



**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.1120/2020

MA No.1378/2020

With

OA No.1236/2020

MA No.1521/2020

Order reserved on : 09.11.2020

Order pronounced on : 19.11.2020

(Through Video Conferencing)

Hon'ble Mr. Pradeep Kumar, Member (A)

Hon'ble Mr. R.N. Singh, Member (J)

OA No.1120/2020

1. Ranveer Singh
Aged about 29 yrs. Group-B,
S/o Gopal Singh
R/o Jato Ka Bas,
Vill- Lunoda Tehsil-Didwana,
Distt- Nagaur,
Rajasthan-341303
(Applied for the post of Nursing Officer)
2. Sanjay Thalore,
Aged about 25 yrs. Group-B,
S/o Jairama Thalore
R/o Vill- Bakwas, PO Kharesh
Tehsil-Didwana,
Distt- Nagaur,
Rajasthan-341303
(Applied for the post of Nursing Officer)

... Applicants

(By Advocate: Sh. Gyanant Kumar Singh)



Versus

1. Union of India,
Through Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi-110011.
2. All India Institute of Medical Sciences,
Through its Director,
Ansari Nagar,
New Delhi-110029.
3. Central Institute Body, AIIMS,
Through Director AIIMS as its Member Secretary,
AIIMS, Ansari Nagar,
New Delhi-110029.

... Respondents

(By Advocate: Sh. Hanu Bhaskar and Sh. Kaushal Gautam)

OA No.1236/2020

1. AIIMS Nurses Union registered under
Trade Union Act, 1926, Registration No.4181,
Room No.6, Nurses Hostel
(New Private Ward), Ansari Nagar,
New Delhi-110029, through its
General Secretary Fameer C.K.
2. Harish Kumar Kajla, age 37 years,
Son of Gopal Singh,
Residing at A-43,
Second floor, Clock Tower,
Hari Nagar, New Delhi-110064.
3. Krishna Kumar Bohra, age about 25 years,
Son of Parmeshwar Lal Bohra,
Residing at Village Ramsisar,
Post Dhandhan,



Tehsil Ramgarh,
Sekhawati, Ramshisar, Rajasthan-332302.

4. Rajesh Kumhar, age about 25 years,
Son of Ramdayal Kumhar,
Residing at Mijhora, Bajna, Karauli,
Rajasthan 322218

... Applicants

(By Advocate: Sh. Santosh Krishnan)

Versus

1. All India Institute of Medical Sciences,
New Delhi a body corporate established by the
All India Institute of Medical Sciences Act, 1956,
Having address at: AIIMS,
Ansari Nagar,
New Delhi through its Director.
2. Union of India,
Ministry of Health and Family Welfare,
Nirman Bhawan,
Maulana Azad Road, New Delhi-110011
Through the Secretary.

... Respondents

(By Advocate: Sh. R.K.Jain, Sh. Anand Verma and
Sh. V.S.R.Krishna)

ORDER

Hon'ble Shri Pradeep Kumar, Member (A):

OA 1120/2020

There are two applicants in this OA who have
Bachelor's Degree in Nursing. They had applied for the post



of Nursing Officer, Group B, pay scale Rs.9300-34800+Grade Pay Rs.4600 (pre-revised), against the advertisement no.106/20 dated 5.8.2020, wherein applications were called for approximately 4629 number of posts for AIIMS New Delhi and a large number of new AIIMS which are being set up in the country.

OA 1236/2020

This OA is filed by AIIMS Nursing Union (as applicant No.1) and three other applicants (applicants 2 to 4). The applicant no.2 is an in-service candidate and a member of applicant no.1. Applicant no.3&4 are open market candidates. Further, it is brought out that any member of the nursing profession, employed in AIIMS, is eligible to become a member of applicant no.1. Applicants no.2 to 4 had applied for the post of Nursing Officers, Group B, pay scale Rs.9300-34800+Grade Pay Rs.4600 (pre-revised), against the same advertisement no.106/20 dated 5.8.2020, wherein applications were called for approximately 4629 number of posts for AIIMS New Delhi and a large number of new AIIMS which are being set up in the country.



The grievance in these two OAs is same and against the same respondents, namely, AIIMS New Delhi who are coordinating the said recruitment and Ministry of Health and Family Welfare, New Delhi, Union of India (MHFW). Hence a common judgment is being passed.

2. Against the said advertisement the applications were to be submitted online by 5.00 pm on 18.8.2020. The written examination has been held in computer based testing mode on 1.9.2020 and the result has been published on 8.10.2020. The applicants are aggrieved with a gender based reservation as per clause in Annexure-1 of the said advertisement. This clause reads as under:

“Important: As per decision in 4th meeting of CIB held on 27th July, 2019, 80% seats are reserved for Females and 20% for Males.”

3. It is pleaded that there is no such gender based reservation for the course of B.Sc. Nursing. It is also pleaded that prescription of such reservation is beyond the competence of Central Institute Body (CIB) in terms of AIIMS Regulations, 1999. It is also pleaded that such



reservation exceeds 50% upper limit prescribed in the judgment of **Indra Sawhney vs. Union of India**, 1992 Supp. 3 SCC 217.

4. Applicants further fairly submitted that this gender based reservation was also prescribed in an earlier recruitment of the Nursing Officers for AIIMS Patna against advertisement no.13562/Nursing Officer/2019 along with corrigendum dated 15.01.2020. That was also challenged before Patna Bench of the Tribunal in OA No.54/2020. This OA was dismissed on 28.2.2020. The operative paras 11 & 12 read as under:

“11. We are of the view that the objective of providing comfort and care in specialised wards by earmarking of 80% of vacancies for females as extracted above, is neither discriminatory, unreasonable, unfair nor arbitrary classification. Hence, we do not find the action of the respondents unfair as held by the Hon’ble Supreme Court in the case of Pathumma vs. State of Kerala, AIR 1978 SC 771.

12. In view of the facts and circumstances as discussed above, and also in view of the law laid down by the Hon’ble Supreme Court as stated above and in view of the submissions made by the counsel for the respondents as referred to above, this OA has no merit and the same is dismissed accordingly. No costs.”



The applicants therein approached Hon'ble High Court of Patna in CWP 7524/2020 which was decided on 23.09.2020 and CAT decision was upheld. The operative para reads as under:

“After hearing the counsel for the petitioner and counsel for the Union of India as well as AIIMS and perusing the order as impugned, this Court does not find any error or infirmity in the order passed by the tribunal requiring any interference by this Court in its writ jurisdiction, accordingly, this writ petition is dismissed.”

4.1 In this context applicants plead that both Hon'ble Tribunal as well as Hon'ble High Court of Patna have relied upon the judgment by Hon'ble Apex Court in **Govt. of A.P. vs. P.B Vijay Kumar**, (1995) 4 SCC 520 but have erred in appreciating the ratio laid down therein and accordingly it was pleaded that if this Bench accepts the pleadings made in the instant two OAs, matter may need to be referred to a larger Bench of the Tribunal.

5. It was also pleaded that in OA No.54/2020 before the Patna Bench the question was recruitment for special ward whereas the instant advertisement No.106/20 is for recruitment to all wards, including the special wards. It

was thus pleaded that there is a need to have a fresh look on the issue.



6. The relief sought was to quash the CIB decision dated 27.7.2019 and to quash advertisement no.106/20 dated 05.08.2020. Interim stay was also sought to stay the recruitment process.

7. OA 1120/2020 came up for hearing on 24.08.2020. The request for grant of stay was not acceded to and notice was issued to the respondents to file their reply.

In OA 1236/2020, matter came up for hearing on 15.09.2020. The IR was not granted. However, following was observed:

“6. We propose to examine the issue in detail, however, we are not inclined to stay the reservation. In case, the applicants are successful, the relief can certainly be moulded.”

8. Being not satisfied with these directions, the applicants in OA No.1236/2020 approached Hon'ble High Court of Delhi in WPC No.6979/2020. The Hon'ble High Court disposed of the Writ vide order dated 25.9.2020 and



remitted the matter to this Tribunal with a direction to commence the hearing from 7.10.2020 and to adjudicate the same as expeditiously as possible and preferably within one month. The matter was accordingly heard on 07.10.2020. The respondent-AIIMS had filed their reply on 06.10.2020 and the applicants filed their rejoinder on 10.10.2020.

In OA No.1120/2020 respondents AIIMS sought time. They submitted their reply on 21.10.2020. The applicants submitted rejoinder on 22.10.2020.

9. Ministry of Health and Family Welfare have also been arrayed as the other respondent in both these OAs. It was submitted by their counsel that they are not filing any reply and the interest of Union of India will be looked after by AIIMS, New Delhi.

10. The matter was heard on 26.10.2020, 27.10.2020, 29.10.2020 and finally on 09.11.2020 when judgment was reserved.

11. Pleadings by applicants are summarised as under:



a) AIIMS Regulations 1999 do not contemplate gender based reservation. The AIIMS is governed by rules. The governing body of each AIIMS is set up under Section 10, para-2 thereof and this governing body is to act as per the Rules. The overarching CIB has been set up under Section 25.

b) The CIB decision to reserve 80% posts for female is in contradiction with the Central Government policy in respect of reservation which are for SC, ST and OBC communities only in a gender neutral context. Thus there is conflict between Central Govt. policy and the decision by CIB. Under such a situation, Central Govt. policy shall prevail as per Section 26.

c) The CIB could not have exceeded the mandate of 15% reservation for SC, 7-1/2% for ST and 27% for OBC as per Statute and in any case 50% ceiling for reservation as a whole, prescribed in Indra Sawhney judgment by the Hon'ble Apex Court could not be exceeded.



Attention was drawn to obiter dicta made by Justice Sawant in para-514 of Indra Sawhney judgment. It was pleaded that even if this obiter dicta is not mentioned in the majority judgment, this is binding on a lower court, especially so it was not contradicted by the majority judgment. In this regard, a judgment of the Hon'ble High Court of Mumbai was relied upon.

d) Article 15 (3) of the Constitution cannot be invoked to provide for 80% reservation for female in public employment. Articles 14, 15 & 16 are to be read harmoniously. In support of this contention the decision of Hon'ble Apex Court in P.B. Vijay Kumar was heavily relied upon.

e) The field to provide for reservation is already occupied by extant Statute and it does not provide for gender based reservation and as such CIB could not have ventured to frame new rules in an occupied field. Such reservation can be provided with legislative action only which is not present in the instant case.



f) No study has been done to arrive at the conclusion that female are better able to provide for patient care and comfort as compared to male and in absence of such a study it is not permissible to provide for 80% reservation in public employment.

g) It was submitted that one male OBC applicant in OA No.1236/2020 who secured a high score of 98.33% percentile (percentile is different vis-à-vis marks) in written examination is not likely to be selected. It was submitted that percentile score indicates percentage of OBC male candidate (out of total candidates who undertook this exam) who secured lesser marks than those secured by this candidate. The prescribed gender based reservation is thus actually hurting even the meritorious candidate.

h) Recruitment Rules exist for the post of Nursing Officer but there is no separate cadre of Nursing Officers (Male) and Nursing Officer (Female). The respondents cannot discriminate between the male and female in public employment. Article 15 (4) provides for reservation in favour of socially and educated backward classes as well as



women. However gender based reservation can be provided only with executive instructions. However, there is no executive order also, to provide for gender based reservation. Even though Sections 25 & 26 of AIIMS Act have been invoked, however, this has to be limited to statutory reservation of SC/ST and OBC only. Therefore, CIB could not have decided it as an executive instruction also.

12. In regard to the above contentions, the applicants relied upon the following judgments of Hon'ble Supreme Court and Hon'ble High Courts:

i) **Union of India v. Permanand Singh**, 1999 SCC (L&S) 625. In this case as per the advertisement all 40 posts of Telephone Operator were reserved for female candidates. It was held that the recruitment rules do not have the provision for gender based reservation and Article 15 (3) cannot be invoked to provide for 100% reservation for female to make good the shortfall amongst the Telephone Operators.



ii) **S. Renuka & Ors. v. State of Andhra Pradesh,**

(2002) 5 SCC 195. In this case all the 10 posts of Districts & Sessions Judge Grade-II for setting up family courts and mahila courts were reserved for female. It was held that the rules did not allow 100% reservation for women.

iii) **State of UP v. Bharat Singh,** (2011) 4 SCC 120. It

was held in this case that Indra Sawhney's case continue to the *locus classicus* on the subject of reservation and Articles 14, 15 & 16 of the Constitution of India need to be applied in a manner so as to strike the balance between opportunities for reserved classes on the one hand and other members of the community on the other and such reservation cannot exceed 50% in order to be constitutionally valid.

iv) **T. Katama Reddy v. Revenue Divisional Officer,**

1997 SCC Online AP 914 decided by Hon'ble High Court of Andhra Pradesh. In this case certain fair price shops were to be allotted. A notification issued by the State Govt. providing for 100% reservation for women came to be challenged. It was held that women reservation can be fixed



at 30% and while doing so other reservation already in vogue shall have to be followed. Further while making reservation both for women and for other categories 50% limit should not be exceeded.

v) **Walter Alfred Baid v. UOI**, AIR 1976 Del 302 decided by the Hon'ble High Court of Delhi. In this case the petitioner was a male and was working as sister tutor in school of nursing, Irwin hospital. One post of senior tutor was created. However, when it fell vacant, petitioner was given looking after charge but he was not being promoted as the relevant Recruitment Rules provided that the post shall be filled up from female candidate only. This was like 100% reservation based on gender and this was struck down and recruitments rules were quashed.

vi) **Govt. of AP v. PB Vijaykumar**, (1995) 4 SCC 520 - In this case Government of AP decided in 1984 that women were not getting due share of public employment. With a view to remedy the situation, a notification was issued on 02.01.1984 wherein Rule 22-A was introduced in the A.P.

Subordinate Service Rules under the proviso to Article 309



of the Constitution of India. It reads as under:

“22-A: Notwithstanding anything contained in these Rules or Special or Ad-hoc Rules-

(1) In the matter of direct recruitment to posts for which women are better suited than men, preference shall be given to women; (G.O..Ms.MNo.472, G.A. dated 11.10.1985):

Provided that such absolute preference to women shall not result in total exclusion of men in any category of posts.

(2) In the matter of direct recruitment to posts for which women and men are equally suited, other things being equal, preference shall be given to women and they shall be selected to an extent of at least 30% of the posts in each category of O.C., B.C., S.C., and S.T. quota.

(3) In the matter of direct recruitment to posts which are reserved exclusively for being filled by women they shall be filled by women only.”

Second part of sub rule (2) above was struck down by Hon’ble High Court of AP. This was under challenge before the Hon’ble Supreme Court in this case.

The Hon’ble Court examined the import of clause 15 (3) of the Constitution which provides that nothing in Article 15 shall prevent the State from making any special provision for women and children.



The Hon'ble Court relied upon **Indra Sawhney** judgment wherein it was held that Article 16 (4) enables reservation being made for SC/ST and backward classes. Since provisions of Article 15(3) are similar to those in Article 16 (4), reservation can also be extended to women. The scope of Article 15 (3) was considered to be much wider as compared to that of Article 16 (4) and it can encompass within it several kinds of positive action and programmes in addition to reservation. It was however noted that such reservation must be within reasonable limits. Such limits have been broadly fixed at 50% at the maximum. The same reasoning would apply to Article 15 (3) also which was worded similarly.

The Hon'ble Apex Court held that both reservation and affirmative action are permissible under Article 15 (3) in connection with employment of posts under the State and Article 15 (3) is required to be read harmoniously with Article 16.

The judgment by Hon'ble High Court was set aside and Rule 22 (A) (2) was upheld as valid.

vii) Certain other judgments were also relied upon.



13. It was thus pleaded that gender based reservation also needs to be limited within the overall ceiling of 50%.

14. Per contra, respondents opposed the OAs. The pleas put-forth are summarised as under:

a) There is nothing unjust about 80% reservation being made for female for the post in question. In this regard, it was pleaded that such reservation is not debarred by Indra Sawhney and caste based reservation as per Article 16 (4) shall apply within this quota of 80%. The issue whether 50% limit applies to all types of reservation put together or only in respect of reservation contemplated under Article 16 (4) of the Constitution (i.e. SC/ST/OBC) was considered by Indra Sawhney judgment. In this regard a specific question was also framed and answered that 50% limit applies to community based reservation under Article 16 (4) only. The relevant parts of the judgment are reproduced below:



“682. For the sake of convenient discussion and in the interest of clarity, we found it necessary to elaborate them. Accordingly, we have re-framed the questions. We shall proceed to answer them in the same order. The reframed questions are:

Xxx xxx xxx

6. To what extent can the reservation be made?

(a) Whether the 50% rule enunciated in *Balaji* a binding rule or only a rule of caution or rule of prudence?

(b) Whether the 50% rule, if any, is confined to reservations made under Clause (4) of [Article 16](#) or whether it takes in all types of reservations that can be provided under [Article 16](#)?

(c) Further while applying 50% rule, if any, whether an year should be taken as a unit or whether the total strength of the cadre should be looked to?

(d) Whether *Devadasan* was correctly decided?”

The answer was contained in para 812 of the judgment which is reproduced below:

“812. We are also of the opinion that this rule of 50% applies only to reservations in favour of backward classes made under Article 16(4). A little clarification is in order at this juncture: all reservations are not of the same nature. There are two types of reservations, which may, for the sake of convenience, be referred to as 'vertical reservations' and 'horizontal reservations'. The reservations in favour of Scheduled Castes, Scheduled Tribes and other backward classes [under Article 16(4)] may be called vertical reservations whereas reservations in favour of physically handicapped [under Clause (1) of Article 16] can be referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations that is



called inter-locking reservations. To be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains - and should remain - the same. This is how these reservations are worked out in several States and there is no reason not to continue that procedure.”

b) In regard to the above, our attention was drawn to another judgment of the Hon'ble Supreme Court in **Shiv Prasad v. Govt. of India**, (2008) 10 SCC 382. The background of this case is that the appellant who was the writ petitioner before the High Court, was aggrieved by the fact that though he was selected and recommended by the Selection Committee for appointment as Associate Professor, yet appointment was not given to him. On the contrary, appointment was given to Respondent 4 as Assistant Professor, who was not recommended by the Selection Committee. The respondent University explained its action by stating that they were inter alia required to



give effect to Government policy of 20% reservation for women. The posts of Associate Professor and Assistant Professor were interchangeable under the scheme of flexible cadre structure (FCS), and therefore, the University could give one available post in Open Category (General Category) either to the writ petitioner, who was a male, or to Respondent 4 who was a female. The University, in order to give effect to 20% reservation for women, preferred to give appointment to Respondent 4 instead of writ petitioner. The High Court declared Respondent 4's appointment invalid but instead of directing the University to give appointment to writ petitioner, directed that fresh process of appointment may be initiated. Both the parties approached the Supreme Court by way of cross-appeals.

The relevant part of the judgment is reproduced below:

“24. The next question then is : How can this woman-reservation be implemented and enforced? Whether such reservation will violate Indra Sawheny (I) and exceed 50% reservation which is maximum? Our reply is in the negative. Let us consider the issue.

Xxx xxx xxx

26. A similar question came up for consideration in Swati Gupta. There, the petitioner appeared in the Combined Pre-Medical Test (CPMT) held by the State. She was not



selected. She challenged a notification of the State Government on the ground that the reservation was 65% which exceeded 50% and was thus violative of the constitutional guarantee under Articles 14, 16, 19 and 21 of the Constitution as also the ratio laid down in *Indra Sawhney (I)*. The Government of U.P., however, issued another notification clarifying its stand on reservations.

28. The Court considered *Indra Sawhney (I)*, applied it to the case on hand and held that the submission of the State was well founded and the contention of the petitioner that the reservation violated constitutional guarantee of 50% was not well-founded. The Court stated:

“3. The vertical reservation is now 50% for general category and 50% for Scheduled Castes, Scheduled Tribes and Backward Classes. Reservation of 15% for various categories mentioned in the earlier circular which reduced the general category to 35% due to vertical reservation has now been made horizontal in the amended circular extending it to all seats. The reservation is no more in general category. The amended circular divides all the seats in CPMT into two categories one, general and other reserved. Both have been allocated 50%. Para 2 of the circular explains that candidates who are selected on merit and happen to be of the category mentioned in para 1 would be liable to be adjusted in general or reserved category depending on to which category they belong, such reservation is not contrary to what was said by this Court in *Indra Sawhney*.”

(emphasis supplied)

29. A similar question was raised in [Anil Kumar Gupta & Ors. V. State of U.P. & Ors.](#), (1995) 5 SCC 173 : JT 1995 (5) SC 505. Referring to *Indra Sawhney (I)*, and *Swati Gupta*, the Court observed;

“18. Now, coming to the correctness of the procedure prescribed by the revised notification for filling up the seats, it was wrong to direct the fifteen per cent special reservation seats to be filled up first and then take up the OC (merit) quota (followed by filling of OBC, SC and ST quotas). The proper and correct course is to first fill up the OC quota (50%) on



the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied “in case it is an overall horizontal reservation” no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/ accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom. (If, however, it is a case of compartmentalised horizontal reservation, then the process of verification and adjustment/ accommodation as stated above should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per cent in favour of special categories, overall, may be satisfied or may not be satisfied.) Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota.

30. It is thus clear that the reservation for women candidates cannot be held invalid or in excess of permissible quota. In fact, reservation policy itself makes this position clear. A letter, dated February 26, 1999 referred to above and annexed as Annexure P1 is explicitly clear. Para 2 reads thus;

Reservation will be of Horizontal nature i.e. if any Woman candidate selected on the basis of reservation on any category then she will be fixed of the said category.”

It was, therefore, pleaded that for providing reservation for women, 50% limit as per Indra Sawhney need not be applied. 80% reservation for female under Article 15 (3) and shall act as a horizontal reservation and cuts across

50% reservation under Article 16 (4) of the Constitution which was for SC/ST and OBC.



It has been held in P.B. Vijay Kumar that scope of Article 15 (3) is much wider than Article 16 (4) (para-12 vi supra). The arguments put-forth by the applicants cannot be accepted.

c) With regard to above contention, reliance was also placed on another judgment by Hon'ble Supreme Court in **T. Sudhakar Reddy vs. Government of Andhra Pradesh**, AIR 1994 SC 544.

d) The respondents also drew attention to another judgment by Hon'ble Supreme Court in **Union of India v. K.P. Prabhakaran**, (1997) 11 SCC 638, where the question of making reservation for all posts in certain offices for women only came under adjudication. The Hon'ble Supreme Court considered P.B.Vijaykumar and also upheld the same. The point at issue and relevant operative part of this judgment is reproduced below:

“1. These appeals by the Union of India relate to appointment on the posts of Enquiry-cum-Reservation



Clerks in the four metropolitan cities of Madras, Bombay, Calcutta and Delhi. In April 1978 the Railway Administration took a decision that both the upper and lower class reservation counters in the Reservation Offices in the metropolitan cities of a Madras, Bombay, Calcutta and Delhi would have to be manned only by women. By circular dated 30-6-1978, it was decided that the Reservation Offices in the said metropolitan cities should constitute seniority unit separate from the rest of the Enquiry and Reservation cadre in the Railways. By the impugned judgment, the Madras High Court has quashed the said circular dated 30-6-1978 on the view that it was violative of provisions of Articles 14 and 16(1) and (2) of the Constitution. The High Court has rejected the contention urged on behalf of the appellants that it was protected by Article 15(3) of the Constitution. The High Court has held that Article 15(3) cannot be read as a proviso or an exception qualifying or restriction the guarantee under Articles 16(1) and (2) of the Constitution.

2. The learned counsel for the appellants has invited our attention to the restricting the guarantee under Articles 16(1) and (2) of the Constitution. Recent decision of this Court in Govt. of A. P v. PB. Vijayakumar [1995 (4) SCC 520 : 1995 SCC(L&S) 1056 1995 (30) ATC 576]. In that case the question regarding validity of Rule 22-A (2) of the A. P. State Subordinate Service Rules came up for consideration. The said provision provided for reservation to the extent of 30 per cent for women in the matter of direct recruitment to the posts governed by the said rules. The Andhra Pradesh High Court had declared the said rule to be invalid on the view that Article 15(3) was not applicable and the rule was violative of Articles 14 and 16 of the Constitution. The said view of the High Court has been reversed by this Court. It has been held that Article 15 deals with every kind of State action in relation to the citizens of this country and that every sphere of activity of the State is controlled by Article 15(1) and, therefore, there was no reason to exclude from the ambit of Article 15(1) employment under the State. Since Articles 15(1) and 15(3) go together, the protection of Article 15(3) would be applicable to employment under the State falling under Articles



16(1) and (2) of the Constitution. In view of the above-referred judgment of this Court in GovL of A. P v. PB. Wjayakumar¹ the impugned judgment of the High Court holding that Article 15(3) has no application in matters relating to employment under the State falling under Articles 16(1) and (2) cannot be upheld and has to be set aside.

3. During the pendency of these appeals, this Court had passed an interim order staying the impugned judgment of the High Court subject to the condition that any appointment made during the pendency of the appeals will be subject to the result of these appeals. Since we are of the view that the impugned judgment of the High Court cannot be upheld, it is directed that the appointments that have been made on the basis of the interim order passed by this Court would remain unaffected. The appeals are disposed of accordingly. No order as to costs.”

e) In regard to statutory competence of CIB to decide on the issue, it was pleaded that earlier there was only one AIIMS at New Delhi which was set up under AIIMS Act, 1956. This Act has been amended later which also provided for new AIIMS being set up. This act envisages that there shall be a governing body to be constituted as per Section 10 of the Act to manage and decide on various issues. The governing body has been assigned the following role as per Section 10 (1) to (3) of the Act, which reads as under:

“10. Governing Body and other Committees of the Institute



(1) There shall be a Governing Body of the Institute which shall be constituted by the Institute from among its members in such manner as may be prescribed by regulations.

(2) The Governing Body shall be the executive committee of the Institute and shall exercise such powers and discharge such functions as the Institute may, by regulations made in this behalf, confer or impose upon it.

(3) The President of the Institute shall be the Chairman of the Governing Body and as Chairman thereof shall exercise such powers and discharge such functions as may be prescribed by regulations.”

The other provisions relevant for the issue at hand are contained in Sections 25 and 26 of the said Act and the same are reproduced below:”

“**Section 25** Control by Central Government - 40[Every Institute] shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act.

Section 26 Disputes between the Institute and the Central Government - If in, or in connection with, the exercise of its powers and discharge of its functions by the Institute under this Act, any dispute arises between the Institute and the Central Government, the decision of the Central Government on such dispute shall be final.”



Later on, when six more AIIMS were to be set up at various places in India, it was felt necessary to constitute an Empowered Committee (EC) in the Ministry of Health and Family Welfare as an overall governance structure for the new AIIMS to decide on major common policy issues not only for administrative convenience but also in the interest of uniformity and consistency of policies for all new AIIMS. This EC was constituted vide Ministry of Health and Family Welfare OM dated 12.01.2018. It comprises of Hon'ble Minister for Health and Family Welfare as Chairman, and Secretary, Department of Health and Family Welfare, Secretary, Department of Biotechnology, Special Secretary and Financial Adviser, Special Secretary Health and the Director of AIIMS, New Delhi as well as the Directors of six new AIIMS as members of this EC. The functions assigned to EC are reproduced below:

“3. The Empowered Committee will consider and take decision on all major policy matters, inter – alia, in the realm of Administration, HR, Finance, etc. which are seen to be common issues for all new AIIMS.

4. xxxxxx

5. xxxxxx



6. xxxxxx

7. The respective GBs and IBs of the new AIIMS, may, by passing appropriate resolutions, authorize the Empowered Committee to take decisions on all matters mentioned in para 3 above.

8. The decisions taken by the Empowered Committee may be adopted by all the new AIIMS and the same may be ratified by their respective GBs and IBs in due course.

9. The Directors of the six new AIIMS are advised to place a suitable agenda before their respective IBs to authorize the aforesaid Empowered Committee to take policy decisions on their behalf on major issues of common application/relevance to the six AIIMS. Such policy issues may cover all matters relating to establishment and personnel matters, namely, recruitment issues, salary and allowances matters, all kinds of employee benefits and any other HR matters.

10. xxxxxx

11. It may be left to the consideration of the Empowered Committee to *suo motu* consider and decide upon issues as common policy/guidelines.

12. The IBs/GBs and the Directors of the new AIIMS could also make specific reference for consideration of the Empowered Committee.

13. The decisions taken by the Empowered Committee may be suitably placed before the respective IBs in due course for necessary ratification.

14. The above arrangement will be applicable to all the new AIIMS.”

Later on it was decided to set up 15 more AIIMS in addition to the above six. Thus the total number of AIIMS to come up was 22, i.e., 1+6+15. In consideration of the recommendations made by Bhan committee which was



constituted to look into the setting of these new AIIMS a new OM was issued by Ministry of Health & Family Welfare on 28.06.2018, superseding the earlier OM of 12.01.2018. The EC was re-constituted as Central Institute Body (CIB) with composition as under:

“2. The Composition of the Central Institute Body (CIB) is as under:

- (i) Chairman and all other Members as per the Institute Body of AIIMS Delhi as constituted/reconstituted from time to time.
- (ii) All Directors of new AIIMS as and when appointed.
- (iii) Additional Secretary handling the matter of PMSSY.
- (iv) Joint Secretary, PMSSY.

Director, AIIMS Delhi will be the Member-Secretary. The Secretarial support to the Central Institute Body will be provided by AIIMS Delhi.

The Central Institute Body may co-opt experts from the medical/medical research or any other relevant field from time to time, as considered necessary.”

This OM dated 28.06.2018, contains the following orders also:

“3. The above Central Institute Body would consider all common policy matters. The Committee will also consider any such matter that are common to two or more institutes. All proposals of capital expenditure of any of the new AIIMS over Rupees 100 Crores are also envisaged to be placed before the Central Institute Body for consideration.

It is left to consideration of the Central Institute Body to suo motu take up issues, it thinks fit, for consideration



as per above. However, the IBs/GBs and the Directors of new AIIMS may also make specific reference for consideration of the Central Institute Body.

4. The decisions taken by the Central Institute Body may be adopted by all the new AIIMS and the same may be ratified by their respective GBs and IBs in due course.

5. The respective IBs of the new AIIMS may pass appropriate resolution authorizing the Central Institute Body to take decision on all matters mentioned in para 3 above. A draft resolution has also been prepared (enclosed herewith) which may be adopted by the respective IBs of all the new AIIMS through circulation, on priority, within a fortnight.”

The draft resolution, referred above, for consideration of the governing body of each of the new AIIMS had the following clauses:

“4. The above Central Institute Body has been envisaged to consider all common policy matters for the new AIIMS. The Committee will also consider any such matter as are common to two or more institutes. All proposals of capital expenditure of any of the new AIIMS over Rupees 100 Crores are also envisaged to be placed before the Central Institute Body also for consideration.

The IBs/GBs and the Directors of the new AIIMS may make specific reference for consideration by the Central Institute Body.

5. As per the envisaged system, the decisions taken by the Central Institute Body may be ratified by the respective GBs and IBs of all the AIIMS in due course.

6. The above system is viewed to bring efficiency in the governance of new AIIMS in as much as, it would not only bring about uniformity in various policy decisions across different AIIMS, but would also facilitate and streamline the decision making process. The individual institutes would also benefit by the rich experience of AIIMS, Delhi earned by it over several decades which has



been envisaged to bring guidance, support and leadership in the matter of governance of new AIIMS through its secretarial support as well as through association of its IB member in the Central Institute Body.

7. In view of the above and in furtherance of setting up of the aforesaid governance structure, the Institute Body resolves that the Central Institute Body as mentioned above is authorized to take decision on different issues as covered in para 3 of the aforesaid OM.”

f) It was thus pleaded that the CIB is a fully empowered body. The 4th meeting of the CIB took place on 27.07.2019.

It was attended by the following members:

(i) Shri Harsh Vardhan, Hon'ble Union Minister of Health and Family Welfare as President, (ii) Professor Ram Gopal Yadav, M.P. Rajya Sabha, (iii) Smt. Preeti Sudan, Secretary Ministry of Health and Family Welfare, (iv) Dr. A.K.Saxena, DGHS, (v) Dr. D.S.Rana, Chairman, Board of Management, Sir Ganga Ram Hospital, (vi) Dr. D.G.Mahisekar, Vice Chancellor, Maharashtra University of Health Sciences, (vii) Dr. D.K.Verma, Professor, Department of Surgery, Indira Gandhi Medical College, Shimla, (viii) Eight Directors of new AIIMS and 12 (ix) Director AIIMS, New Delhi as Member Secretary.

In this meeting of CIB, following was decided as item



No.16:

“16. Additional Item: the CIB discussed on the issue of appropriateness and requirement of female nursing staff in a number of departments/specialised wards vis-a-vis patient comfort and care. Keeping this in view, it was decided that 80% of posts may be reserved for female nursing staff while the remaining 20% posts may be filled by male nursing staff.”

In view of the above, it was pleaded that CIB was represented by a wide spectrum of experts and was fully empowered and it had taken the decision. The members had requisite knowledge and wide experience in the field of providing health care and had taken the decision in the interest of patient comfort and care. It cannot be faulted.

g) Respondents also relied upon another judgment by the Hon'ble Supreme Court in **Rajesh Kumar Daria v. Rajasthan Public Service Commission**, (2007) 8 SCC 785.

In this case certain recruitment was conducted by Rajasthan Public Service Commission wherein certain posts were reserved for women candidates also. However this was provided within the post reserved only for SC/ST & OBC candidate. Rajasthan Judicial Service Rules, 1955 provided



for 20% horizontal reservation for women category-wise.

The Rajasthan Public Service Commission while preparing select list had wrongly applied the principle of horizontal reservation and had selected women candidates in excess of this quota, thereby denying selection to the appellant (two from OBC and five from general category) and other male candidates who secured more marks as compared to the selected women candidates. Appellant filed writ before Hon'ble High Court of Rajasthan seeking annulment of the select list to the extent of excess selection of women candidate and for a consequential direction for selection of male candidates. The High Court dismissed the Writ by holding that the principles of reservation were correctly applied.

Appellants approached the Hon'ble Supreme Court. While allowing this appeal in part it was held that while social reservation for SC/ST/OBC under Article 16 (4) are vertical reservation the special reservation in favour of physically handicapped, women etc. under Article 16 (4) or 15 (3) are horizontal reservations. The Hon'ble Court



discussed the ratio of Indra Sawhney and Anil Kumar Gupta judgments wherein application of vertical and horizontal reservation was explained in detail.

In keeping with this the appeal was allowed in part and the Hon'ble High Court judgment was set aside in respect of three appellants.

h) Reliance was also placed on another judgment by Hon'ble Apex Court in **Air Conditioning Specialists vs. Union of India**, (1996) 221 ITR 739, wherein it was held that it is not proper on the part of Tribunal to ignore the judgment by a higher judicial forum. It was pleaded that in the instant case the grievance raised has already been adjudicated by Hon'ble High Court of Patna (para-4 supra) which is a superior judicial forum and this Bench of the Tribunal is duty bound to follow the same ratio and dismiss the instant OAs.

i) Some other judgments were also relied upon.



15. The learned counsel of Union of India adopted the arguments put-forth by the learned counsel appearing for AIIMS, New Delhi.

16. The applicants rebutted the contentions put-forth by the respondents. These are summarised as under:

a) Obiter dicta by Justice Sawant is binding for lower courts and this Tribunal. Even otherwise any special provision for female needs to be within the reasonable limits. Fixing reservation at 80% is excessive and cannot be accepted.

b) In respect of public employment it is Article 16 which needs to be followed and not Article 15.

c) Various judgments relied upon by the respondents are in the context when reservation provided for women was in the range of 20% to 30%. As against this, in the instant case it has been kept at 80% which is excessive. Accordingly, the ratio of relied upon judgment is not applicable.



d) CAT Patna while dismissing OA 54/2020 in their judgment had relied upon judgment by Hon'ble Apex Court in P.B. Vijay Kumar (para-12 vi supra).

The Hon'ble High Court has while upholding this decision in Writ Petition No.7524/2020 (para-4 supra) also relied upon this judgment in P.B. Vijay Kumar. However, it appears that para-8 of the Hon'ble Apex Court judgement in P.B. Vijay Kumar was perhaps overlooked as this has not been reproduced in either of the two judgments, even as other paras are quoted. The concluding part of this para-8 is quoted below:

“This Court has, therefore, clearly considered the scope of Article 15(4) as wider than Article 16(4) covering within it several kinds of positive action programmes in addition to reservations. It has, however, added a word of caution by reiterating M.R. Balaji (supra) to the effect that a special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4), must be within reasonable limits. These limits of reservation have been broadly fixed at 50% at the maximum. The same reasoning would apply to Article 15(3) which is worded similarly.”

e) It may, therefore, not be appropriate not to take totality of circumstances while deciding the instant OAs as the challenge pertains to 80% reservation for female under



Article 15 (3) of the Constitution which exceeds 50% reservation ceiling set by Indra Sawhney under Article 16 (4) of the Constitution.

17. The matter was heard at length. Shri Santosh Krishnan, learned counsel represented applicants in OA No. 1236/2020 and Shri Gyanant Kumar Singh, learned counsel represented applicants in OA No. 1120/2020. Shri R.K. Jain, Shri Anand Verma and Shri V.S.R. Krishna, learned counsels represented Respondents in OA No. 1236/2020. Shri Hanu Bhaskar and Shri Kaushal Gautam, learned counsels represented Respondents in OA No. 1120/2020.

18. The decision to reserve 80% posts for Nursing Officers was taken by CIB which is a body set up in the Ministry of Health and Family Welfare to oversee the setting up of 21 new AIIMS by drawing upon the experience and expertise gained by the older AIIMS, New Delhi. The CIB is functioning under the Chairmanship of Hon'ble Minister of Health and Family Welfare and is represented by other



experts from diverse walks of life out of whom majority are from the medical field. The statutory power are drawn from the relevant Act read with subsequent amendments and the OMs issued on 12.1.2018 and 28.06.2018. Paras-3 and 9 specify that Empowered Committee which was re-designated as CIB, can take a policy decision in respect of the issues pertaining to Human Resources (HR), establishment and personal matters, namely, recruitment issue etc. Therefore, the contention of the applicants that CIB was not empowered is not acceptable.

19. The second leg of contention raised by the applicants is in respect of legality of reserving 80% posts for female which exceeds 50% upper limit of reservation set by Indra Sawhney judgment. The respondents have contended that 80% is kept as a special provision for women under Article 15 (3), whereas 50% limit was set for SC/ST/OBC community in the context of Article 16 (4) and is thus permissible in its own right. Both rival parties have relied upon many judgments supporting their case.



The applicants have mainly relied upon the judgment in **P.B. Vijay Kumar** and contended that it appears that entirety of this judgment was not taken into account by Patna Bench of Tribunal as well as by Hon'ble High Court of Patna (para-4 supra).

This Tribunal is of the considered view that Article 15 (3) provides for special provision for women. The Hon'ble Apex Court have held in many judgments, including in P.B. Vijay Kumar that scope of Article 15 (3) is much wider as compared to that of Article 16 (4) under which 50% ceiling was fixed in Indra Sawhney. The CAT Patna while deciding OA No.54/2020 and Hon'ble Patna High Court while deciding Writ Petition No.7524/2020 have both relied upon P.B. Vijay Kumar, which in turn has also discussed Indra Sawhney. Many other judgments were also relied upon. It was thereafter that 80% reservation for female for the post of Nursing Officer was upheld in these judgments (para-4 supra). There is no reason to believe that the entire judgment in P.B. Vijay Kumar was not taken into account by these two judicial forums. This Tribunal is in respectful

agreement with the decision rendered by CAT Patna and Hon'ble High Court of Patna.



This Tribunal is in respectful agreement with the adjudication that scope of Article 15 (3) is much wider, as compared to that of Article 16 (4), which is limited to only to community based reservation in public employment for candidates belonging to SC/ST/OBC.

The judgments relied upon by the applicants are in the context where 100% posts were reserved for female candidates in that particular selection. In the instant OAs, the challenge is to reservation for women which is kept at 80%. Hence those ratios are not considered applicable here.

20. Accordingly, the reservation of 80% posts of Nursing Officer for female, as notified, is considered to be a special provision for women candidate under Article 15 (3) of the Constitution as a separate classification and is held to be valid.

In keeping with the above, the OAs are held to be without merit and the same are accordingly dismissed. No costs.



(R.N. Singh)
Member (J)

(Pradeep Kumar)
Member (A)

‘San.’