Principal Secretary General Administration Department, Vallabh Bhawan, Bhopal (M.P.) 462001.

2. The M.P. Public Service Commission, Daly College Road, Indore (M.P.) 452001. Through its Chairman.

...Respondents

(By Shri Ashish Anand Bernard, Additional Advocate General and Shri Bharat Singh, Additional Advocate General, Shri Pramod Thakre, Govt. Adv. Shri A.S. Baghel, Dy. Govt. Adv.)

(Shri Parag Tiwari, Adv. for the Public Service Commission).

Whether approved for reporting	**YES**
Law Laid down :-	**1. Section 4 of Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (Adhiniyam) :-** **Constitutional Validity** :- The provision is declared as *intra vires.* There is no element of unconstitutionality in this provision. It is in consonance with Article 14 and 16 of the Constitution of India. **2. Rule 4(3)(d)III of Amendment dated 17 Feb 2020 in Madhya Pradesh State Service Examination Rules 2015 (Examination Rules)** :- It is declared as unconstitutional because it runs contrary to Nine Judges Bench judgment of Supreme Court in **Indra Sawhney (supra)** and does not have any rational and basis for depriving the reserved category candidate securing equal or more marks qua general category candidates from securing birth as U.R. candidate in all stages of selection.

Such meritorious reserved category candidate merges in open/U.R. category because of his own merit. Depriving such candidate from his entitlement to get space in U.R. category amounts to dividing a homogeneous class of U.R. category on the basis of their birth mark which is impermissible.

3. Article 14 and 16 of the Constitution :- There must be a rational between the object sought to be achieved and the impugned provision. The State has failed to establish any valid nexus between the two.

4. Change of Rule after Commencement of Selection Process :- The amended rule came into being in mid way and after commencement of Selection Process by issuance of advertisement dated 14.11.2019. Rule of game cannot be permitted to be changed to the detriment of the candidates.

5. Reason shown for impugned amendment in the Rules :- The court considered the previous judgment of Division Bench in **Hemraj Rana Vs. State of M.P. (2006) 3 MPHT 477** and opined that a window is left open in Para-7 of judgment to consider the word 'selected' by taking aid of the Rules. When **Hemraj Rana (supra)** was decided, the Rule was differently worded whereas at present, unamended Rule permits the meritorious reserved category candidates to get a birth as UR category candidate.

6. Law of Precedent :- The judgment of court is precedent for the principle decided by it and not for something which logically flows from it.

7. Precedent :- Judgment should not be read as *Euclid's theorem*, A singular different fact may change the precedential value of a judgment.

	8. Necessary Parties :- In a selection process which is still not over and subject matter of challenge, parties going to be affected are not required to be impleaded. Moreso, when constitutionality of the Adhiniyam and Rule are subject matter of challenge. **9. Use of Word 'Substituted' in the latest amendment in the Examination Rules** :-Since the court declared Rule 4(3)(d)III of Amendment dated 17 Feb 2020 in Madhya Pradesh State Service Examination Rules 2015 (Examination Rules) as unconstitutional, this aspect pales into insignificance and not required to be decided. **10. Constitutionality of Provision:-** Efforts should be made by the Court to uphold the constitutionality. It can be declared as *ultra vires* if it is absolutely necessary.

SUJOY PAUL, J :

Few writ petitions of this batch of 49 petitions are filed assailing constitutionality of sub-section (4) of Section 4 of **Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994** (Adhiniyam) whereas rest of them are filed with a prayer to declare Rule 4(3)(d) III of Amendment dated 17 Feb 2020 in **Madhya Pradesh State Service Examination Rules 2015 (Examination Rules)** as *ultra vires*.

2. The admitted facts between the parties are that Madhya Pradesh Public Service Commission (PSC) published an advertisement on 14.11.2019 for conducting State Service Examination 2019 for a total 571 posts including the posts for reserved category. In furtherance thereof, the petitioners submitted their candidature in prescribed form for appearing in

the said examination. On 12.1.2020, preliminary exam was conducted by P.S.C. Soon thereafter, the impugned amendment in the Rules came into being by publishing it in the Official Gazette on 17.2.2020. The result of said examination was declared on 21.12.2020 on the basis of amended Rules of 2020. Aggrieved, these batch of writ petitions were filed.

3. In these petitions, the respondents were put to notice and in turn, they filed reply. After receiving notices in the petitions, yet another amendment dated 20.12.2021 was published in the Official Gazette on 20.12.2021 amending the said Examination Rules. On 31.12.2021 the PSC declared the result of said examination (mains) and proceeded further to take interview of the candidates.

Contentions of petitioners:-

4. Shri Rameshwar Singh Thakur and Shri Vinayak Prasad, learned counsel for the petitioners while arguing W.P. Nos. 419/2021, 807/2021, 1029/2021 1588/2021, 2482/2021, 2891/2021, 5594/2021, 14468/2021 and 1918/2022 urged that in these petitions, the petitioners have prayed for a declaration that sub-section (4) of Section 4 Adhiniyam, and Rule 4(3)(d) III of Amendment dated 17 Feb 2020 in Madhya Pradesh State Examination Rules be declared as *ultra virus* Article 14, 15 and 16 of the Constitution as well as against the aims and object of reservation policy.

5. Learned counsel for the petitioners in these batch of matters argued that sub-section (4) of Section 4 of Adhiniyam provides that if a person belonging to any of the categories mentioned in sub-section (2) *gets selected* on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under sub-section (2). It is urged that when 1994 Act was

introduced, no Rule like examination Rules of 2015 were framed for implementing the provisions of the Adhiniyam. In this backdrop, a Division Bench of this Court in the case of **Hemraj Rana Vs. State of M.P. (2006) 3 MPHT 477** interpreted the word 'selected' and opined that it will apply only at the time of final selection of candidates and not at the time of preliminary examination.

6. Thus, sub-section (4) of Section 4 became a hurdle for the reserved category candidates. This is well settled that if a reserved category candidate received more or equal marks qua UR category candidate, he will secure birth in UR category and he cannot be treated to be a reserve category candidate. The respondents in preliminary examination and main examination are not implementing this settled principle in view of the impugned amendment in Examination Rules dated 17.2.2020.

7. Shri Vinayak Shah, learned counsel for these petitioners placed further reliance on the order passed by another Division Bench (Indore) in W.A. 1450 of 2018 (**Madhya Pradesh Public Service Commission Vs. Vishal Jain and others)** decided on 1.2.2019 and urged that this order is solely based on the previous judgment of Division Bench in **Hemraj (supra)** and the judgment of Supreme Court reported **in 2017 (12) SCC 680 (Deepa E.V. vs. Union of India and others).** Judgment of **Deepa E.V. (supra)** cannot be applied submits Shri Vinayak Prasad Shah, Advocate by contending that OBC candidate therein had applied in OBC category by taking advantage of relaxation of age being a reserved category candidate whereas in the instant cases, the petitioners have not taken any such advantage of reserve category except relating to relaxation of fees which is permissible under the Rules. It is further argued that when W.A. No. 1450/2018 was decided on 1.2.2019, the Admission Rules

of 2015 came into being. The attention of Division Bench was not drawn on para -7 of the judgment of **Hemraj (supra)** and Admissions Rules. Therefore, the order of Division Bench in the case of **Vishal Jain (supra)** is *per incuriam.*

8. It is common ground taken by all the petitioners that the selection process started with issuance of advertisement on 14.11.2019. As per the Rules prevailing at that point of time, the respondents were obliged to treat the reserve category candidates who have secured marks equal or more to an UR candidate as UR candidate at all stages including preliminary and main examination. This procedure laid down in the main Rules could not have been changed to the detriment of the petitioners after game was started. In nutshell, it is argued that Rules of game cannot be permitted to be changed after commencement of the game.

9. In support of these submissions, learned counsel for the petitioners have filed written submissions. The written submission is also pressed in service by Shri Rameshwar Singh Thakur, Advocate only to the extent indicated herein-above.

10. Shri Vibhor Khandelwal, and Shri Akshat Pahadia, learned counsel appearing for petitioners in W.P. Nos. 542/2021 and 1292/2021 urged that Rule 4(3)(d)III inserted by Amendment dated 17 Feb 2020 in Examination Rules has undergone a change in view of another amendment in the Rules w.e.f. 20.12.2021. In the amending notification, it is mentioned that 'in Rule 4 sub rule (3) for clause (a), a new following clause shall be *substituted.* The law makers consciously used the word 'substituted' submits Shri Vibhor Khandelwal, Advocate by placing reliance on a full bench decision of this Court reported in **2017 (2) MPLJ 681 (Viva Highways Ltd Vs. Madhya Pradesh Road Development**

Corporation Ltd). In the context the word 'substituted' is used, it is urged that the substituted provision will relate back to the date Rules were enacted. Thus, entire selection needs to be conducted on the basis of amended provision dated 20.12.2021. Lastly, it is strenuously contended that amendment brought in the Rules on 20.12.2021 is infact outcome of realization of mistake on the part of the government. After having realized the mistake, for correcting the same amendment dated 20.12.2021 is introduced. It is no more open to the government to apply the said amendment prospectively. Indeed, it should be given effect to on the entire selection process.

11. Shri Aditya Sanghi, learned counsel for the petitioners borrowed the argument of Shri Vibhor Khandelwal, Advocate and in addition urged that this Court on 14.12.2021 granted time to the State to examine the necessity to amend the Rules. In turn, once Rules are amended by way of 'substitution' the substituted provision will hold the field from the date Examination Rules became part of the statute book.

12. Shri Sanghi, placed reliance on **2021 (4) SCC 542 (Saurav Yadav and others Vs. State of Uttar Pradesh and others)** and urged that the principle laid down in this case squarely covers the case in hand. He also interpreted the judgment of **Hemraj Rana, Vishal Jain (supra)**. **2005 (4) SCC 154 (Secretary, A.P. Public Service Commission Vs. B. Swapna And Others)** is referred to contend that norms of selection cannot be altered after commencement of selection process. He also relied on the judgment of Rajasthan High Court in **S.A.W. No.280/2019 (State of Rajasthan Vs. Surghan Singh).**

13. Shri Nityanand Pandey, learned counsel appearing for the petitioner in W.P. No.4410/2022 adopted the argument of learned counsel for the petitioner advanced in W.P. No.6972/2022.

Government's Contentions:-

14. Shri Ashish Anand Bernard, learned Additional Advocate General submits that in view of Division Bench judgment of this Court in **Hemraj Rana** (supra), no fault can be found in sub-section (4) of Section 4 of the Adhiniyam. The Division Bench rightly interpreted the words 'gets selected' and opined that it relates to the main selection and does not deal with preliminary exam or any other exam taken in interlocutory stage. In **Vishal Jain** (supra) another Division Bench has followed the principle laid down in **Hemraj Rana (**supra). On more than one occasion, Shri Bernard, learned Additional Advocate General urged that it is a misconceived notion on the part of petitioners that the Government has realized their mistake in bringing the impugned amendment on 17.02.2020 and subsequent amendment dated 20.12.2021 is an outcome of such realization of mistake. Indeed, submits learned Additional Advocate General on the strength of **CMD/Chairman, Bharat Sanchar Nigam Lmt. & ors. vs. Mishri Lal & Ors (2011) 14 SCC 739** that the impugned Rules were brought into force in exercise of power under proviso to Article 309 of the Constitution. Thus the Rules are legislative and statutory in nature. The Rules were amended w.e.f. 20.12.2021 on the basis of source of power constitutionally permissible and, therefore, the argument of petitioners regarding realization of mistake by the State is devoid of substance. Heavy reliance is placed on the word 'omitted' in the amended Rules dated 20.12.2021. He resisted the contention of Shri

Khandelwal that the word 'substitution' will make the rules retrospectively applicable.

15. The argument of learned counsel appearing for the State is that no doubt, initially in the Examination Rules, 2015 there existed a specific provision which permits the respondents to treat a Reserve Category Candidate as UR Candidate, if he/she has secured equal or more marks in the examination *qua* UR Category Candidate. In order to explain the necessity for bringing the impugned amendment dated 20.12.2021, learned Additional Advocate General urged that the Division Bench in **Hemraj Rana** (supra) interpreted the word 'selected' appearing in sub-section (4) of Section 4 of Adhiniyam. The judgment of **Hemraj Rana** (supra) was again considered in **Vishal Jain** (supra). The ratio of **Hemraj Rana** was followed in **Vishal Jain**. By taking this Court to the entire judgment of **Vishal Jain** (supra), it is urged that the initial Examination Rules of 2015 were not in tune with the *dicta* of **Vishal Jain** (supra) which necessitated the Government to bring the amendment in the Examination Rules w.e.f. 17.2.2020. This amendment is not introduced because of any realization of mistake by the Government.

16. A nine Judges Bench of Supreme Court in **Indra Sawhney & ors. vs. Union of India & ors. r**eported in **1992 Suppl (3) SCC 217** laid down certain binding principles pursuant to which Adhiniyam was brought into force. Consistent with the Adhiniyam which was interpreted in **Hemraj Rana** (supra) and **Vishal Jain** (supra), impugned amendment dated 17.2.2020 was introduced.

17. Furthermore, it is argued that judgment of Supreme Court in **Saurav Yadav & ors. vs. State of Uttar Pradesh** reported in **2021 (4) SCC 542** is relating to horizontal reservation whereas instant case relates

to vertical reservation. Judgment of **Saurav Yadav** (supra) is therefore inapplicable in the instant case.

18. In absence of any manifest arbitrariness, interference of this Court is not warranted. Reliance is placed on **Cellular Operators Association of India & Ors. vs. Telecom Regulatory Authority of India & Ors. r**eported in **(2016) 7 SCC 703**.

Other Contentions :

19. Shri Parag Tiwari, learned counsel for the Public Service Commission adopted the argument of learned Additional Advocate General, whereas Shri Permanand Sahu appearing for respondent No.3 in W.P. No.1588/2021 and W.P. No.2891/2021 contended that Article 338-B (9) of the Constitution of India makes it obligatory for the Union and every State Government to consult the Commission on all major policy matters affecting socially and educationally backward classes. While bringing aforesaid amendments in the Examination Rules w.e.f. 17.02.2020 and 20.12.2021, the Commission was not at all consulted. On a specific query from the Bench, Shri Permanand Sahu submits that respondent No.3 is supporting the case of the present petitioners.

20. For the petitioner of W.P. No.1918/2022, Shri Anshul Tiwari learned counsel for the proposed intervenor appeared and argued that the intervenor is a General Category candidate. If petitioners succeed, the entire selection process will be disturbed and therefore petitioners should have impleaded all the UR category candidates as party respondents. In absence whereof, the petitions suffer from non-joinder of necessary parties and deserve to be dismissed on this count alone. He referred to

(**2010) 12 SCC 204 (Public Service Commission, Uttranchal Vs. Mamta Bisht and others)** for this purpose.

21. Shri Vinayak Shah in his rejoinder submissions urged that unless the principles laid down in **Indra Sawhney** (supra) and **Saurav Yadav** (supra) are applied in toto at the stage of preliminary examination and main examination, the constitutional mandate ingrained in Article 15 and 16 cannot be translated into reality. Unless a reserve category candidate who has secured more or equal marks *qua* UR category candidate is given birth in all stages including preliminary and main examination in UR Category, he will not get actual benefits envisaged in aforesaid Articles as well as judgment of Supreme Court in **Indra Sawhney** (supra).

22. Shri Vibhor Khandelwal in his rejoinder submission relied on a chart to show that last reserve category candidate and UR category candidate have secured same marks. **Saurav Yadav's** judgment shows that it is applicable to vertical reservation and not to the horizontal reservation.

23. No other point is pressed by learned counsel for the parties.

24. We have heard the parties at length and perused the record.

FINDINGS :-

25. Constitutionality of Section 4(4) of the Adhiniyam.

The petitioners have raised eyebrows on the expression 'get selected' used in this provision. **Section 4 (4) reads as under:**

> 4. (4) If a person belonging to any of the categories mentioned in sub- section (2) **gets selected** on the basis of merit in an open competition with general candidates, he shall not

> be adjusted against the vacancies reserved for such category under sub-section (2).

26. A Division Bench of this Court in the case of **Smt. Rajshri Tiwari Vs. State of M.P. 2006 (2) MPLJ 121** opined that sub-section (4) of Section 4 of the Adhiniyam of 1994 is in consonance with the interpretation of Section 16(4) of the Constitution given by the Supreme Court in the case of **Indra Sawhney** (supra). In this backdrop, we are unable to declare sub-section (4) of Section 4 as unconstitutional.

27. The Apex Court in catena of judgments held that efforts should be made to uphold the constitutionality of a provision and impugned provision can be declared as unconstitutional only when it is absolutely necessary. It is apposite to refer the following judgments; **AIR 1951 SC 41 (Chiranjit Lal Choudhuri Vs. Union of India and others)**, **2013 (8) SCC 368 (Dharmendra Kirthal Vs. State of U.P and others), 2013 (1) SCC 745 (Namit Sharma Vs. Union of India)** and **2011 (2) SCC 568 (Prafull Goradia Vs Union of India).**

28. The case of **Hemraj Rana** (supra) was decided on 17.05.2006. At that point of time, a different set of Rules of 2001 were in vogue. In para-6 of the judgment of **Hemraj Rana** (supra)**,** the Division Bench has taken note of sub-section (4) of Adhiniyam as well as relevant Rules of 2001. Thereafter, in para-7, it was recorded as under:-

> ***'In absence of any specific provision either in the Adhiniyam of 1994 or the Rules of 2001 made thereunder, providing that the principle in Sub-section (4) of Section 4 of the Adhiniyam of 1994 will equally apply to preliminary examinations conducted for the purpose of screening candidates for the main examination, the MP PSC would be well within its discretion to decide as to what would be the procedure which should be followed in the preliminary***

> ***examination for screening candidates for the main examination.*** *So long as such procedure followed by the MP PSC is not contrary to Article 16(4) of the Constitution, this Court cannot hold that the procedure followed by the MP PSC is ultra vires.'*
>
> **(Emphasis Supplied)**

29. At the cost of repetition, it is noteworthy that in para-4 of judgment of **Hemraj Rana** (supra)**,** this Court considered the word **'selected'** as appears in Sub-section (4) of Section 4 of Adhiniyam whereas in para-6, the Court considered Sub-section (4) of Section 4 of Adhiniyam in the light of Rules of 2001. This Court gave a conscious finding in para-7 reproduced hereinabove, which shows that the provision of Adhiniyam and Rules applicable in 2006 as such do not suggest that the principle desired to be made applicable should be made applicable during preliminary examination. *In absence of any specific provision* in the Rules, the Division Bench expressed its inability to apply the principle that a reserve category candidate secured equal or more marks than UR category candidate will occupy a UR seat.

30. Pertinently, the subsequent events show that New Examination Rules, 2015 came into being. As per these Rules, the State itself decided to apply the said principle in favour of such reserve category candidates, who have secured equal or more marks than general category candidates in all levels of selection including preliminary and main examination. This is trite that judgment of a Court must be treated as a precedent for the principle which has been actually decided by it and not for something which logically flows from it. [**See:- AIR 1968 SC 647 (State of Orissa Vs. Sudhansu Sekhar Mishra and others)**, **AIR 1976 SC 1766 (Regional Manager & Anr vs Pawan Kumar Dubey), AIR 1987 SC 1073 (Ambica Quarry Works & Anr vs State Of Gujarat & Ors)**, **(2006)**

1 SCC 368 (Union Of India and another Vs. Major Bahadur Singh), (**2007) 5 SCC 371 (Commissioner of Customs (Port) v. Toyota Kirloskar Motor (P) Ltd.)]**

31. This is equally settled that precedential value of a judgment depends upon the factual matrix of the case as well as the statutory provision governing the field. [**See:-Union of India v. Major Bahadur Singh, (2006) 1 SCC 368, Padma Sundara Rao and others v. State of T.N. and others, (2002) 3 SCC 533, Ram Prasad Sarma v. Mani Kumar Subba, (2003) 1 SCC 289]**

32. The judgment of the Courts should not be read as *Euclid's Theorum.* [See: (**2003) 11 SCC 584 (Ashwani Kumar Singh v. U.P. Public Service Commission and others)**, **(2015) 10 SCC 161 (Indian Performing Rights Society Ltd. v. Sanjay Dalia), (2016) 3 SCC 762 (Vishal N. Kalsaria v. Bank of India)**]. In this view of the matter, in our view, the judgment of **Hemraj Rana** (supra) was delivered in the peculiar factual backdrop of that case by taking into account the statutory provisions/Rules prevailing at that point of time. The introduction of Examination Rules of 2015 has changed the scenario and a conjoint reading of para-7 of **Hemraj Rana's** judgment and unamended Examination Rules of 2015 permits us to uphold the constitutionality of Sub-section (4) of Section 4 of Adhiniyam and clarify that combined reading of Sub-section (4) of Section 4 with unamended Rules of 2015 makes it obligatory for the respondents to apply the principle desired by the petitioner i.e. in all stages of selection, the reserve category candidate received more or equal marks *qua* UR candidate are entitled to secure a birth in UR category. Thus, we are unable to persuade ourselves that

impugned provision of Adhiniyam should be struck down being unconstitutional.

33. Constitutionality of Rule 4(3)(d)(III) of Examination Rules, 2015:-

As noticed, this amended Rule became part of statute book w.e.f. 17.02.2020. Before dealing with this amended Rule, it is profitable to consider the unamended Rule, the impugned Rule amended w.e.f. 17.02.2020 and another amendment dated 20.12.2021. The relevant provisions are reproduced hereinunder in tabular form to examine the provisions in juxtaposition.

Unamended Rules 2015	Amendment 17.2.2020	Amendment 20.12.2021
4. Mode of preparation of select list - (1) (a) (i) On the basis of marks obtained in Preliminary Examination, candidates numbering 15 times the vacancies as advertised categorywise will be declared successful for Main examination subject to the condition that candidates have scored minimum passing marks as may be specified by the Commission. In addition to this, all the other candidates who get marks equal to "Cut Off Marks" will also be declared successful for the main examination. (ii) Firstly, a list of Candidates of unreserved category shall be prepared. This list will include the candidates selected on the basis of the common merit from Scheduled Castes,	(d) (I) Results of Preliminary/Main Examination, the candidates shall be declared in the category mentioned as their category in their online application form. (II) Candidates of reserved category (Scheduled caste/ Scheduled Tribe ? Other Banckwards Classes/ Economically Weaker Section) who get selected like general category cadidates without any relaxation shall not be adjusted against the posts reserved for those reserved categories. They shall be adjusted against vacancies of unreserved category. **(III) But above adjusment will only be at the time of final sleection, not at the time of preliminary/ main examination.**	4. In Rule 4 sub rule (3) for clause (a) the following clause shall be substituted, namely :- (3) (a) (i) After the interview, the merit list of the candidates shall be prepared by the Commission on the basis of the total marks obtained by them in the main examination and interview. The order of merit of the candidates securing equal marks shall be determined as per the criteria prescribed by the order of the Commission. (ii) First of all, a list of unreserved category (which includes Scheduled Castes, Scheduled Tribes, Other Backward Classes and Economically Weaker Sections) shall be prepared. After this, those candidates belonging to the reserved category (Scheduled Castes, Scheduled Tribes, Other Backward Classes and Economically Weaker Sections) included in the unreserved category (which also includes Scheduled Castes, Scheduled Tribes, Other Backward Classes and Economically Weaker Sections) who have taken the benefit of relaxations from time to time, shall be included in the respective category by separating them from the list of unreserved category.

Scheduled Tribes and Other Backward Classes, who have not taken any advantage/relaxation given to the concerned category. (iii) Secondly, separate lists of Scheduled Castes, Scheduled Tribes and Other Backward Classes will be prepared.		(iii) Secondly, separate lists of candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes and Economically Weaker Sections shall be prepared.

A comparative reading of main Rule and two subsequent amendments above makes it clear that as per main unamended Rule, the meritorious reserved category candidate was entitled to compete with U.R. category candidates and get his position in Open/UR Category. By impugned amendment dated 17.2.2020, this right was taken away by confining the benefit at the time of final selection only. By subsequent amendment, dated 20.12.2021, the earlier position prevailing at the time of unamended Rules was restored. Thus, impugned amendment became a hurdle for the meritorious reserved category candidates to be treated as U.R./Open Category Candidate.

34. The impugned amendment dated 17.02.2020, as per the argument of Shri Bernard, learned Additional Advocate General was necessitated in view of Division Bench order passed in the case of **Vishal Jain** (supra). On a minute scrutiny, we do not find any merit in this contention that the judgment of **Vishal Jain** (supra) can become a reason for amendment in the Rules with effect from 17.02.2020. A careful reading of order of **Vishal Jain** (supra) leaves no room for any doubt that this matter was decided after commencement of Rules of 2015. The Court did not consider the impact of the Rules, if read with Sub-section (4) of Section 4 of the Adhiniyam. In other words, Examination Rules of 2015 were not brought to the notice of the Division Bench in the case of **Vishal Jain**

(supra). In absence thereof, principle of **Hemraj Rana's** case was followed by the subsequent Bench. We find substance in the argument of Shri Vinayak Shah, learned counsel for the petitioner that in absence of considering the statutory Rules (Examination Rules of 2015), the judgment of **Vishal Jain** (supra) cannot become reason for introducing the impugned amendment. For yet another reason, we are unable to accept the reason assigned for amendment w.e.f. 17.02.2020. The Apex Court in the case of **Indra Sawhney** (supra) ruled that:-

> *'811*. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will not be counted against the quota reserved for Scheduled Castes; **they will be treated as open competition candidates.'**
>
> **[Emphasis Supplied]**

The r*atio decidendi* of **Indra Sawhney** (supra) is followed in **R.K. Sabharwal v. State of Punjab (1995) 2 SCC 745, Union of India and others v. Virpal Singh Chauhan and others (1995) 6 SCC 684** and recently in **Saurav Yadav v. State of U.P., (2021) 4 SCC 542** it is held as under:

> "I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid "slots", where a candidate's merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence

> would be, if the state's argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, **thus negating merit. The open category is open to all, and the only condition for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him."**
>
> **(Emphasis Supplied)**

35. Needless to emphasize that law laid down by Apex Court in the case of **Indra Sawhney** (9 Judges Bench) is binding on all the Courts and Authorities throughout India. This binding judgment was consistently followed by the Supreme Court in catena of judgments.

36. As pointed out by Shri Sanghi, the Rajasthan High Court also followed it in Special Appeal (**Writ) No.280/2019 (State of Rajasthan Vs. Surghan Singh)** decided on 15.04.2019. The law laid down in **Indra Sawhney's** case became law of land under Article 141 of the Constitution. The argument of learned Additional Advocate General deserves to be rejected regarding necessity to bring the impugned amendment because it runs contrary to the law laid down in **Vishal Jain's** case. In view of this binding decision of 9 Judges Bench of Supreme Court, there was no occasion for the State to introduce amendment in the Examination Rules on 17.02.2020. Moreso, when the judgment of **Vishal Jain** (supra) does not help the respondents because in the said judgment, as noticed above, the Court simply followed the previous judgment of **Hemraj Rana** (supra) and did not deal with the Examination Rules of 2015, which were already brought into force by that time.

37. <u>Validity of the impugned amendment dated 17.2.2020 after commencement of selection process :-</u>

In catena of judgments, the Courts made it clear that selection process begins with issuance of advertisement. See [(**1990) 2 SCC 669** (**A.P. Public Service Commission Hyderabad and another Vs. B. Sarat Chandra and others), 2020 SCC Online M.P. 2975 (Ramkhiladi Sharma Vs. National Health Mission)** and **2012 SCC Online M.P. 10635 (Rachna Dixit Vs. State of M.P. and others)].** Indisputably, the advertisement was issued by the Public Service Commission on 14.11.2019 and selection/recruitment process set on motion from that date itself. The impugned amendment was issued on 17.2.2020 in the midst of the selection process.

38. Pausing here for a moment, it is apposite to remember that as per Unamended Examination Rules, the reserved category candidates were entitled to secure a birth in U.R. category, if they have received same or more marks than a U.R. candidate. This norm/rule of game was admittedly changed to the detriment of petitioners by bringing the impugned amendment.

39. The Apex Court in **(Y.V. Rangaiah Vs. J. Sreenivasa Rao) (1983) 3 SCC 284** held as under :-

> "But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

40. In **State of Bihar and others Vs. Mithilesh Kumar (2010) 13 SCC 467** the court opined that:-

> "The Respondent had been selected for recommendation to be appointed as Assistant Instructor in accordance with the existing norms. Before he could be appointed or even considered for appointment, the norms of recruitment were altered to the prejudice of the Respondent. The question is whether those altered norms will apply to the Respondent.
>
> The decisions which have been cited on behalf of the Respondent have clearly explained the law with regard to the applicability of the Rules which are amended and/or altered during the selection process. They all say in one voice that the norms or Rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect."
>
> **[Emphasis Supplied]**

42. Since the petitioners have obtained equal or more marks than last U.R. category candidates, they were having a valuable right to secure a position in U.R. category. This right of consideration and occupying a slot in U.R. category is sought to be taken away by bringing the impugned amendment, which in our opinion is arbitrary, impermissible and irrational.

43. While constitutional principles applied in England only as safeguards against executive usurpation and tyranny, USA and India they became bulwarks also against unconstitutional legislation. The essential democratic rights of the people were sought to be secured in the United States "not by law paramount to prerogative but by constitution paramount to laws". The absolute reign of law which this constitutional principle was designed to establish became effective

when **Chief Justice Marshall** propounded the doctrine of judicial review in **Marbury v. Madison, 2 L.Ed. 60 (1803)**. It was argued by **Daniel Webster** in **Dartmouth College v. Woodward, 4 Wheaton 518 (579): 4 L Edn. 629 (645)** that everything which passes under the form of enactment is not to be considered the law of the land. There is a familiar ring of this in **Justice Krishna Iyer's** dictum in **Maneka Gandhi v. Union of India, AIR 1978 SC 597: (1978) 1 SCC 248**: **(1978) 2 SCR 621** that law is not any enacted piece.

Supreme Court of America way back in (**1885) 118 U.S. 356 (I) (Yick Wo Vs. Peter Howking)** held as under :-

> "though a law be fair on its face and impartial in operation, yet, if it is administered by public authority with an evil eye and an unequal hand so as practically to make illegal discrimination between persons in similar circumstances materially to their right, the denial of equal justice is still within the prohibition of the Constitution. "
>
> **(Emphasis supplied)**

44. A Constitution Bench of Supreme Court in **AIR 1955 SC 191 (Budhan Choudhary and others Vs. State of Bihar)** held that when constitutionality of a provision is called in question what is necessary to examine is that whether there exists a nexus between the basis of classification and the object of the impugned provision under consideration. Article 14 condemns discrimination not only by a substantive law but also by a law of procedure. This judgment is consistently followed by the Supreme Court in **Hiralal P. Harsora Vs. Kusum Narottamdas Harora (2016) 10 SCC 165, Karnataka Live Band Restaurants Assn. vs. State of Karnataka (2018) 4 SCC 372,**

Lok Prahari vs. State of U.P. (2018) 6 SCC 1, CRPF vs. Janardan Singh (2018) 7 SCC 656, Navtej Singh Johar vs. Union of India (2018) 10 SCC 1 and Rana Nahid vs. Sahidul Haq Chisti (2020) 7 SCC 657.

45. The respondents could not assign any justifiable reason or establish any rationale object/purpose for bringing impugned amendment dated 17.02.2020. Similarly, they could not establish the nexus between the object sought to be achieved and the impugned amendment. Thus, the impugned amendment dated 17.02.2020 cannot be given a stamp of approval. Since, it runs contrary to the binding precedent of **Indra Sawhney** (supra) consistently followed till **Saurav Yadav** (supra)**,** the impugned amendment cannot sustain judicial scrutiny. By no stretch of imagination, withstanding a Nine Judges Bench judgment of Supreme Court in **Indra Sawhney** (supra), it was open to the Government to amend the Examination Rules contrary to the principles laid down in **Indra Sawhney** (supra) under the garb of order of Division Bench of this court in **Vishal Jain** (supra). Moreso when in **Vishal Jain** (supra), the Examination Rules of 2015 were not brought to the notice of this Court.

We are of the considered view that the principles laid down by the Supreme Court in **Indra Sawhney (supra)** can be translated into reality only when reserved category candidate secured equal or more marks with U.R. category candidate is given birth in U.R. category in all stages of selection including preliminary and the main examination. Any other interpretation will defeat the purpose and the constitutional scheme flowing from Article 14 and 16 of the Constitution of the India. There is no justifiable reason for depriving a

meritorious reserved category candidate who has competed with UR category candidate and secured same or more marks than him from being treated as U.R. candidate.

The matter may be examined through a different magnifying glass.

As per the judgment of **Indra Sawhney (supra),** the reserve category candidate equal / more meritorious qua UR category candidate deserves a birth in UR category. Thus, such reserved category meritorious candidate merges in the class of UR category because of his own merits. Depriving such candidate from the fruits of securing a birth in UR category results into dividing a homogeneous class of meritorious candidates. The Artificial classification which is outcome of impugned rule is arbitrary, discriminatory and violative of equality clause enshrined in Article 14 of the Constitution. The meritorious reserve category candidates cannot be put to a comparative disadvantageous position because of their birth mark if they are otherwise equal or more meritorious than the last UR category candidate. The impugned Amended Rule, for no valid reasons deprives such reserved category candidate and, therefore, the impugned Rule deserves to be declared as *ultra vires.* We accordingly declare Rule 4 (3) (d) (III) of the Amended Rules as unconstitutional.

46. We will be failing in our duty if argument of Shri Vibhore Khandelwal and Shri Akshat Pahariya is not considered based on the use of word 'substituted' in the latest amendment dated 20.12.2021. The argument is based on a Full Bench decision of this Court in **Viva Highways** (supra). We are only inclined to observe that once we have formed an opinion that impugned amendment dated 17.02.2020 is *ultra*

vires, this argument relating to 'substitution' pales into insignificance. Thus, we need not to go into this aspect any further. Shri Anshul Tiwari, learned counsel for the proposed intervener opposed the petition on the strength of **Public Service Commission Uttaranchal Vs. Mamta Bisht and others (2010) 12 SCC 204**. This judgment has no application in the instant case for the simple reason that these writ petitions are filed when selection process was not over and pertinently, same is still not over. No candidate has been finally selected and no right accrued in favour of any candidate. Thus, it was not necessary to implead the candidates who are going to be adversely affected by the outcome of this judgment.

The matter may be viewed from another angle. The Apex Court in **GM, South Central Rly. v. A.V.R. Siddhantti, (1974) 4 SCC 335, Surinder Shukla v. Union of India, (2008) 2 SCC 649** held that when constitutional validity of a policy decision is impeached, it is not necessary to implead the affected parties. Thus, objection of Shri Tiwari deserves to be rejected.

47. In view of foregoing analysis, the constitutionality of Sub-section (4) of Section 4 of **Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994** is upheld. Rule 4(3)(d)(III) introduced by Amendment in Examination Rules on 17.02.2020 is declared as *ultra vires* and **set aside**. Resultantly, the recruitment process must be conducted and completed in consonance with unamended Examination Rules of 2015.

48. Writ petitions are **partly allowed** to the extent indicated above. No order as to costs.

(SUJOY PAUL)
JUDGE

(DWARKA DHISH BANSAL)
JUDGE

Bks/ahd