya Kanta Parhi, Adv.
Mr. Sanjay Kumar, Adv.
Mr. Ram Kishan Rao, Adv.

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Nikhil Rohatgi, Adv.
Ms. Ranjeeta Rohatgi, AOR
Mr. Shashank Khurana, Adv.
Mr. Vishal Banshal, Adv.
Ms. Shrika Gautam, Adv.

Mr. Partha S Deb Barman, Adv.
Mr. Rajeev Kumar Gupta, Adv.
Mr. Raja Adhikari, Adv.
Mr. Parminder Singh Bhullar, AOR

Mr. Bikash Ranjan Bhattacharya, Sr.Adv.
Mr. Rauf Rahim, AOR
Firdous Samim, Adv.
Ali Asghar Rahim, Adv.
Gopa Biswas, Adv.
Mousumi Hazra, Adv.
Payel S., Adv.
Sampriti Saha, Adv.
Arpita Bhattacharya, Adv.
Purba Mukherjee, Adv.
Sudipto Dasgupta, Adv.
Bikram Banerjee, Adv.
Arka Nandy, Adv.
Arkadeb Biswas, Adv.

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Ms. Bansuri Swaraj, Adv.
Mr. Siddhesh Shirish Kotwal, AOR
Mr. Bikram Banerjee, Adv.
Ms. Ana Upadhyay, Adv.
Ms. Manya Hasija, Adv.
Mr. Tejasvi Gupta, Adv.
Mr. Pawan Upadhyay, Adv.
Mr. T. Illayarasu, Adv.

Mr. Sukesh Ghosh, Adv.
Mr. Ashish Kumar Chaudhary, Adv.
Mr. P.C.Das, Adv.
Mr. Sushanta Datta, Adv.
Mr. Vijay Kumar, Adv.
Mr. Md.Sadath Hussain, Adv.
Mr. Chand Qureshi, AOR

Mr. Sunil Fernandes, Adv.
Mr. Nipun Saxena, Adv.
Mr. Srisatya Mohanty, Adv.
Mr. Sanjeev Kaushik, Adv.
Ms. Priyansha Sharma, Adv.
Mr. Shreyas Awasthi, Adv.
Ms. Diksha Dadu, Adv.
Ms. Astha Sharma, AOR

Mr. Kunal Chatterji, AOR
Ms. Maitrayee Banerjee, Adv.
Mr. Rohit Bansal, Adv.
Ms. Kshitij Singh, Adv.
Mr. Sohhom Sau, Adv.

Mr. Mukul Rohatgi, Sr. Adv.
Mr. Partha S. Deb Burman, Adv.
Mr. Anindo Mukherjee, Adv.
Mr. Rameshwar Prasad Goyal, AOR

Mr. Gaurav Agrawal, AOR
Mr. Ranjan Mukherjee, AOR

Mr. S.V. Raju, A.S.G.
Mrs. Sairica Raju, Adv.
Mr. Annam Venkatesh, Adv.
Mr. Arkaj Kumar, Adv.
Mr. Mukesh Kumar Maroria, AOR

Mr. Sohhom Sau, Adv.
Mr. Partha S.Dev Barman, Adv.
Mr. Raja Adhikary, Adv.
Mr. Rajeev Kumar Gupta, Adv.
Mrs. Prerna Dhall, Adv.

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Mr. Piyush Yadav, Adv.
Mr. Prashant Singh, AOR

Mr. Avnish Pandey, AOR

Mr. Pavan Duggal, Adv.
Mr. Saakshar Duggal, Adv.
Mr. Lalit Kumar, Adv.
Mr. Sunklan Porwal, Adv.
Ms. Preeti Singh, AOR

Mr. Kunal Chatterji, AOR
Ms. Maitrayee Banerjee, Adv.
Mr. Rohit Bansal, Adv.
Ms. Kshitij Singh, Adv.
Mr. Sohhom Sau, Adv.

UPON hearing the counsel the Court made the following

O R D E R

SLP(C)NOS. 4078-4079/2023, C.A.NO(S).2422/2023, SLP(C)NOS.4637-4638/2023, 5811/2023, 7014/2023, C.A.NOS.2419-2420/2023, 2421/2023, 2482/2023, SLP(C)NOS.8262/2023, 7172/2023, 12995/2023, 16111/2023, 16112/2023, 17765/2023, 18742/2023, 21416/2023, 23618/2023, 23708/2023 AND 20363-20364/2023.

The present set of petitions/appeals are disposed of in terms of the signed order, which is placed on the file.

Pending application(s), if any, shall stand disposed of.

DIARY NO(S). 18494/2023, DIARY NO(S). 19822/2023

These petitions shall be placed before us for disposal after four weeks.

(NIRMALA NEGI)
COURT MASTER (SH)

(VIDYA NEGI)
ASSISTANT REGISTRAR

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