IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE MANINDER SINGH BHATTI

ON THE 22th OF FEBRUARY, 2022

WRIT PETITION NO.3833 OF 2022

Between:-

ANAMIKA TOMAR D/O SHRI SOBRAN TOMAR,
R/O E-1/10, POLICE LINE,
NEHRU NAGAR, BHOPAL,
DISTT. BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ADITYA PACHORI, ADVOCATE)

AND

1. STATE OF MAHDYA PRADESH, THROUGH PRINCIPAL SECRTARY, GENERAL ADMINISTRATION, DEPARTMENT, VLLABH BHAWAN, BHOPAL, DISTRICT BHOPAL (MP);

2. STATE OF MADHYA PRADESH, THROUGH PRINCIPAL SECRETARY, LAW AND LEGISLTIVE AFFAIRS DEPARTMENT, BHOPAL;

3. DIRECTOR, DIRECTORATE OF AYUSH, STATE OF M.P., SATPURA BHAWAN, DISTRICT BHOPAL;

4. DEPUTY DIRECTOR, DIRECTORATE OF AYUSH, STATE OF MADHYA PRADESH, SATPURA BHAWAN, BHOPAL (M.P.)RAJIV S/O SOMAT GHOSHI,

.....RESPONDENTS

(BY SHRI VINAYAK PRASAD SHAH, SPECIALLY ENGAGED COUNSEL FOR THE STATE)

This appeal coming on for admission and interim relief this day, ***Hon'ble Shri Justice Maninder Singh Bhatti*** *passed the following:*

ORDER

In the instant writ petition preferred under Article 226 of the Constitution of India, the petitioner has called in question, validity of Section 4(2)(i)(a) and (b) of the Madhya Pradesh Lok Seva (Anusuchit Jatioyon, Anusuchit Janjatiyon Evam Anya PichhdaVargon to Arakshan) Adhiniyam 1994 for admission in the All India Ayush Postgraduate Entrance Test, 2021. The petitioner, who is desirous to get admission in the said Entrance Test has further challenged the Gazette Notification, dated 8-03-2019 contained in Annexure-P/2.

2. Learned counsel appearing for the petitioner vehemently urged that Section 4 of the *Madhya Pradesh Lok Seva (Anusuchit Jatioyon, Anusuchit Janjatiyon Evam Anya PichhdaVargon to Arakshan) Sanshodhan Adhyadesh, 2019* [herein referred to as "the Ordinance 2019"] now provides that the reservation for Other Backward Class (OBC) stands increased from 14% to 27% and the same is, in direct conflict with the judgment of the Hon'ble Apex Court rendered in the case of **Indra Sawhney and others vs. Union of India and others, 1992 suppl (3) SCC 217**. The learned counsel has relied upon the order passed by this Court in identical cases which are contained in Annexure-P/9 and Annexure-P/10.

3. The learned counsel, specially engaged for the State of M.P., submits that, where constitutional validity of a Statute is challenged, the Court should be loath to pass an interim order. To substantiate his submission while

objecting the prayer for interim relief he has relied upon the decision of the Hon'ble Supreme Court rendered in the case of **Health for Millions vs. Union of India and others, (2014) 14 SCC 496**.

4. The Apex Court in the case of **Bhavesh D. Parish and others vs. Union of India and another, (2000) 5 SCC 471,** while dealing with the scope of interference to pass an interim order in the matters, where the constitutional validity of a Statute is concerned, discussed the same in paras 30 and 31 of the judgment, which are extracted hereunder :

> *"30. Before we conclude there is another matter to which we must advert to. It has been brought to our notice that Section 45- S of the Act has been challenged in various High Courts and few of them have granted the stay of provisions of Section 45-S. When considering an application for staying the operation of a piece of legislation, and that too pertaining to economic reform or change then the courts must bear in mind that unless the provision is manifestly unjust or glaringly unconstitutional, the courts must show judicial restrain in staying the applicability of the same. Merely because a statute comes up for examination and some arguable point is raised, which persuades the courts to consider the controversy, the legislative will should not normally be put under suspension pending such consideration. It is now well- settled that there is always a presumption in favour of the constitutional validity of any legislation, unless the same is set- aside after final hearing and, therefore, the tendency to grant stay of legislation relating to economic reform, at the interim stage, cannot be understood. The system of checks and balances has to be utilised in a balanced manner with the primary objective of accelerating economic growth rather than suspending its growth by doubting its constitutional efficacy at the threshold itself.*
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> *31. While the courts should not abrogate its duty of granting interim injunctions where necessary, equally important is the need to ensure that the judicial discretion*

> *does not abrogate from the function of weighing the overwhelming public interest in favour of the continuing operation of a fiscal statute or a piece of economic reform legislation, till on a mature consideration at the final hearing, it is found to be unconstitutional. It is, therefore, necessary to sound a word of caution against intervening at the interlocutory stage in matters of economic reforms and fiscal statutes. "*

5. **Bhavesh D. Parish and others (supra)** was a case, where the Statute in question pertained to economic reforms/change and, therefore, since it had direct nexus with the economic growth of the State, the Apex Court observed, that in a case where the legislation pertains to economic reforms, the Court must take into consideration the fact that, unless and until the provision is manifestly unjust or glaringly unconstitutional, the Court must show judicial restraint in staying the applicability of the same.

6. Thus, the principle which emerges from perusal of the decision of the Apex Court in **Bhavesh D. Parish and others (supra)**, that operation of fiscal statute or piece of economic legislation should be interfered with, while granting injunction, only if the same is manifestly unjust or glaringly unconstitutional. Thus, the Apex Court concluded, that it is necessary to sound a word of caution against interference at the interlocutory stage in the matters of economic reforms and fiscal Statute.

7. Thereafter, in another case validity of an enactment i.e., the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, was challenged before the High Court of Bombay, where a Division Bench, by an interim order stayed the operation of the Statute. This interim order was challenged before the Hon'ble Supreme Court by a public charitable

trust known as Health for Millions, on the ground that the Statute in question, which was stayed by the Division Bench of the High Court, had direct bearing to the health of public at large, inasmuch as the Legislation restricted consumption of tobacco, to protect the public and, therefore, looking to the huge societal impact of the Statute the Hon'ble Supreme Court while dealing with the Special Leave Petition filed by the **Health for Millions (supra)** observed in paras 13 and 15 as under :

> ***"13.*** *We have considered the respective arguments and submissions and carefully perused the record. Since the matter is pending adjudication before the High Court, we do not want to express any opinion on the merits and demerits of the writ petitioner's challenge to the constitutional validity of the 2003 Act and the 2004 Rules as amended in 2005 but have no hesitation in holding that the High Court was not at all justified in passing the impugned orders ignoring the well-settled proposition of law that in matters involving challenge to the constitutionality of any legislation enacted by the legislature and the rules framed thereunder the courts should be extremely loath to pass an interim order. At the time of final adjudication, the court can strike down the statute if it is found to be ultra vires the Constitution. Likewise, the rules can be quashed if the same are found to be unconstitutional or ultra vires the provisions of the Act. However, the operation of the statutory provisions cannot be stultified by granting an interim order <u>except when the court is fully convinced that the particular enactment or the rules are ex facie unconstitutional</u> and the factors, like balance of convenience, irreparable injury and public interest are in favour of passing an interim order.*
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> ***15.*** *A reading of the impugned orders leaves no manner of doubt that while granting interim relief to the writ petitioners, the High Court did not apply its mind to any of the ingredients, the existence of which is sine qua non for such orders. The High Court overlooked the fact that the consumption of tobacco and tobacco products has huge adverse impact on the health of the public at large and, particularly, the poor and weaker sections of the society which are the largest consumers of such products and that unrestricted advertisement of these*

products will attract younger generation and innocent minds, who are not aware of grave and adverse consequences of consuming such products. "

[Emphasis supplied]

8. Therefore, the picture which emerges out of the ratio laid down in the course of decision is to the effect that, firstly if the Statute pertains to economic reforms or is a fiscal statute or, is enacted in order to safeguard the health of public at large, the Court should be cautious while granting an interim order until and unless, it appears to the Court that the enactment in question, is *ex facie* unconstitutional.

9. Before dealing with the contentions, so putforth by the learned counsel for the respondents, it is useful to refer Article 15(5) of the Constitution of India. It reads thus :

"Article 15 (5). Nothing in this article or in clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30."

10. The Apex Court while dealing with scope of Article 15(5) of the Constitution of India, in the judgment rendered in the case of **M.R. Balaji and others vs. The State of Mysore and others, AIR 1963 SC 649** in paras 32 and 34 ruled thus :

"32. In this connection, it is necessary to remember that the reservation made by the impugned order is in regard to admission in the seats of higher education in the State. It is well-known that as a result of the awakening caused by

political freedom, all classes of citizens are showing a growing desire to give their children higher university education and so, the Universities are called upon to face the challenge of this growing demand. While it is necessary that the demand for higher education which is thus increasing from year to year must be adequately met and properly channelised, we cannot overlook the fact that in meeting that demand standards of higher education in Universities must not be lowered. The large demand for education maybe met by starting larger number of educational institutions, vocational schools and polytechnics. But it would be against the national interest to exclude from the portals of our Universities qualified and competent students on the ground that all the seats in the Universities are reserved for weaker elements in society. As has been observed by the University Education Commission,

"he indeed must be blind who does not see that mighty as are the political changes, far deeper are the fundamental questions which will be decided by what happens in the universities" (p. 32).

Therefore, in considering the question about the propriety of the reservation made by the impugned order, we cannot lose sight of the fact that the reservation is made in respect of higher university education. The demand for technicians scientists, doctors, economists, engineers a experts for the further economic advancement of the country is so great that it would cause grave prejudice to national interests if considerations of merit are completely excluded by whole-sale reservation of seats in all Technical, Medical or Engineering colleges or institutions of that kind. Therefore, considerations of national interest and the interests of the community or society as a whole cannot be ignored in determining the question as to whether the special provision contemplated by Art. 15(4) can be special provision which excludes the rest of the society altogether. In this connection, it would be relevant to mention that the University Education Commission which considered the problem of the assistance to backward communities, has observed that the percentage of reservation shall not exceed a third of the total number of seats, and it has added that the principle of reservation may be adopted for a period often years. (p. 53).

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34. The learned Advocate-General has suggested that reservation of a large number of seats for the weaker sections of the society should not affect either the depth or efficiency of scholarship at all, and in support of this

argument, he has relied on the observations made by the Backward Classes Commission that it found no complaint in the States- of Madras, Andhra, Travancore-Cochin and Mysore where the system of recruiting candidates from other Backward Classes to the reserve quota has been in vogue for several decades. The Committee further observed that the representatives of the upper classes did not complain about any lack of efficiency i n the offices recruited by reservation (p.135). This opinion, however, is plainly inconsistent with what is bound to be the inevitable consequence of reservation in higher university education. If admission to professional and technical colleges is unduly liberalised it would be idle to contend that the quality of our graduates will not suffer. That is not to say that reservation should not be adopted; reservation should and must be adopted to advance the prospects of the weaker section's of society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centres to deserving and qualified candidates of other communities. A special provision contemplated by Art. 15(4) like reservation of posts and appointments contemplated by Art. 16(4 must be within reasonable limits. The interests of weaker sections of society which are, a first charge on the states and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Art. 15 (4). In this matter again.. we arc reluctant to say definitely what would be a proper provision to make. Speaking generally and in a];road way, a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case. In this particular case it is remarkable that when the State issued its order on July 10, 1961, it emphatically expressed its opinion that the reservation of 68% recommended by the Nagan Gowda Committee would not be in the larger interests of the State. What happened between July 10, 1961, and July 31, 1962, does not appear on the record. But the State changed its mind and adopted the recommendation of the Committee ignoring its earlier decision that the said recommendation was contrary to the larger interests of the State. In our opinion, when the State makes a special provision for the advancement of the weaker sections of society specified in Art. 15(4), it has to approach its task objectively and in a rational manner.

> *Undoubtedly, it has to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighed, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant considerations. Therefore, we are satisfied that the reservation of 68% directed by the impugned order is plainly inconsistent with Art. 15 (4).”*

11. Again, the Hon’ble Supreme Court, in the case of **Ashoka Kumar Thakur vs. Union of India and others, (2008) 6 SCC 1** while dealing with the cases pertaining to admission in educational institutions, in para 629 of the judgment observed as under :

> *“629. Finding 68% reservation in educational institutions excessive M.R. Balaji, at SCR pp.470-71 admonished States that reservation must be reasonable and balanced against other societal interests. “States have to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighted, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several relevant considerations”. (AIR p.663, para 34).*
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> *To strike such a balance, M.R. Balaji slashed the impugned reservation from 68% to less than 50%. M.R. Balaji, thus serves as an example in which this Court sought to ensure that reservation would remain reasonable……..”*
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> *[Emphasis supplied]*

12. In the above factual backdrop, now we proceed to consider the objections raised by the learned counsel for the State.

13. Article 226 of the Constitution of India does not stipulate that while passing an interim order in exercise of powers conferred in Article 226 of the Constitution of India, it would require to assign reason therefor.

14. Thus, when at the very initial stage the Court takes cognizance of the matter and in order to protect the petitioner approaching the Court, passes an order granting interim relief, there is no requirement of law, that reason should be assigned, while passing an interim order. Thus, in a case where constitutional validity of the Statute is challenged, the Court while taking into consideration the impact of the Statute on public at large, as far as economic/fiscal affect of the same is concerned, may pass interim orders within the parameters as laid down by the Apex Court in **Health for Millions (supra)** as well as **Bhavesh D. Parish and others (supra)**.

15. However, the scope of passing an interim order on interim relief, was initially considered by the Apex Court in the case of **The State of Orissa and others vs. Madan Gopal Rungta, AIR 1952 SC 12**, wherein it was held that interim relief can be granted before hearing on merits and ancillary to the main relief which may be available to the party on final determination of his rights on the petition. [***See : Public Services Tribunal Bar Association vs. State of U.P. and others, (2003) 4 SCC 104***].

16. Hon'ble Apex Court in the case of **Siliguri Municipality and others vs. Amalendu Das and others, (1984) 2 SCC 436** in para 2 of the judgment held, that purpose of an interim order is to evolve a workable arrangement and the Court has to strike the balance between the irreparable injury to the litigant and larger public interest.

17. Thus, in the case in hand, where the provision of reservation in excess of 50% is challenged, in bunch of petitions, interim orders have been passed by this Court, to evolve a workable arrangement and, to provide safeguard to larger public interest. Moreover, the interim order does not

foreclose the option of final hearing because of lapse of time, during pendency of litigation, as per law laid down by the Apex Court in the case of **Home Secretary Union Territory of Chandigarh and another vs. Darshjit Singh Grewal and others, (1993) 4 SCC 25**.

18. Thus, while passing an interim order, the Court has to first satisfy itself, as regards the *prima facie* case, consideration of balance of convenience and also irreparable injury. Thus, the same amounts to stop-gap arrangement securing the interest of the parties in litigation before the Court. Therefore, assigning of reason while passing an interim order, is no at all necessary, when the same is being passed in exercise of Article 226 of the Constitution of India.

19. Recently, in the case of **Neeharikia Infrastructure and others vs. State of Maharashtra and others, reported in 2021 SCC Online SC 315**, the Apex Court considered the scope of assigning reason and referred to para 47 of the decision rendered in the case of **Kranti Associates (Pvt.) Ltd. vs. Masood Ahmed, (2010) 9 SCC 496** and ultimately, concluded in para 77 as under :

> *"77. Therefore, even while passing such an interim order, in exceptional cases with caution and circumspection, the High Court has to give brief reasons why it is necessary to pass such an interim order, more particularly when the High Court is exercising the extraordinary and inherent powers under Section 482 of the Cr.P.C. and/or under Article 226 of the Constitution of India."*

20. From the aforesaid enunciation of law, it is crystal clear that only in exceptional cases, with caution and circumspection, the High Court has to ascribe brief reasons and hence, it is not necessary to assign reasons while passing an interim order in all cases, while dealing with a petition under Article 226 of the Constitution of India.

21. Thus, from the conspectus of the aforesaid, it is luminescent that the Statute in question has been issued in contravention of the law laid down by the Hon'ble Supreme Court in **Indra Sawhney and others (supra).** Therefore, while maintaining parity, as the interim order has already been passed in **Writ Petition No.5901 of 2019 – Ashita Dubey vs. The State of Madhya Pradesh** and other connected bunch of writ petitions, as an ad interim measure, it is directed, that the respondents shall not provide reservation of more than 14% for OBC category in admission made to the colleges on the strength of Ordinance 2019, which is subject-matter of challenge in the present writ petition.

22. Post for hearing in due course along with connected matters, for analogous hearing.

(SHEEL NAGU)
JUDGE

(MANINDER SINGH BHATTI)
JUDGE

ac.

AJAY KUMAR CHATURVEDI