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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WPC No. 591 of 2012**

Guru Ghasidas Sahitya Avam Sanskriti Academy, through its President: P.R.Gahine son of Late Sahas Ram Gahine, aged about 73 years, office at Guru Ghasidas Colony, Sanskritik Bhawan, New Rajendra Nagar, Raipur, Chhattisgarh.

---Petitioner

**Versus**

1. State of Chhattisgarh, through the Secretary, Department of General Administration, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.
2. The Chief Secretary, State of Chhattisgarh, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.

----Respondents

For Petitioner

: Mr. Brijendra Singh and Mr. Shyam Sunder Lal Tekchandani, Advocates.

For Respondents

: Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.

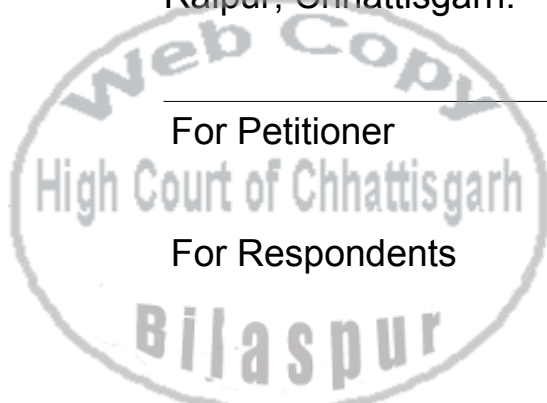
For Intervenors

: Dr. K.S.Chauhan, Senior Advocate assisted by Mr. Ajit Kumar Ekka, Mr. Ravi Prakash, Mr. Ashish Kumar Beck, Mr. Lekh Ram Dhruw and Mr. R.V.Rajwade, Mr. Anchal Kumar Matre, Advocates.

**WPC/592/2012**

1. P.R.Khute son of Shri Kalap Ram Khunte (Ex Member of Parliament), aged about 62 years, R/o A-12, Palas Vihar, New Purena Mahavir Nagar, Raipur, Chhattisgarh.
2. Smt. Padma Manhar wife of Shri Ghanshyam Manhar (Member of Legislative Assembly, Chhattisgarh), aged about 36 years, R/o Sarangarh, District Raigarh.

---Petitioners





**Versus**

1. State of Chhattisgarh, through the Secretary, Department of General Administration, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.
2. The Chief Secretary, State of Chhattisgarh, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.

**----Respondents**

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For Petitioner	: Mr. Brijendra Singh and Mr. Shyam Sunder Lal Tekchandani, Advocates.
For Respondents	: Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.

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**WPC/593/2012**

Satyanam Seva Sangh, Raipur, Chhattisgarh, through: it's President Shri Sundar Lal Lahre, son of Shri D.R.Lahre, aged about 64 years, R/o Veer Shivaji Ward No. 7, Khamtarai, Raipur, Chhattisgarh.

**---Petitioner**

**Versus**

1. State of Chhattisgarh, through the Secretary, Department of General Administration, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.
2. The Chief Secretary, State of Chhattisgarh, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.

**----Respondents**

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For Petitioner	: Mr. Brijendra Singh and Mr. Shyam Sunder Lal Tekchandani, Advocates.
For Respondents	: Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.

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**WPC/594/2012**

1. H.R.Bhatpahare S/o Late Panch Ram Bhatpahare, aged about 77 years, R/o Om Nagar, Jarhabhatha, Bilaspur, Chhattisgarh.
2. Om Prakash Gangotri S/o Late Bhairo Dayal Gangotri, aged about 64 years, R/o Main Road, Dayalband, Bilaspur, Chhattisgarh.
3. Ms. Pushpa Adile D/o Shri Basant Kumar Adile, aged about 25 years, R/o



Ravi Nagar, Sindhi Colony, Bilaspur, Chhattisgarh.

4. Mahendra Gangotri S/o Shri Om Prakash Gangotri, aged about 35 years,  
R/o Main Road, Dayalband, Bilaspur.

---Petitioners

**Versus**

1. State of Chhattisgarh, through the Secretary, Department of General Administration, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.

2. The Chief Secretary, State of Chhattisgarh, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.

----Respondents

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For Petitioner : Mr. N. Naha Roy, Advocate.

For Respondents : Mr. S.C.Verma, Advocate General alongwith  
Mr. Vikram Sharma and Mr. Gagan Tiwari,  
Deputy Government Advocates.

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**WPC/652/2012**

1. Chandra Prakash Jangde S/o Shri Fagu Ram Jangde, aged about 45 years, resident of Balram Talkies Road, Nehru Nagar, Bilaspur, Chhattisgarh.

2. Ram Ratan Jangde S/o Late Moti Lal Jagde, aged about 73 years, resident of Gurughasi Das School, Nehru Nagar, Bilaspur, Chhattisgarh.

---Petitioners

**Versus**

1. State of Chhattisgarh, through Chief Secretary, DKS Building, Mantralaya, Raipur, Chhattisgarh.

2. State of Chhattisgarh, through Secretary, Scheduled Caste, Scheduled Tribal Welfare Department, DKS Building, Mantralaya, Raipur, Chhattisgarh.

3. State of Chhattisgarh, through Assistant Commissioner, Scheduled Caste, Scheduled Tribal Welfare Department, Bilaspur, Chhattisgarh.

----Respondents

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For Petitioner : Mr. Anchal Kumar Matre, Advocate.

For Respondents : Mr. S.C.Verma, Advocate General alongwith  
Mr. Vikram Sharma and Mr. Gagan Tiwari,  
Deputy Government Advocates.

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**WPC/653/2012**

Ramayan Lal Jangde S/o Late Moti Lal Jangde, aged about 63 years,



Resident of Adile Chouk, Purani Basti, Korba, Chhattisgarh.

---Petitioner

**Versus**

1. State of Chhattisgarh, through Chief Secretary, Chhattisgarh State, DKS Building, Mantralaya, Raipur, Chhattisgarh.
2. State of Chhattisgarh, through Secretary, Scheduled Caste, Scheduled Tribal Welfare Department, DKS Building, Mantralaya, Raipur, Chhattisgarh.

----Respondents

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For Petitioner	: Mr. Anchal Kumar Matre, Advocate.
For Respondents	: Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.

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**WPC/936/2012**

Shri Ram Baghel S/o Sadhram Baghel, aged about 35 years, R/o Vijeta Complex, Shop No. 14-15, Shastri Bazar, Raipur, Tahsil and District Raipur, Chhattisgarh.

---Petitioner

**Versus**

1. State of Chhattisgarh, through General Administrative Department, DKS Bhawan, Raipur, Chhattisgarh.
2. Union of India, through its Secretary, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, Shastri Bhawan, New Delhi.

----Respondents

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For Petitioner	: Mr. Anumeh Shrivastava and Mr. Akash Shrivastava, Advocates.
For Respondent No. 1	: Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.
For Respondent No. 2	Mr. Krishna Gopal Yadav and Ms. Anmol Sharma, Central Government counsel.

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**WPC/2072/2014**

1. Arun Kumar Pathak, Late Shri Ramesh Prasad Pathak, aged about 39 years, R/o village Dhangaon, Thana Gaurella, District Bilaspur, Chhattisgarh.



2. Bholu Singh, Shri Sheshnath Singh, aged about 31 years, R/o Shivnandan Nagar, Sector-1, WRS Colony, Thana Khamtarai, District Raipur, Chhattisgarh.

3. Ranjit Pratap Singh, Shri Virendra Singh, aged about 30 years, R/o Indira Nagar, Zone-1, Thana Purana Bhilai, District Durg, Chhattisgarh.

4. Pushpendra Tiwari, Shri Hemdatta Tiwari, Aged about 32 years, R/o 23, Sundar Nagar, Thana Dindayal Upadhyay Nagar, District Raipur, Chhattisgarh.

---Petitioners

**Versus**

1. State of Chhattisgarh, through Secretary, Department of General Administration, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.

2. The Chief Secretary, State of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.

----Respondents

For Petitioners

: Mr. Vinay Pandey, Advocate.

For Respondents

: Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.

**WPS/4240/2014**

Chhattisgarh Anusuchit Jati/Janjati Chhatra Sangathan (Student Union) (Registration No. 19557/88) having it's office at Tandan Niwas, Chourasiya Colony, Santoshi Nagar, Raipur, Chhattisgarh, through: it's President Yashwant Bandhe, son of Shri Brij Lal Bandhe, aged about 25 years, R/o Village Matwali, Post Sundarvan, PS Palari, Civil and Revenue District Baloda-Bazar-Bhatapara, Chhattisgarh.

---Petitioner

**Versus**

1. State of Chhattisgarh, through the Secretary, Tribal Welfare Department, Mantralaya, Mahanadi Bhawan, New Raipur, Chhattisgarh.

2. Commissioner, Adim Jati Tatha Anusuchit Jati vikas, Chhattisgarh, Raipur, Chhattisgarh.

----Respondents




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For Petitioner	: Mr. Rahul Agrawal, Advocate.
For Respondents	: Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.

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**WPS/5578/2012**

1. Sparsh Lunkad D/o Shri S.K.Lunkad, aged about 27 years, R/o B-303, Palm Residency, Opposite Bagrecha Nursing Home, Katora Talab, PS Civil Lines, Raipur, Chhattisgarh.
2. Bhupendra Kumar Sahu S/o Shri H.C.Sahu, aged about 26 years, R/o village: Tikripar, Post Armarikala, Block and PS Gurur, District Balod, Chhattisgarh.
3. Ajay Sur S/o Shri R.K.Sur, aged about 28 years, R/o Ganesh Nagar, Naya Para, PS Torwa, Bilaspur, Chhattisgarh.

---Petitioners

**Versus**

1. State of Chhattisgarh, through the Secretary, Department of General Administration, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.
2. The Chief Secretary, State of Chhattisgarh, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.
3. Chhattisgarh State Civil Supplies Corporation, through The Managing Director, Head Office: Hitwad Parisar, Avanti Vihar, PS Telibandha, Raipur, Chhattisgarh.
4. Santosh Agrawal, Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Raipur, District Raipur, Chhattisgarh.
5. Nitin Deewan, Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Surajpur, District Surajpur, Chhattisgarh.
6. Abhinay Shukla, Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Raigarh, District Raigarh, Chhattisgarh.
7. Vinod Budhicha, Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Korba, District Korba, Chhattisgarh.
8. Pragya Kadam, Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Janjgir, District Janjgir-Champa, Chhattisgarh.
9. Alka Shukla Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Mahasamund, District Mahasamund, Chhattisgarh.



10. Anita Soni, Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Gariaband, District Gariaband, Chhattisgarh.
11. Neha Sahu, Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Bemetara, District Bemetara, Chhattisgarh.
12. Pramod Jangde, Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Balod, District Balod, Chhattisgarh.
13. Manoj Minj, Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Jashpur, District Jashpur, Chhattisgarh.
14. Mamta Dhruv, Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Baloda Bazar, District Baloda Bazar, Chhattisgarh.
15. Sameer Tirkey, Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Jagdalpur, District Bastar, Chhattisgarh.
16. Akash Rahi, Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Bijapur, District Bijapur, Chhattisgarh.
17. Rupesh Dhruv, Assistant Manager, Chhattisgarh State Civil Supplies Corporation, Jagdalpur, District Bastar, Chhattisgarh.

**----Respondents**

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| For Petitioners           | : Mr. N. Naha Roy, Advocate.   |
| For Respondents No. 1 & 2 | : Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates. |
| For Respondent No. 3      | : Mr. Abhishek Vinod Deshmukh, Advocate.   |
| For Private Respondents   | Ms. Surya Kawalkar Dangi, Advocate.  |
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**WPC/1067/2012**

Dr. Rajesh Baghel aged about 41 years, s/o Shri Punni Das Baghel, R/o Forest Colony, Belvapaalai, Kondagaon, Chhattisgarh.

**---Petitioner**

**Versus**

1. State of Chhattisgarh, Through Secretary, Health and Family Welfare Department, Mantralaya, DKS Bhavan, Raipur, Chhattisgarh.
2. Director, Health and Family Welfare Department, Mantralaya, DKS Bhavan, Raipur, Chhattisgarh.
3. Director, Medical Education, DKS Bhavan Campus, Old Nursing Hostel, Raipur, Chhattisgarh.
4. Ayush & Health Sciences University of Chhattisgarh, Through its Registrar,



GE Road, Raipur, Chhattisgarh.

----Respondents

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For Petitioner	: Mr. Mateen Siddiqui and Ms. Diksha Gouraha, Advocate.
For Respondents	: Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.

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**WPC/1093/2012**

1. L.L.Koshley son of Late Shri S.L.Koshley, aged 62 years, R/o D-102, Guru Ghasidas Colony, New Rajendra Nagar, Raipur, Chhattisgarh.
2. K.P.Khande son of Late Shri S.P.Khande, aged 72 years, R/o Shyam Nagar, Telibandha Raipur, Chhattisgarh.
3. H.R.Bhatpahre son of Late Panch Ram Bhatpahre, aged 77 years, R/o Om Nagar, Jarhabhata, Bilaspur, Chhattisgarh.

---Petitioners

**Versus**

1. State of Chhattisgarh, through the Secretary, Department of General Administration, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.
2. The Chief Secretary, State of Chhattisgarh, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.
3. Secretary, Department of Higher Education, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.

----Respondents

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For Petitioner	: Mr. Brijendra Singh and Mr. Shyam Sunder Lal Tekchandani, Advocates.
For Respondents	: Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.

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**WPC/1121/2012**

1. Dr. Pankaj Sahu, aged about 35 years, S/o Shri B.R.Sahu, R/o R-3, Vinoba Nagar, Bilaspur, Chhattisgarh.
2. Dr. Sudhir Kumar Bhoi, aged about 30 years, S/o Late Shri S.K.Bhoi, R/o Mahalpara, Saraipali, Mahasamund, Chhattisgarh.
3. Dr. Mamta Sahu, aged about 30 years, W/o Dr. Pankaj Sahu, R/o R-3,





Vinoba Nagar, Bilaspur, Chhattisgarh.

4. Dr. Chaturbhuj Mishra, aged about 35 years, S/o Dr. Sheshnath Mishra, R/o Sr. MIG 12, Nehru Nagar, Bilaspur, Chhattisgarh.

---Petitioners

**Versus**

1. State of Chhattisgarh, through Secretary, Health and Family Welfare Department, Mantralaya, DKS Bhavan, Raipur, Chhattisgarh.

2. Director, Health and Family Welfare Department, Mantralaya, DKS Bhavan, Raipur, Chhattisgarh.

3. Director, Medical Education, DKS Bhavan Campus, Old Nursing Hostel, Raipur, Chhattisgarh.

4. Ayush & Health Sciences University of Chhattisgarh, Through its Registrar GE Road, Raipur, Chhattisgarh.

----Respondents

For Petitioner

: Mr. Mateen Siddiqui and Ms. Diksha Gouraha Advocates.

For Respondents

: Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.

**WPC/1372/2012**

Dr. Manmeet Thawait aged about 31 years, S/o Shri Ram Kumar Thawait, R/o Infront of Railway Station, Ward No. 1, Bilha, District Bilaspur, Chhattisgarh.

---Petitioner

**Versus**

1. State of Chhattisgarh, through Secretary, Health and Family Welfare Department, Mantralaya, DKS Bhavan, Raipur, Chhattisgarh.

2. Director, Health & Family Welfare Department, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.

3. Director, Medical Education, DKS Bhavan Campus, Old Nursing Hostel, Raipur, Chhattisgarh.

4. Ayush & Health Sciences University of Chhattisgarh, through its Registrar, GE Road, Raipur, Chhattisgarh.

----Respondents

For Petitioner

: Mr. Mateen Siddiqui and Ms. Diksha Gouraha




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Advocates.  
 For Respondents : Mr. S.C.Verma, Advocate General alongwith  
 Mr. Vikram Sharma and Mr. Gagan Tiwari,  
 Deputy Government Advocates.

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**WPS/5290/2021**

Dr. Renu Pant W/o Shri Nitesh Pant, Aged about 40 years, Occupation  
 Government Service (Lecturer, Nagriya Nikay) R/o Amapara, Main Road,  
 Kanker, District North Bastar, Kanker, Chhattisgarh.

---Petitioner

**Versus**

1. State of Chhattisgarh, through Secretary, Department of General  
 Administration, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. The Chief Secretary, State of Chhattisgarh, Mantralaya, Mahanadi Bhawan,  
 Naya Raipur, Chhattisgarh.
3. State of Chhattisgarh, through the Higher Education Department,  
 Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
4. Chhattisgarh Public Service Commission, through its Secretary, Shankar  
 Nagar Road, Raipur, Chhattisgarh.

----Respondents

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For Petitioner : Mr. Anil S. Pandey, Advocate.  
 For Respondents No. 1 to 3 : Mr. S.C.Verma, Advocate General alongwith  
 Mr. Vikram Sharma and Mr. Gagan Tiwari,  
 Deputy Government Advocates.  
 For Respondent No. 4 : Mr. Anand Mohan Tiwari, Advocate.

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**WPS/7100/2021**

Aparna Agrawal W/o Shri Sanskar Mishra, aged about 46 years, Occupation  
 Government Service (Lecturer Nagriya Nikay) R/o House No. 89/489, Ward  
 No.51, Purani Basti, Raipur, District Raipur, Chhattisgarh.

---Petitioner

**Versus**

1. State of Chhattisgarh, through Department of General Administration,  
 Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. The Chief Secretary, State of Chhattisgarh, Mantralaya, Mahanadi Bhawan,



Naya Raipur, Chhattisgarh.

3. State of Chhattisgarh, through Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.

4. Chhattisgarh Public Service Commission, through its Secretary, Shankar Nagar Road, Raipur, Chhattisgarh.

----Respondents

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For Petitioner : Mr. Shivanshu Pandey, Advocate.

For Respondents No. 1 to 3 : Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.

For Respondent No. 4 Mr. Anand Mohan Tiwari, Advocate.

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**WPS/4049/2018**

Rashmi Agrawal D/o Shri Vinod Kumar Agrawal, Aged about 32 years, R/o Baniyapara, Near Kankalin Mandir, Durg, District Durg, Chhattisgarh.

---Petitioner

**Versus**

1. State of Chhattisgarh, through Secretary, Department of General Administration, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.

2. The State of Chhattisgarh, through Secretary, Department of Health and Family Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.

3. State of Chhattisgarh, through the Principal Secretary, Law and Legislative Affairs, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.

4. Chhattisgarh Public Service Commission, Through its Secretary, Shankar Nagar Road, Raipur, Chhattisgarh.

----Respondents

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For Petitioner : Mr. Vinay Pandey, Advocate.

For Respondents No. 1 to 3 : Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.

For Respondent No. 4 Mr. Anand Mohan Tiwari, Advocate.

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**WPS/6083/2018**



Dr. Shraddha Sharma D/o Shri Veerbhadra Prasad Sharma, aged about 36 years, R/o House No. 314, Ward No. 1, Near Dharam Ara Mill, Bemetara, District Bemetara, Chhattisgarh.

---Petitioner

**Versus**

1. State of Chhattisgarh, through Secretary, Department of General Administration, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. The State of Chhattisgarh, through Secretary, Department of Health and Family Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
3. State of Chhattisgarh, through the Principal Secretary, Law and Legislative Affairs, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
4. Chhattisgarh Public Service Commission, through its Secretary, Shankar Nagar Road, Raipur, Chhattisgarh.

----Respondents

For Petitioner	: Mr. Vinay Pandey, Advocate.
For Respondents No. 1 to 3	: Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.
For Respondent No. 4	Mr. Anand Mohan Tiwari, Advocate

**WPC/4665/2019**

1. Vivek Kumar singh S/o Shri Lallan Prasad Singh, age 22 years, R/o 52A Mayapur, Shastri Ward, Ambikapur, District Sarguja, Chhattisgarh Pincode 497001
2. Amit Kumar Singh S/o Shri Kundan Lal Singh, age 31 years, R/o 27(2) Lal Bangla Ward No. 1, Janakpur, District Koriya, Chhattisgarh, Pin code 497778 at present address Mannu Chowk, Tikrapara, Bilaspur, District Bilaspur, Chhattisgarh.

---Petitioners

**Versus**

1. State of Chhattisgarh, through the General Administration Department, Mahanadi Bhawan, Atal Nagar, Naya Raipur, Chhattisgarh.
2. Secretary, Law and Legislative Affairs Department, Mahanadi Bhawan, Atal



Nagar, Naya Raipur, District Raipur, Chhattisgarh.

----Respondents

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For Petitioner	: Mr. Sangharsh Pandey, Advocate.
For Respondents	: Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.

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**WPS/2091/2018**

Chandrakant Pandey, Shri Harendra Nath Pandey, Aged about 35 years, R/o  
Daya Kunj, Karbala Road, Thana Civil Lines, District Bilaspur, Chhattisgarh.

---Petitioner

**Versus**

1. State of Chhattisgarh, through Secretary, Department of General Administration, Mantralay, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
2. The Chief Secretary, State of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
3. State of Chhattisgarh, through the Principal Secretary, Law and Legislative Affairs, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.
4. Chhattisgarh Public Service Commission, Through its Secretary, Shankar Nagar Road, Raipur, Chhattisgarh.
5. Shri Suresh Toppo (selected candidate), C/o Chhattisgarh Public Service Commission, through its Secretary, Shankar Nagar Road, Raipur, Chhattisgarh.

----Respondents

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For Petitioner	: Mr. Vinay Pandey, Advocate.
For Respondents No. 1 to 3	: Mr. S.C.Verma, Advocate General alongwith Mr. Vikram Sharma and Mr. Gagan Tiwari, Deputy Government Advocates.
For Respondent No. 4	: Mr. Anand Mohan Tiwari, Advocate.
Dates of Hearing	: 13.06.2022, 15.06.2022, 28.06.2022, 04.07.2022 and 06.07.2022
Date of Judgment	: 19.09.2022

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**Hon'ble Mr. Arup Kumar Goswami, Chief Justice**

**Hon'ble Mr. Parth Prateem Sahu, Judge**

**C A V Judgment**

**Per Arup Kumar Goswami, Chief Justice**

In this batch of writ petitions, primarily, the pleadings in WPC No. 591/2012 and WPC No. 1067/2012 are relied upon by the learned counsel for the parties and therefore, while disposing of these petitions, essentially, reference would be made to the pleadings in the aforesaid writ petitions. Of course, whenever necessary, reference to the pleadings made in other writ petitions would be made as well.

2. At the very outset, nevertheless, a brief reference to the writ petitions as well as prayers made therein would be in order.

3. WPC No. 591/2012 is filed by a registered society espousing the cause of the Scheduled Caste (SC) community. In the writ petition, following prayers are made:

“1. Quash amendment No. 368/D.19/21-A/PRA/CHH.G./12, dated 18.01.2012 whereby Section 4(2)(i) of Chhattisgarh Public Service (Reservation for Scheduled Caste, Scheduled Tribe & Other Backward Classes) Act, 1994 has been amended (Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichere Wargo Ke Liye Aarakshan) Adhiniyam, 1994) and declare the same as unconstitutional and ultra vires.

Or

2. Issue an appropriate writ and declare the Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya



Pichere Wargon Ke Liye Aarakshan) Sanshodhan Adhinyam, 2011 (Act of 2011) as ultra vires and unconstitutional.

3. Any other relief(s) which may deem fit, looking to the facts and circumstances of the case, may be given by this Hon'ble Court.”

4. We will revert back to the pleadings in WPC No. 591/2012 in detail after we briefly take note of the salient facts in each of the other writ petitions.

5. In WPC No. 592/2012, the petitioners belong to SC community and they are social activists. Identical prayers, as made in WPC No. 591/2012, are made. The return filed by the State relies on the return filed in WPC No. 591/2012.

6. In WPC No. 593/2012, the petitioner is a registered society working for upliftment of the SC community. In this petition, the notification dated 18.01.2012, as elaborated in the prayer of WPC No.591/2012, is challenged. The return filed by the State in this case relies on the return filed in WPC No. 591/2012.

7. In WPC No. 594/2012, the petitioners belong to SC community. While petitioner Nos. 1 and 2 are social activists, petitioners No. 3 and 4 are aspiring for recruitment to the services of the State. In WPC No. 652/2012, the petitioners belong to to SC community. Petitioner No. 1 is aged about 45 years and petitioner No. 2 aged about 73 years. In WPC No. 653/2012, the petitioner belongs to SC category. In WPC No. 936/2012, the petitioner belongs to SC community. In WPC No. 2072/2014, the petitioners belong to the unreserved category. In these petitions, prayers, as made in WPC No. 593/2012, are made. The return filed by the State in in WPC No. 591/2012 are



relied on in WPC No. 594/2012, WPC No. 652/2012, WPC No. 653/2012 and WPC No. 936/2012. Though an independent return has been filed in WPC No. 2072/2014, in this return, essentially, the averments made in the return and the additional returns filed by the State in WPC No. 591/2012 are incorporated.

8. In WPS No. 4240/2014, petitioner is Chhattisgarh Anusuchit Jati/Janjati Chhatra Sangathan (Student Union). Prayer is made to quash advertisement issued in the month of July, 2014 by the Commissioner, Tribal and Scheduled Caste Welfare, Raipur, for the recruitment to 800 posts of Hostel Superintendent, Group-D. By the aforesaid advertisement, 96 posts for SCs, 256 posts for Scheduled Tribes (ST) and 112 posts for Other Backward Classes (OBC) were reserved. Similar return as filed in WPC No. 591/2012 is filed in this case.

9. In WPS No. 5578/2012, the three petitioners are graduates from commerce stream and they had also obtained MBA degree. They had been appointed on contractual basis in the post of Assistant Manager vide orders dated 16.09.2011 and 14.09.2011. The contractual appointment of petitioner No. 1 and 2 had been extended for a period of 6 months. In this petition, prayer is made for declaration of the Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichere Wargon Ke Liye Aarakshan) Sanshodhan Adhiniyam, 2011 (Act of 2011) as ultra vires and unconstitutional as also to quash the selection list dated 19.11.2012 (Annexure P/9) issued by the Managing Director, Chhattisgarh State Civil Supplies Corporation Limited, Raipur, for 15 posts of Assistant Manager, pursuant to the advertisement dated 30.07.2012. Prayer is also made to initiate fresh recruitment process.





10. In WPS No. 5578/2012, return was filed by the CG Civil Supplies Corporation, which is arrayed as respondent No. 3. The respondents No. 1 and 2 have filed return adopting the return filed in WPC No. 591/2012. Respondents No. 4, 7, 8, 10, 11, 13, 15 and 17, i.e. the private respondents filed return stating that pursuant to the advertisement, 292 candidates from the unreserved category had applied. It is stated that the petitioner No. 1 had cleared the computer test but the petitioners No. 2 and 3 could not clear the computer test conducted by the National Institute of Computer Science, a Government of India Undertaking. The petitioner No. 1 was placed at serial No. 10 of the waiting list, which has already expired.

11. In WPC No. 1067/2012, the petitioner belongs to SC community. In WPC No. 1093/2012, the petitioners belong to SC community and they are social activists. In WPC No. 1121/2012, petitioner No. 1 to 3 belong to OBC category while petitioner No. 4 belongs to unreserved category. In WPC No. 1372/2012, petitioner belongs to OBC category. In WPC Nos. 1067/2012, 1121/2012 and 1372/2012, challenge is made to the Notification dated 16.05.2012 issued by the Director, Medical Education, Raipur, for admission in Pre-P.G. Medical and Dental and to declare Section 3 of the Chhattisgarh Educational Institutions (Reservation in Admission) Act, 2012, (for short, Act of 2012), which came into force on 13.03.2012, as ultra vires. In WPC No. 1067/2012 and WPC No. 1121/2012, an additional prayer is made to declare the entire selection process of Chhattisgarh Pre-Post Graduate Medical Education, 2012 as void ab-initio. In WPC No. 1093/2012, essentially, Section 3 of the Act of 2012 is challenged. More or less similar return is filed in the above four petitions.



12. Stand taken in the return in WPC No. 1067/2012 will be considered at an appropriate place. It is also to be noted a similar return is filed in WPC No. 1093/2012.

13. In WPS No. 5290/2021 and WPS No. 7100/2021 petitioners belong to unreserved category. They appeared in the competition examination for the post of Assistant Professor (Hindi) pursuant to an advertisement dated 10.09.2014. The petitioner in WPS No. 5290/2021 was kept in the waiting list at serial No. 5 and the petitioner in WPS No. 7100/2021 was kept in the waiting list at serial No. 2 for the post of Assistant Professor (Hindi). They challenge the amendment notification dated 18.01.2012 and pray for quashing the advertisement as well as the select list to the extent reservation had exceeded 50% and for a direction to the respondents to appoint them with consequential benefits. It is stated that the advertisement in question indicated that the selection would be governed by the outcome of the decision pending in WPC Nos. 591/2012, 593/2012 and 594/2012. Prayer 10.1 of WPS No. 7100/2021 is with regard to placing the petitioner above respondents No. 3 and 4 in the gradation list which does not fit in with the factual matrix of the writ petition as the respondents No. 3 and 4 are the State and the Chhattisgarh Public Service Commission (for short, CGPSC). While State has not filed any return in these two writ petitions, the CGPSC had filed return stating that it had issued the advertisement as per requisition given by the State Government.

14. In WPS No. 4049/2018 and WPS No. 6083/2018, petitioners belong to unreserved category. They responded to the advertisement dated 21.06.2017 issued by the CGPSC for 57 posts of Homeopathy Medical Officer. While the



petitioner in WPS No.4049/2018 was kept in the waiting list at serial No. 1, the petitioner in WPS No. 6083/2018 was kept at serial No. 3 in the waiting list. The petitioners challenge amendment notification dated 18.01.2012 and pray for quashing the advertisement and select list to the extent reservation had exceeded ceiling limit of 50%. Prayer is also made to appoint them with all consequential benefits. However, in WPS No. 4049/2018, wrongly, appointment is sought to the post of 'Civil Judge' with all consequential benefits, though, admittedly, she had applied for Homeopathy Medical Officer. It is stated that the advertisement in question indicated that the selection would be governed by the outcome of the decision pending in WPC No. 591/2012, 593/2012 and 594/2012. Though an independent return has been filed in WPS No. 4049/2018, in this return, essentially, the averments made in the return and the additional returns filed by the State in WPC No. 591/2012 are incorporated. In the return filed in WPS No. 6083/2018, apart from referring to certain judicial precedents, it is stated that the petitioner has erroneously relied on Chhattisgarh Lok Sewa Anusuchit Jati, Anusuchit Janjatiya Aur Anya Pichhre Vargon Ke Liye Arakshan Sanshodhan Adhiniyam, 2011, which is a legislation pertaining to reservation in public employment, while the petition is in respect of providing for reservation in educational institutions under Article 15(5) of the Constitution of India. It is also stated that by notification dated 29.11.2012, Chhattisgarh Public Service Scheduled Caste, Scheduled Tribe and Other Backward Class Reservation Rules, 1998 (for short, the Rules of 1998) was amended and on the basis thereof, Schedule I, II and III of the reservation roster was changed to new



Schedule I and II. The CGPSC had filed return in both the cases stating that it had issued the advertisement as per the notification dated 18.01.2012.

15. In WPS No. 2091/2018, petitioner belongs to unreserved category. The petitioner responded to the advertisement dated 07.09.2016 for the 40 posts of Civil Judge, Entry Level Exam, 2016 and he was kept at serial No. 3 in the waiting list. Respondent No. 5 in the writ petition is the last candidate who had been selected against 'reserved category (T)'. The petitioner challenges amendment notification dated 18.01.2012 and prays for quashing the advertisement and select list to the extent reservation had exceeded ceiling limit of 50%. Prayer is also made to appoint him with all consequential benefits. The High Court is not a party-respondent. Though an independent return has been filed, in this return, essentially, the averments made in the return and the additional returns filed by the State in WPC No. 591/2012 are incorporated. The CGPSC had filed return stating that it had issued the advertisement as per the notification dated 18.01.2012.

16. In WPC No. 4665/2019, the petitioners belong to general category. The petitioners challenge the amendment effected to the Rules of 1998 vide notification dated 29.11.2012 whereby Schedule I and II were substituted. Schedule I deals with model roster for the post/cadre to be filled by direct recruitment in State level and Schedule-II deals with model roster for the post/cadre to be filled by direct recruitment at Division and District level, respectively. Prayer is made to declare the notification dated 29.11.2012 as ultra vires to the extent of making reservation of posts of SCs, STs, and OBCs exceeding 50% in Class III and Class IV posts of Districts falling under Surguja Division. It is pleaded that while Schedule I model roster provides for



reservation at State Level by direct recruitment for Class I, II, III and IV at 12%, 32% and 14% for SCs, STs and OBCs, in Schedule II model roster which provides for reservation at the Division and District level for Class III and Class IV posts, higher percentage of reservation has been prescribed for Surguja Division and Surguja District. Surguja Division comprises of districts of Surguja, Surajpur, Balrampur-Ramanujganj, Jashpur and Koriya. In the return filed, essentially, the averments made in the return and the additional returns filed by the State in WPC No. 591/2012 are incorporated. The reservation in District Surguja is 76% (SC-5%, ST 57% OBC, 14%) District Surjapur- 64% (SC-5%, ST-45%, OBC-14%), District Balrampur-Ramanujganj- 80% (SC-4%, ST-62%, OBC-14%), District Jashpur- 81% (SC- 5%, ST-62%, OBC-14%), District Koria – 66% (SC-8%, ST-44%, OBC-14%), Surguja Division- 74% (SC-5%, ST-57%, OBC-14%). The return is conspicuously silent as to why such higher percentage for reservation is fixed.

17. From the prayers made in the writ petitions, it is seen that essentially in WPC Nos. 591/2012, 592/2012, 593/2012, 594/2012, 652/2012, 653/2012, 936/2012, 2072/2014, WPS Nos. 5578/2012, 5290/2021, 7100/2021, 4049/2018 and 6083/2018, challenge is made to the Amendment Act of 2011.

18. The Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichere Wargo Ke Liye Aarakshan) Adhiniyam, 1994, was enacted to provide for reservation of vacancies in public services and posts in favour of the persons belonging to SC, ST and OBC and for the matters connected therewith and incidental thereto. The Act had received assent of the Governor on 03.06.1994 and the same was published in the Gazette (Extraordinary) on 08.06.1994. The Act was brought into force w.e.f 01.07.1994.



19. Section 4 of the Act of 1994 provided for fixation of percentage for reservation of posts and standards of evaluation. By the Chhattisgarh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichere Wargon Ke Liye Aarakshan) Sanshodhan Adhiniyam, 2011 (for short, Amendment Act of 2011), Section 4(2)(i) of the Act of 1994 was substituted.

20. As the focal point of controversy in WPC Nos. 591/2012, 592/2012, 593/2012, 594/2012, 652/2012, 653/2012, 936/2012, 2072/2014, WPS Nos. 5578/2012, 5290/2021, 7100/2021, 4049/2018 and 6083/2018, is amendment effected in the Act of 1994 relating to Section 4(2)(i), at this juncture, it will be appropriate to take note of the provisions prior and post-amendment. The provision immediately existing before amendment reads as follows:

**“4. Fixation of percentage for reservation of posts and standard of evaluation. - (1) Unless otherwise provided by or under this Act, the**

posts reserved for the members of the Scheduled Castes or Scheduled Tribes or other Backward Classes shall not be filled by the members who do not belong to such castes or tribes or classes, as the case may be.

(2) Subject to other provisions of this Act there shall be reserved for the persons belonging to the Scheduled Castes, Scheduled Tribes and other Backward Classes, at the stage of direct recruitment in public services and posts.

(i) at the State level, the following percentage of vacancies arising in a recruitment year, in Classes I, II, III and IV posts -

(a) In Class I and Class II posts



Scheduled Castes	16 percent.
Scheduled Tribes	20 percent
Other Backward Classes	14 percent.

(b) Class III and Class IV posts -

Scheduled Castes	16 percent.
Scheduled Tribes	20 percent
Other Backward Classes	14 percent.”

21. By the Amendment Act of 2011, Section 4(2)(i) was substituted as follows:

“(i) at the State level, the following percentage of vacancies arising in a recruitment year in Class I, II, III and IV posts:-

Scheduled Castes 12 %

Scheduled Tribes 32%

Other Backward Classes 14%.

22. In WPC No. 591/2012, it is wrongly stated that prior to the impugned amendment, reservation in Class I and Class II posts in respect of SC, ST and OBC was fixed at 15%, 18% and 14%, respectively.

23. The Act of 2012 is an act to provide for reservation in admission of the students belonging to STs, SCs and OBCs to certain educational institutions established, maintained or aided by the State Government and for matters connected therewith or incidental thereto.

24. Section 2(f) describes an educational institution to mean (i) a University established or incorporated by or under an Act of legislature of the State of



Chhattisgarh and (ii) an institution, other than a minority educational institution referred to in Article 30(1) of the Constitution, maintained by or receiving aid from the State Government, whether directly or indirectly, and affiliated to a University referred to in clause (i), and (iii) an educational institution established by the State Government under the Chhattisgarh Societies Registration Adhiniyam, 1973. As section 3 of the Act of 2012 is under challenge, the same is reproduced here in below:

“3. The reservation of seats in admission to each academic session and its extent in an Educational Institution shall be in the following manner, namely:-

(a) out of the annual permitted strength in each branch of study or faculty, thirty two percent seats shall be reserved for the Scheduled Tribes;

(b) out of the annual permitted strength in each branch of study or faculty, twelve percent seats shall be reserved for the Scheduled Castes;

(c) out of the annual permitted strength in each branch of study or faculty, fourteen percent seats shall be reserved for the Other Backward Classes:

Provided that where the seats reserved for the Scheduled Tribes remain vacant due to non availability of eligible students on the cut-off date(s), the same shall be filled from among eligible students belonging to the Scheduled Castes and *vice versa*.





Provided further that where seats reserved under clause (a), (b) and (c) remain vacant on the cut-off date(s), even after the arrangement referred to in the foregoing proviso, the same shall be filled from other eligible students.

Provided also that the State Government may, for the purpose of giving effect to reservation under this section, aggregate the annual permitted strength of any or all branches of study at the post-graduate or higher levels, if in the opinion of the State Government such reservation cannot be made in such branch or branches of study taken alone.”

25. It is pleaded in WPC No. 591/2012 that the Ministry of Public Grievances and Training issued an office memorandum dated 05.07.2005 pertaining to quantum of reservation to the SC, ST and OBC in case of direct recruitment to Group C and D posts. According to the said office memorandum, for the State of Chhattisgarh, the percentage of reservation for the SCs, STs and OBCs was fixed as 12%, 32% and 6%. The said memorandum set out the revision of quantum of reservation for SCs, STs and OBC in accordance with the figures of 2001 census for Group C and D posts also stating that the reservation would not exceed 50%. It is pleaded that when the census of 2011 was conducted and the data/figures were expected within a couple of months, the amendment effected by Amendment Act of 2011 in Section 4(2)(i) of the Act of 1994 on the basis of the census data of 2001 defies rationale and the same is, *per se*, unconstitutional, reservation having reached 58%, thus breaching the ceiling of 50% reservation as laid down by the Hon'ble Supreme Court in the case of ***Indra Sawhney & Others***



*v. Union of India & Others*, reported in *(1992) Supp 3 SCC 217* and *M.R.Balaji & Others v. The State of Mysore & Others*, reported in *AIR 1963 SC 649*.

26. It is further pleaded that reduction of percentage drastically from 16% to 12% in respect of SC in all classes of posts is not tenable as they are not adequately represented in service. Similarly, increase of percentage from 20 to 32% in respect of STs is also stated to be without any rationale basis.

27. Return was filed by the State respondents on 27.04.2012. In the return, it is stated that the State of Chhattisgarh has come into existence pursuant to the Madhya Pradesh Reorganization Act, 2000 as a result of bifurcation of the State of Madhya Pradesh into State of Madhya Pradesh and State of Chhattisgarh. While the re-organization resulted in allocation of a number of tribal districts to the State of Chhattisgarh, SC dominated districts largely formed the new State of Madhya Pradesh. The population of OBC continued to be substantially same in both the States. At the relevant time, there were 27 districts in the State of Chhattisgarh with total population of 28.83 million, out of which the SC population was 2.42 million and the ST population was 6.62 million as per the 2001 census and thus, the SC population constituted about 12% of the total population of the State while the ST population constituted about 31.76%. It is pleaded that incidence of poverty amongst STs is 54.8% in comparison to All India figure of 44.7%. Prior to issuance of the OM dated 05.07.2005, reservation of posts in Group C and D Central Government posts in the State of Chhattisgarh stood at 14% for SCs, 23% for STs and at that point of time, the Government of Chhattisgarh followed a policy of reservation of 16% for SCs, 20% for the STs and 14% for OBCs in respect of Class III and IV posts corresponding to Group C and D posts of the Central Government. It



is pleaded that as a result of a demographic change in the population of the SCs and STs, consequent upon formation of the two States i.e. State of Madhya Pradesh and State of Chhattisgarh, the Government of Chhattisgarh decided to review and re-frame the existing reservation policy for the State-cadre posts, based on the data from the 2001 Census. In the process, numerous representations were received from the tribal groups which demanded a revision in the State's reservation policy. After due consideration of all relevant aspects, the revision was effected in the existing reservation policy which resulted in the Amendment Act of 2011. It is pleaded that so far as the districts are concerned, there is no direct recruitment to Class A and B posts. Class C and D posts are filled up by direct recruitment as per the reservation policy which is not changed by the impugned amendment. It is pleaded that the revised reservation policy is constitutionally valid and the same is based on the Directive Principles of the State Policy, in particular, Article 46 of the Constitution, which requires the State to protect and preserve the interest of the tribal communities, which not only form 32% of the State's population but also markedly backward in social and economic terms. It is also pleaded that the Tribes Advisory Council, which is a constitutional body under Schedule V of the Constitution of India, had recommended in its meeting dated 26.09.2011 that the tribals in the State of Chhattisgarh should be accorded reservation at 32%. It is pleaded that the State can take into account special circumstances and in order to uplift the lot of the ST communities, apart from increasing reservation in Government posts, have taken many welfare measures to promote their educational and economic interests so that they can be integrated into the main stream and with that



objective, many social welfare legislation had been enacted and a number of administrative schemes have been launched. The respondents have also filed an application dated 03.05.2012 for taking documents on record in respect of the aforesaid measures and the documents relied upon have been marked as Annexure A, collectively.

28. Class A, B, C and D as referred to in the return possibly refers to Class I, II, III and IV posts.

29. A rejoinder affidavit was filed by the petitioner to the return filed by the respondents No. 1 and 2 on 05.07.2012. In the said rejoinder, it is stated that whether demographic position is altered or not would be revealed from the subsequent census of 2011. It is pleaded that there was no justification for making amendment in the year 2011 based on the census of the year 2001 when the tentative census data of 2011 was already available. It is stated that while the State is free to exercise its discretion of providing reservation, same is subject to the conditions that there must exist compelling reasons of backwardness and inadequacy of representation in a class of post(s) and in the process, overall administrative efficiency is also to be borne in mind. In the instant case, discretionary power has been misused while breaching the ceiling limit of 50% reservation and the respondents have made the reservation proportionate to the population which cannot be sustained in law. It is asserted that there is no basis whatsoever for changing the percentage of reservation or breaching the ceiling of 50%.

30. An additional return was filed on 19.11.2012 by the State respondents stating that the presumption attached to the constitutionality of the legislation ought not be lightly interfered with and no ground has been laid down in the



writ petition for entering into the examination of the constitutional validity of the impugned amendment. By the said affidavit, the State respondents have furnished additional data claiming the same to be not exhaustive demonstrating inadequacy of representation of SC, ST and OBC in the services of the State which would go to show that there was a valid and reasonable basis for extending the reservation policy beyond the limit of 50% with regard to the parameters of backwardness, inadequacy in representation and overall administrative efficiency.

31. In paragraph 17 of the said additional return, 8 tables relating to (i) SC, ST and OBC Representation among Candidates Selected by Chhattisgarh State PSC through Open Competition (i.e., without the Aid of Reservation), (ii) SC, ST and OBC representation among Students selected for MBBS/BDS course through Open Competition, i.e., without the aid of Reservation, in Pre-Medical Test, (iii) SC, ST and OBC representation among Students selected for Engineering Course through Open Competition, i.e., without the aid of Reservation, in Pre-Engineering Test, (iv) Distribution households of social groups in Chhattisgarh by employment status (as per NSSO, 61<sup>st</sup> round, 2004-05 survey), (v) Distribution of household of social groups in Chhattisgarh by monthly per capita expenditure (Rs.) (as per NSSO, 61<sup>st</sup> round, 2004-05 survey), (vi) Proportion of persons (15 yrs & above) among social groups in Chhattisgarh by level of general education (rural + urban) (as per NSSO, 61<sup>st</sup> round, 2004-05 survey), (vii) Proportion of persons (15 yrs & above) among social groups in Chhattisgarh by level of general education (urban) (as per NSSO, 61<sup>st</sup> round, 2004-05 survey), and (viii) Proportion of households with no literate adult (15 yrs & above) / adult female member among social groups



in Chhattisgarh (as per NSSO, 61<sup>st</sup> round, 2004-05 survey). Explanations/interpretations of the aforesaid tables are given at paragraphs 18 to 30.

**32.** An additional rejoinder was filed by the petitioner on 18.02.2013.

**33.** In the return filed by the State respondents in WPC No. 1067/ 2012, it is submitted that there is no violation or infraction of any constitutional requirement for passing the Act of 2012 and that the reservation has been provided not by an executive action but by a substantive legislation passed by a competent legislature. The presumption attached to the constitutionality of the legislation may not be allowed to be lightly interfered with. It is further submitted that the petitioner therein has not pleaded violation of any fundamental or legal right and that the challenge raised in this petition has been rendered academic as the Medical Pre PG Entrance Test, 2012 has already been conducted. The State respondents have furnished the same data as submitted in the additional return to WPC No. 591/2012 and also relies on return filed in WPC No. 1093/2012, in support of their case. In WPC No. 1093/2012, it is stated that the respondents are relying on the return in WPC No. 1067/2012. Five tables are incorporated in the aforesaid two returns. Table 1 relates to Table 1 in WPC No. 591/2012, Table 2 relates to Table 3 of WPC No. 591/2012, Table 3 relates to Table 6 of WPC No. 591/2012, Table 4 relates to Table 7 of WPC No. 591/2012 and Table 5 relates to Table 8 of WPC No. 591/2012.

**34.** We have heard Mr. Vinay Pandey, learned counsel, appearing for the petitioner in WPC No. 2072/2014, WPS No. 2091/2018, WPS No. 4049/2018,



WPS No. 6083/2018, Mr. Anchal Kumar Matre, learned counsel, appearing for the petitioners in WPC No. 652/2012 and WPC No. 653/2012, Mr. Anil S. Pandey, learned counsel, appearing for the petitioner in WPS No. 5290/2021, Mr. Sanjeev Pandey and Mr. Sangharsh Pandey, learned counsel, appearing for the petitioner in WPC No. 4665/2019, Mr. Akash Shrivastava and Mr. Anumeh Shrivastava, learned counsel, appearing for the petitioners in WPC No. 936/2012, Mr. N.N.Roy, learned counsel, appearing for the petitioner in WPC No. 594/2012, Mr. Rahul Agrawal, learned counsel, appearing for the petitioner in WPS No. 4240/2014, Mr. Brijendra Singh and Mr. Shyam Sunder Lal Tekchandani, learned counsel, appearing for the petitioners in WPC Nos. 591/2012, 592/2012, 593/2012 and 1093/2012, Mr. Mateen Siddique and Ms. Diksha Gouraha, learned counsel, appearing for the petitioner, in WPC No. 1121/2012, 1372/2012, and 1067/2012 and Mr. Shivanashu Pandey, learned counsel, appearing for the petitioner in WPS No. 7100/2021. None appears for the petitioners in WPS No. 5578/2012.

**35.** We have also heard Mr. S.C.Verma, learned Advocate General, assisted by Mr. Vikram Sharma as well as Mr. Gagan Tiwari, learned Deputy Government Advocates, appearing for the respondent State of Chhattisgarh in this batch of petitions, Mr. Anand Mohan Tiwari, learned counsel, appearing for the respondent Chhattisgarh Public Service Commission in WPS No. 2091/2018, 4049/2018, 6083/2018, 5290/2021 and 7100/2021, Mr. Krishna Gopal Yadav and Ms. Anmol Sharma, learned Central Government counsel, appearing for the Union of India in WPC No. 936/2012, Mr. Abhishek Vinod Deshmukh and Ms. Suraya Kawalkar Dangi, learned counsel, appearing for some of the private respondents in WPS No. 5578/2012 as well as Dr.



K.S.Chauhan, learned senior counsel, assisted by Mr. Ajit Kumar Ekka, Mr. Lekh Ram Dhruw and Mr. R.V.Rajwade, learned counsel, appearing for the intervenors in WPC No. 591/2012, Mr. Ashish Beck and Mr. Anand K. Kujur, learned counsel, appearing for the intervenors in WPC No. 591/2012.

**36.** Lead arguments have been advanced by Mr. Vinay Kumar Pandey, Mr. Mateen Siddique, and Mr. N.Naha Roy, learned counsel, appearing for the petitioners.

**37.** Mr. Vinay Kumar Pandey, learned counsel, appearing for the petitioners submits that as the reservation has exceeded 50%, it has violated the principles of equality of opportunity under Article 16(1) of the Constitution of India. It is further submitted that no materials have been placed before this Court to justify the impugned amendment brought in by Amendment Act of 2011 and such amendment has been effected breaching 50% ceiling without any exercise being undertaken with regard to representation of various classes such as SCs, STs and OBCs in service. No exceptional circumstance is made out for breaching the 50% ceiling of reservation and the State has brought the amendment as a measure of proportional representation, which is not permissible in law.

**38.** Mr. Mateen Siddique, learned counsel, while endorsing the submissions of Mr. Pandey, submits that Section 3 of the Act of 2012 is ultra vires as without there being any compelling or extraordinary circumstances, 58% seats have been reserved in the proportion of 32% for ST, 12% for SC and 14% for OBC. It is submitted that since Census 2011 was conducted and the data relating to the population pattern was expected within a short period, there was no justification for effecting the amendment in the year 2012 on the basis





of Census data of 2001. No justification whatsoever have been provided for reducing the percentage of reservation in respect of SCs from 16% to 12%.

39. In support of their contention, learned counsel for the petitioners rely on the decisions of the Hon'ble Supreme Court in *M.R.Balaji* (supra), *Indra Sawhney* (supra), *M. Nagaraj & Others v. Union Of India & Others*, reported in *(2006) 8 SCC 212*, *Ashoka Kumar Thakur v. Union of India & Others*, reported in *(2008) 6 SCC 1*, *Union of India v. Ramesh Ram & Others*, reported in *(2010) 7 SCC 234*, *Madras Institute of Development Studies & Another v. K. Sivasubramaniyan & Others*, reported in *(2016) 1 SCC 454*, *Dr. Jaishri Laxmanrao Patil v. Chief Minister & Others*, reported in *(2021) 8 SCC 1*, and a Division Bench judgment of Madhya Pradesh High Court in *Mayank Jain v. State of Madhya Pradesh & Others*, reported in *MANU/MP/0276/2003*.

40. Mr. S.C.Verma, learned Advocate General submits that incidence of poverty in the State of Chhattisgarh amongst SCs is lower in comparison to all India figures while in case of STs, there is a substantial higher incidence of poverty. The decision to amend the reservation policy was taken after taking into consideration the relevant aspects of the matter by which proportionate reservation is introduced in the State cadre posts. It is submitted that Chhattisgarh is a tribal majority state and therefore, reserving 32% posts in service or seats in educational institutions for the STs cannot be faulted with. The State has got legislative competence and no violation of any fundamental rights has been established by the petitioners. It is submitted that 50% ceiling can be breached if (a) quantifiable contemporary data relating to backwardness is shown which has to be determined on the basis of objective factors such as studies of a particular community in a given area, (b)



inadequacy in representation, which must factually exist though it need not be proved with exact and precise data and (c) overall administrative efficiency, which cannot be supported by any data but is a matter of opinion based on various factors. It is submitted that Tables 1 to 8 of the additional return along with the explanation for the same in WPC No. 591/2012, justifies the amendments. In support of his contentions, Mr. Verma also relies on the decision of the Hon'ble Supreme Court in *Indra Sawhney* (supra).

41. Learned counsel for the intervenors led by Dr. K.S.Chauhan, learned senior counsel argued that the amendment vide notification dated 18.01.2012 is legally justified as the ST population constituted 38.1% of the total population in the State and accordingly, reservation is sought to be enhanced to 32% as the same was only 20% prior to amendment. It is submitted that in *R.K.Sabharwal & Others v. State of Punjab & Others*, reported in (1995) 2 SCC 745, it is held that reservation could be provided in proportion to the population of the backward classes. No material has been placed that the opinion of the Government as regards inadequacy of representation in service is not justified. In support of their contention, they rely on the decisions of the Hon'ble Supreme Court in *Jarnail Singh & Others v. Lachhmi Narain Gupta & Others*, reported in (2018) 10 SCC 396 (hereinafter referred to as *Jarnail Singh & Others-I*), and *B.K. Pavitra & Others v. Union of India & Others*, reported in (2019) 16 SCC 129 and *Jarnail Singh & Others v. Lachhmi Narain Gupta & Others*, reported in 2022 SCC OnLine SC 96 (hereinafter referred to as *Jarnail Singh & Others-II*) and *Managing Director, ECIL, Hyderabad & Others v. B. Karunakar & Others*, reported in (1993) 4 SCC 727.



42. We have considered the submissions of the learned counsel for the parties and have perused the materials on record.

43. Articles 15 and 16 read as follows:

**15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.** - (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or conditions with regard to -

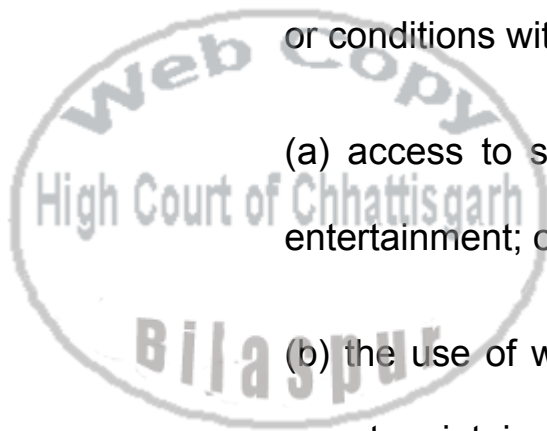
(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

(5) Nothing in this article or in sub-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 or 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.

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making -

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) 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, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.

Explanation. - For the purpose of this article and article 16, “economically weaker sections” shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.



**16. Equality of opportunity in matters of public employment . - (1)**

There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State;

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory, any requirement as to residence within that State or Union Territory prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.





(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent of the posts in each category.

**44.** Article 15(4) provides that nothing in this Article or Article 29(2) shall prevent the State from making any special provision for the advancement of any socially and educationally Backward Classes of citizens or for the SCs and the STs.

**45.** Article 15(4) was added by the Constitution (First Amendment) Act 1951. The object of this amendment was to bring Articles 15 and 29 in line



with Article 16(4) as a result of the decision rendered by the Hon'ble Supreme Court in the case of *The State of Madras v. Srimathi Champakam Dorairajan & Another*, reported in *AIR 1951 SC 226*. In the aforesaid case, the validity of an order issued by the Madras Government fixing certain proportions in which students seeking for admissions to the Engineering and Medical Colleges in the State should be admitted, was challenged. The said government order being on the face of it a communal order fixing the admissions in the stated proportion by reference to the communities of the candidates, was struck down by the Madras High Court and the decision of the Madras High Court was confirmed by the Hon'ble Supreme Court in appeal, on the ground that the fundamental rights guaranteed by Articles 15(1) and 29(2) were not controlled by any exception, and that since there was no provision under Article 15 corresponding to Article 16(4), the impugned order could not be sustained. Thus, there is no doubt that Article 15(4) has to be read as a proviso or an exception to Articles 15(1) and 29(2). In other words, if the impugned order is justified by the provisions of Article 15(4), its validity cannot be impeached on the ground that it violates Article 15(1) or Article 29(2). The fundamental rights guaranteed by the said two provisions do not affect the validity of the special provision which it is permissible to make under Article. 15(4).

**46.** Article 15(4) authorises the State to make a special provision for the advancement of any socially and educationally backward classes of citizens, as distinguished from the SCs and STs. No doubt, special provision can be made for both categories of citizens, but in specifying the categories, the first category is distinguished from the second. Sub-clauses (24) and (25) of



Article 366 define SCs and STs respectively, but there is no clause defining socially and educationally backward classes of citizens, and so, in determining the question as to whether a particular provision has been validly made under Article 15 (4) or not, the first question which falls to be determined is whether the State has validly determined who should be included in these Backward Classes. It seems fairly clear that the backward classes of citizens for whom special provision is authorised to be made are, by Article 15(4) itself, treated as being similar to the SCs and STs. SCs and STs which have been defined were known to be backward and the Constitution-makers felt no doubt that special provision had to be made for their advancement. It was realised that in the Indian society there were other classes of citizens who were equally, or may be somewhat less, backward than the SCs and STs and it was thought that some special provision ought to be made even for them. Article 341 provides for the issue of public notification specifying the castes, races or tribes which shall, for the purposes of the Constitution, be deemed to be SCs either in the State or the Union territory as the case may be. Similarly, Article 342 makes a provision for the issue of public notification in respect of STs. Under Article 338 (3), it is provided that references to the SCs and STs shall be construed as including references to such other Backward Classes as the President may, on receipt of the report of a Commission appointed under Article 340(1), by order, specify and also to the Anglo Indian community. It would thus be seen that this provision contemplates that some Backward Classes may by the Presidential order be included in scheduled castes and tribes. That helps to bring out the point that the Backward Classes for whose





improvement special provision is contemplated by Article 15 (4) are in the matter of their backwardness comparable to SCs and STs.

47. In *M. R. Balaji* (supra), the validity of an order dated 31.07.1962 passed by the State of Mysore under Article 15(4) of the Constitution of India superseding all previous orders for reservation of seats in favour of the SCs, STs as well as OBCs was questioned. The OBCs were divided into two categories, namely, Backward Classes and More Backward Classes. 50% was fixed as the quota for the reservation of seats for OBCs; 28% out of this was reserved for Backward Classes so called and 22% for More Backward Classes. 15% seats was reserved for the SCs and 3% for the STs. The result of the order was that 68% of the seats available for admission to the Engineering and Medical Colleges and to other Technical Institutions specified in the aforesaid order, is reserved and only 32% was available to the merit pool.

48. On consideration of the materials on record as well as Nagan Gowda Committee recommendations, the Hon'ble Supreme Court held that the classification of the socially backward classes of citizens made by the State proceeded on the only consideration of their castes without regard to the other factors which are relevant and therefore, the social backwardness of the communities to whom the order applied had been determined in a manner which is not permissible under Article 15(4) and that itself would introduce an infirmity which is fatal to the validity of the said classification. It was held that the sub-classification made by the order between Backward Classes and More Backward Classes is not justified under Article 15(4) which authorises special provision being made for the really backward classes. By introducing



two categories, the order purported to devise measures for the benefit of all the classes of citizens who are less advanced compared to the most advanced classes in the State which is not within the scope of Article 15(4).

49. It was observed that in considering the scope and extent of the expression 'backward classes' under Art. 15(4), it is necessary to remember that the concept of backwardness is not intended to be relative in the sense that any classes who are backward in relation to the most advanced classes of the society should be included in it. If such relative tests were to be applied by reason of the most advanced classes, there would be several layers or strata of backward classes and each one of them may claim to be included under Article 15(4). The backwardness under Article 15(4) must be social and educational. It is not either social or educational but it is both social and educational.

50. While considering the question of social backwardness observed that the problem of determining as to who are socially backward classes is very complex and for determination of which an elaborate investigation and collection of data and examining the said data in a rational and scientific way will be required. It was observed that the castes cannot be the sole or the dominant test to consider in determining social backwardness of groups or classes of citizens as social backwardness is on the ultimate analysis the result of poverty, to a very large extent. It is in that context it was held that both caste and poverty have relevance in determining backwardness of citizens.



51. While considering the question of educational backwardness of the classes of citizens, it was noticed by the Hon'ble Supreme Court that the impugned order proceeded to deal with the question on the basis of the average of the student population in the last three High School classes in the State in relation to a thousand citizens of that community and on the basis of the figures supplied, the Nagan Gowda Committee came to the conclusion that the State average of student population in the last three High School classes of all High Schools in the State was 6.9 per thousand. Accordingly, all castes whose average was less than 6.9 per thousand be added as backward community and had further held that if the average of any community was less than 50% of the State average, it should be recorded as constituting the more backward classes. The Hon'ble Supreme Court held that assuming that the test applied is rational and permissible under Article 15(4), then also, if the State average is 6.9 per thousand, a community which satisfied the said test or is just below the said test cannot be regarded as educationally backward classes of citizens and that classes of citizens whose average of student population works below 50% of the State average, are obviously educationally backward classes of citizens.

52. Coming to the question about the extent of the special provision which it would be competent for the State to make under Article 15(4), in *M.R.Balaji* (supra), it was observed that unless the educational and economic interests of the weaker sections of the people are promoted quickly and liberally, the ideal of establishing social and economic equality will not be attained and so, there can be no doubt that Article 15(4) authorises the State to take adequate steps to achieve the object which it has in view. The Hon'ble Supreme Court



emphasised that consideration 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 Article 15(4) can be special provision which excludes the rest of the society altogether. It was observed that if admission to professional and technical colleges is unduly liberalised, it will be idle to contend that the quality of our graduates would not suffer. While advocating reservation, it was observed that reservation should and must be adopted to advance the prospects of the weaker sections of the society. It was also emphasised that while providing for special measures in that behalf, care should be taken not to exclude admission to higher educational centres to the deserving and qualified candidates of other communities. Special provision contemplated by Article 15(4) like reservation of posts and appointments contemplated by Article 16(4) must be within reasonable limits. While expressing no opinion categorically and definitely as to what would be a proper provision to make, it was observed that speaking generally and in a broad way, a special provision should be less than 50%; how much less than 50% would depend upon the relevant prevailing circumstances in each case. Resultantly, the impugned order was held to be a fraud on the Constitutional power conferred on the State by Article 15(4).

**53.** In the majority judgment in *Indra Sawhney* (supra), at paragraph 681, the Hon'ble Supreme Court noted eight questions which were framed by the learned counsel for the parties for consideration and the same read as follows:



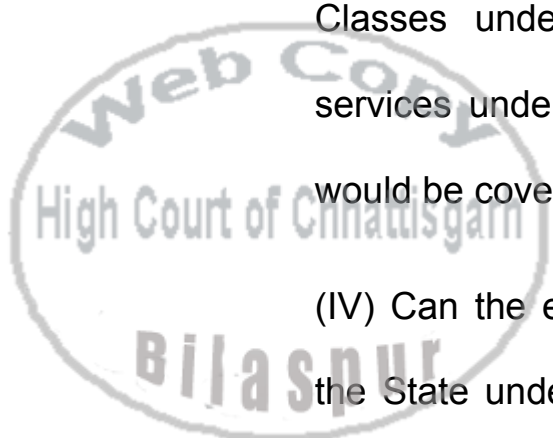
“(I) Whether Article 16(4) is an exception to Article 16(1) and would be exhaustive of the right to reservation to posts in services under the State?

(II) What would be the content of the phrase Backward Class in Article 16(4) of the Constitution and whether caste by itself could constitute a class and whether economic criterion by itself could identify a class for Article 16(4) and whether backward Classes in Article 16(4) would include the Article 46 as well?

(III) If economic criterion by itself could not constitute a Backward Classes under Article 16(4) whether reservation of posts in services under the State based exclusively on economic criteria would be covered by Article 16(1) of the Constitution?

(IV) Can the extent of reservation to posts in the services under the State under Article 16(4) or, if permitted under Articles 16(1) and 16(4) together, exceed 50% of the posts in a cadre or Service under the State or exceed 50% of the appointment in a cadre or Service in any particular year and can such extent of reservation be determined without determining the inadequacy of representation of each class in the different categories and grades of Services under the State?

(V) Does Article 16(4) permit the classification of 'Backward Classes' into Backward Classes and Most Backward Classes or permit classification among them based on economic or other considerations?





(VI) Would making "any provision" under Article 16(4) for reservation "by the State" necessarily have to be by law made by the Legislatures of the State or by law made by Parliament? Or could such provisions be made by an executive order?

(VII) Will the extent of judicial review be limited or restricted in regard to the identification of Backward Classes and the percentage of reservations made for such classes, to a demonstrably perverse identification or a demonstrably unreasonable percentage?

(VIII) Would reservation of appointments or posts "in favour of any Backward Class" be restricted to the initial appointment to the post or would it extend to promotions as well?

54. At paragraph 682, the Hon'ble Supreme Court re-framed the questions as follows:

"1(a) Whether the 'provision' contemplated by Article 16(4) must necessarily be made by the legislative wing of the State?

(b) If the answer to Clause (a) is in the negative, whether an executive order making such a provision is enforceable without incorporating it into a rule made under the proviso to Article 309?

2(a) Whether Clause (4) of Article 16 is an exception to Clause (1) of Article 16?

(b) Whether Clause (4) of Article 16 is exhaustive of the special provisions that can be made in favour of 'backward class of



citizens'? Whether it is exhaustive of the special provisions that can be made in favour of all sections, classes or groups?

(c) Whether reservations can be made under Clause (1) of Article 16 or whether it permits only extending of preferences/ concessions?

3(a) What does the expression 'backward class of citizens' in Article 16(4) mean?

(b) Whether backward classes can be identified on the basis and with reference to caste alone?

(c) Whether a class, to be designated as a backward class, should be situated similarly to the SCs/STs?

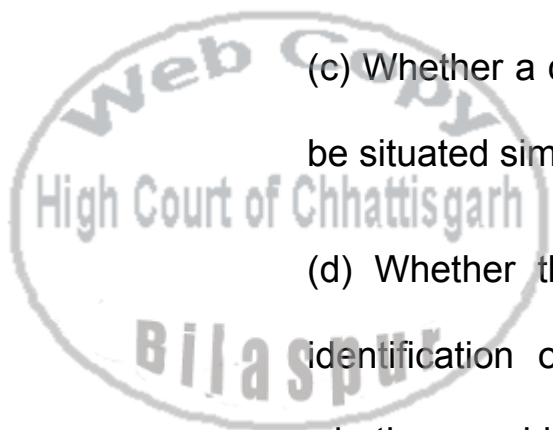
(d) Whether the 'means' test can be applied in the course of identification of backward classes? And if the answer is yes, whether providing such a test is obligatory?

4(a). Whether the backward classes can be identified only and exclusively with reference to economic criteria?

(b) Whether a criteria like occupation-cum-income without reference to caste altogether, can be evolved for identifying the backward classes?

5. Whether the backward classes can be further categorised into backward and more backward categories?

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?

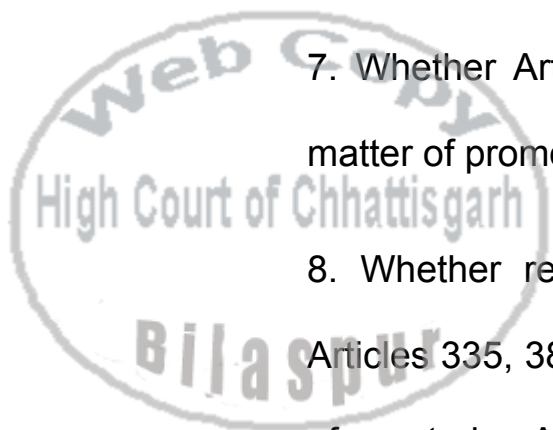
7. Whether Article 16 permits reservations being provided in the matter of promotions?

8. Whether reservations are anti-meritian? To what extent are Articles 335, 38(2) and 46 of the Constitution relevant in the matter of construing Article 16?

9. Whether the extent of judicial review is restricted with regard to the identification of Backward Classes and the percentage of reservations made for such classes to a demonstrably perverse identification or a demonstrably unreasonable percentage?

10. Whether the distinction made in the second Memorandum between 'poorer sections' of the backward classes and others permissible under Article 16?

11. Whether the reservation of 10% of the posts in favour of 'other economically backward sections of the people who are not covered







by any of the existing schemes of the reservations' made by the Office Memorandum dated September 25, 1991 permissible under Article 16?"

**55.** In paragraphs 809 and 810, it is stated as follows:

*809.* From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of Article 16 should not exceed 50%.

*810.* While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in farflung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."

**56.** At paragraph 860, the answers to the questions as framed by the counsel for the parties and as set out in paragraph 681 were recorded as follows:

"(1) Article 16(4) is not an exception to Article 16(1). It is an instance of classification inherent in Article 16(1). Article 16(4) is exhaustive of the subject of reservation in favour of backward classes, though it may not be exhaustive of the very concept of

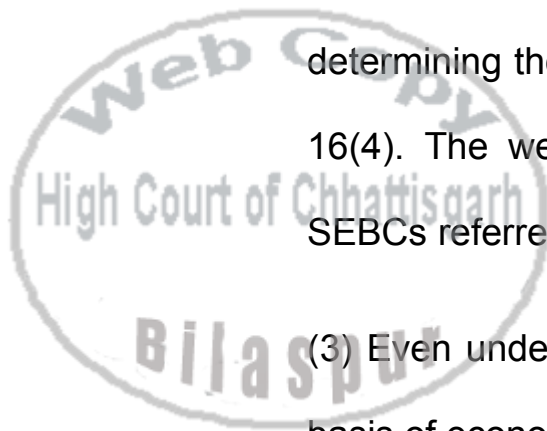


reservation. Reservations for other classes can be provided under Clause (1) of Article 16.

(2) The expression 'backward class' in Article 16(4) takes in 'Other Backward Classes', SCs, STs and may be some other backward classes as well. The accent in Article 16(4) is upon social backwardness. Social backwardness leads to educational backwardness and economic backwardness. They are mutually contributory to each other and are intertwined with low occupations in the Indian society. A caste can be and quite often is a social class in India. Economic criterion cannot be the sole basis for determining the backward class of citizens contemplated by Article 16(4). The weaker sections referred to in Article 46 do include SEBCs referred to in Article 340 and covered by Article 16(4).

(3) Even under Article 16(1), reservations cannot be made on the basis of economic criteria alone.

(4) The reservations contemplated in Clause (4) of Article 16 should not exceed 50%. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of the conditions peculiar to and characteristic of them need to be treated in a different way, some relaxation in this strict rule may become





imperative. In doing so, extreme caution is to be exercised and a special case made out.

For applying this rule, the reservations should not exceed 50% of the appointments in a grade, cadre or service in any given year. Reservation can be made in a service or category only when the State is satisfied that representation of backward class of citizens therein is not adequate.

To the extent, *Devadasan* is inconsistent herewith, it is over-ruled.

(5) There is no constitutional bar to classification of backward classes into more backward and backward classes for the purposes of Article 16(4). The distinction should be on the basis of degrees of social backwardness. In case of such classification, however, it would be advisable- nay, necessary- to ensure equitable distribution amongst the various backward classes to avoid lumping so that one or two such classes do not eat away the entire quota leaving the other backward classes high and dry.

For excluding 'creamy layer', an economic criterion can be adopted as an indicium or measure of social advancement.

(6) A 'provision' under Article 16(4) can be made by an executive order. It is not necessary that it should be made by Parliament/ Legislature.



(7) No special standard of judicial scrutiny can be predicated in matters arising under Article 16(4). It is not possible or necessary to say more than this under this question.

(8) Reservation of appointments or posts under Article 16(4) is confined to initial appointment only and cannot extend to providing reservation in the matter of promotion. We direct that our decision on this question shall operate only prospectively and shall not affect promotions already made, whether on temporary, officiating or regular/ permanent basis. It is further directed that wherever reservations are already provided in the matter of promotion - be it Central Services or State Services, or for that matter services under any Corporation, authority or body falling under the definition of 'State' in Article 12 - such reservations may continue in operation for a period of five years from this day. Within this period, it would be open to the appropriate authorities to revise, modify or re-issue the relevant rules to ensure the achievement of the objective of Article 16(4). If any authority thinks that for ensuring adequate representation of 'backward class of citizens' in any service, class or category, it is necessary to provide for direct recruitment therein, it shall be open to it to do so.”

**57.** In *R.K.Sabharwal* (supra), it was laid down that Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the State is not adequately represented in the services under the State. It is, therefore, incumbent on the State Government



to reach a conclusion that the backward class/classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular backward class and its representation in the State services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said backward class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the backward class have already been appointed/promoted against the general seats. The roster point which is reserved for a backward class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the backward class. The fact that considerable number of members of a backward class have been appointed/promoted against general seats in the State services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the backward classes are operative the same have to be followed.

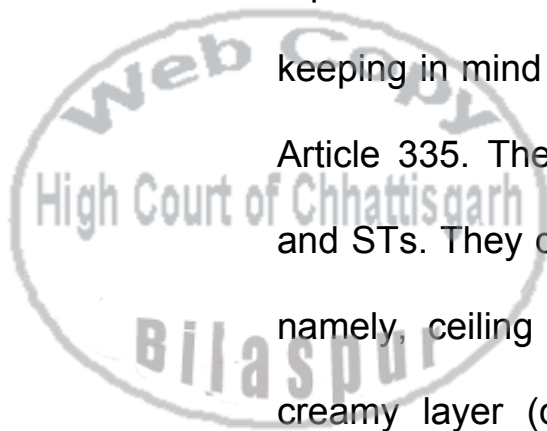
58. In *M. Nagaraj* (supra), the petitioner had prayed for quashing of the Constitution (Eighty-Fifth Amendment) Act, 2001 inserting Article 16(4A) of the Constitution retrospectively from 17.6.1995 providing reservation in promotion with consequential seniority as being unconstitutional and violative of the basic structure. Article 16(4A) is inspired by the observations in *Indra Sawhney* (supra) vide paragraphs 802 and 803 in which the Hon'ble Supreme



Court had observed that in order to avoid lumping of OBC, SC and ST which would make OBC take away all the vacancies leaving SC and ST high and dry, the State concerned was entitled to categorise and sub- classify SCs and STs on one hand vis-a-vis OBC on the other hand. In paragraphs 121, 122, 123, it was observed as follows:

“121. The impugned constitutional amendments by which Articles 16(4A) and 16(4B) have been inserted flow from Article 16(4). They do not alter the structure of Article 16(4). They retain the controlling factors or the compelling reasons, namely, backwardness and inadequacy of representation which enables the States to provide for reservation keeping in mind the overall efficiency of the State administration under Article 335. These impugned amendments are confined only to SCs and STs. They do not obliterate any of the constitutional requirements, namely, ceiling limit of 50% (quantitative limitation), the concept of creamy layer (qualitative exclusion), the sub-classification between OBCs on one hand and SCs and STs on the other hand as held in *Indra Sawhney*, the concept of post-based roster with inbuilt concept of replacement as held in *R.K. Sabharwal*.

122. We reiterate that the ceiling limit of 50%, the concept of creamy layer and the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency are all constitutional requirements without which the structure of equality of opportunity in Article 16 would collapse.





123. However, in this case, as stated above, the main issue concerns the "extent of reservation". In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SCs/STs in matter of promotions. However if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50% or obliterate the creamy layer or extend the reservation indefinitely."

59. In *Ashoka Kumar Thakur* (supra), insertion of Article 15(5) by the Constitution (Ninety-third Amendment) Act, 2005, which reads as under, was challenged:

"15. (5) Nothing in this article or in sub-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 or the Scheduled Tribes insofar as such special provisions relate to their admission to the 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”.

60. After the above Constitution (Ninety-third Amendment Act), 2005, the Parliament passed Central Educational Institutions (Reservation in Admission) Act 2006 (Act 5 of 2007) wherein Section 3 provided for reservation of 15% seats for Scheduled Castes, 7 ½ % of seats for Scheduled Tribes and 27% for Other Backward Classes in the State aided institutions which were defined as “Central Educational Institutions”. The order of the Court in *Ashoka Kumar Thakur* (supra) was as follows:

“668. The Constitution (Ninety-third Amendment) Act, 2005, is valid and does not violate the “basic structure” of the Constitution so far as it relates to the State-maintained institutions and aided educational institutions. Question whether the Constitution (Ninety-third Amendment) Act, 2005 would be constitutionally valid or not so far as “private unaided” educational institutions are concerned, is not considered and left open to be decided in an appropriate case. Bhandari J, in his opinion, has, however, considered the issue and has held that the Constitution (Ninety-third Amendment) Act, 2005 is not constitutionally valid so far as private unaided educational institutions are concerned.

669. Act 5 of 2007 is constitutionally valid subject to the definition of “Other Backward Classes” in Section 2(g) of Act 5 of 2007 being clarified as follows: If the determination of “Other Backward Classes”





by the Central Government is with reference to a caste, it shall exclude the “creamy layer” among such caste.

670. Quantum of reservation of 27% of seats to Other Backward Classes in the educational institutions provided in the Act is not illegal.

671. Act 5 of 2007 is not invalid for the reason that there is no time-limit prescribed for its operation but majority of Judges are of the view that the review should be made as to the need for continuance of reservation at the end of 5 years.

672. The writ petitions are disposed of in the light of majority judgment.

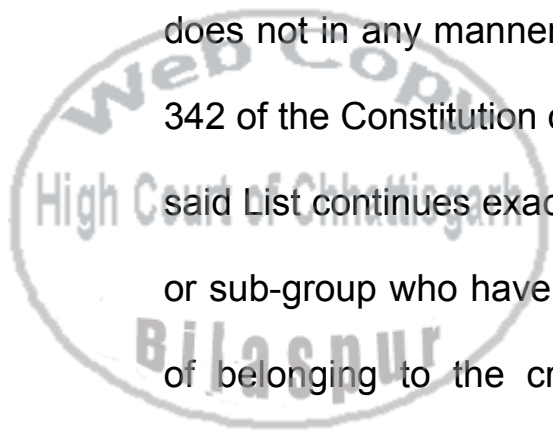
However, in Contempt Petition No. 112 of 2007 in WPC No. 265 of 2006, no orders are required.”

61. In *Union of India v. Ramesh Ram & Others*, reported in (2010) 7 SCC 234, a Constitution Bench reiterated that the aggregate reservation should not exceed 50% of all the available vacancies, in accordance with the decision in *Indra Sawhney* (supra).

62. In *Jarnail Singh & Others-I* (supra), the controversy centered around interpretation of Articles 16(4-A) and 16(4-B), 335, 341 and 342 of the Constitution of India. Arguments were advanced for reconsideration of the judgment rendered in *Nagaraj* (supra), which is a later judgment, on the ground that it was in conflict with *E.V.Chinnaiah v. State of A.P.*, reported in (2005) 1 SCC 394 as well as on some other grounds. It was observed by the Hon'ble Supreme Court that in *E.V.Chennaiah* (supra), the Supreme Court was dealing with a completely different problem, apart from dealing with a State statute and not a constitutional amendment, as was dealt in *Nagaraj*



(supra). However, it was held that the observations in *Nagaraj* (supra) that the State has to collect quantifiable data showing backwardness of the SCs and STs was contrary to the decision in *Indra Sawhney* (supra) and therefore had to be declared as bad on that ground. It was observed that the whole object of reservation is to see that the backward classes of citizens move forward so that they may march hand in hand with other citizens on an equal basis. This will not be possible if only the creamy layer within that class bag all the coveted jobs in the public sector and perpetuate themselves, leaving the rest of the class as backward as they always were. This being the case, it is clear that when a court applies the creamy layer principle to SCs and STs, it does not in any manner tinker with the Presidential List under Article 341 and 342 of the Constitution of India. The caste or group or sub-group named in the said List continues exactly as before. It is only those persons within that group or sub-group who have come out of untouchability or backwardness by virtue of belonging to the creamy layer, who are excluded from the benefit of reservation. Even these persons who are contained within the group or sub-group in the Presidential Lists continue to be within those Lists. It is only when it comes to the application of the reservation principle under Articles 14 and 16 that the creamy layer within that sub-group is not given the benefit of such reservation. In view of the above, the Hon'ble Supreme Court held that when in *Nagaraj* (supra), when the creamy layer test to SCs and STs was applied in exercise of application of the basic structure test to uphold the constitutional amendments leading to Articles 16(4-A) and 16(4-B), it did not in any manner interfere with Parliament's power under Article 341 and 342, and therefore, in





*Jarnail Singh-I* (supra), it was observed that there was no necessity to refer the judgment in *Nagaraj* (supra) to a Seven-Judge Bench.

63. In *B.K. Pavitra* (supra), the Hon'ble Supreme Court, observed that for equality to be truly effective or substantive, the principle must recognize existing inequalities in society to overcome them. Reservations are thus not an exception to the rule of equality of opportunity. They are rather the fulfilment of effective and substantive equality by accounting for the structural conditions into which people are born. If Article 16(1) merely postulates the principle of formal equality of opportunity, then Article 16(4), by enabling reservations due to existing inequalities, becomes an exception to the strict rule of formal equality in Article 16(1). However, Article 16(1) itself sets out the principle of substantive equality including the recognition of existing inequalities, then Article 16(4) becomes the enunciation of one particular facet of the rule of substantive equality set out in Article 16(1). With regard to adequacy of representation, it was observed that the same has to be assessed with reference to a benchmark on adequacy, which conventionally, the same is linked by the State and Central Governments the percentage of reservation for the SCs and STs to their percentage of population and accordingly it was held that it is open to the State to make reservation in promotion for SCs and STs proportionate to their representation in general population.

64. In *Dr. Jaishri Laxmanrao Patil* (supra), six questions were formulated which read as follows:

“(1) Whether judgment in *Indra Sawhney v. Union of India* needs to



be referred to a larger Bench or requires a re-look by the larger Bench in the light of subsequent constitutional amendments, judgments and changed social dynamics of the society, etc.?

(2) Whether Maharashtra State Reservation (of Seats for Admission in Educational Institutions in the State and for Appointments in the Public Services and Posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018 as amended in 2019 granting 12% and 13% reservation for Maratha community in addition to 50% social reservation is covered by exceptional circumstances as contemplated by the Constitution Bench in *Indra Sawhney* case?

(3) Whether the State Government on the strength of Maharashtra State Backward Class Commission Report chaired by M.C.Gaikwad has made out a case of existence of extraordinary situation and exceptional circumstances in the State to fall within the exception carved out in the judgment of *Indra Sawhney* case?

(4) Whether the Constitution (One Hundred and Second) Amendment deprives the State Legislature of its power to enact a legislation determining the socially and economically backward classes and conferring the benefits of the said community under its enabling power?

(5) Whether, State power to legislate in relation to “any backward class” under Article 15(4) and 16(4) is anyway abridged by Article 342-A read with Article 366(26-C) of the Constitution of India?



(6) Whether, Article 342-A of the Constitution abrogates States' power to legislate or classify in respect of "any backward class of citizens" and thereby affects the federal policy/structure of the Constitution of India? "

65. Hon'ble Justice L. Nageswara Rao, Hon'ble Justice Hemant Gupta and Hon'ble Justice S. Ravindra Bhatt, concurred with Hon'ble Justice Ashok Bhushan and Hon'ble Justice S. Abdul Nazir in respect of question No. 1, 2 and 3 whereas, with regard to question No. 4, 5 and 6, Hon'ble Justice L. Nageswara Rao and Hon'ble Justice Hemant Gupta concurred with Hon'ble Justice S. Ravindra Bhatt.

66. At paragraphs 10 and 194, Hon'ble Justice S. Ravindra Bhatt stated as follows:

"10. A careful reading of the judgments in *Indra Sawhney v. Union of India*, clarifies that seven out of nine judges concurred that there exists a quantitative limit on reservation – spelt out at 50%. In the opinion of four judges, therefore, per the judgment of B.P. Jeevan Reddy, J., this limit could be exceeded under extraordinary circumstances and in conditions for which separate justification has to be forthcoming by the State or the agency concerned. However, there is unanimity in the conclusion by all seven judges that an outer limit for reservation should be 50%. Undoubtedly, the other two judges, Ratnavel Pandian and P.B. Sawant, JJ. indicated that there is no general rule of 50% limit on reservation. In these circumstances, given the general common agreement about the existence of an



outer limit, i.e. 50%, the petitioner's argument about the incoherence or uncertainty about the existence of the rule or that there were contrary observations with respect to absence of any ceiling limit in other judgments (the dissenting judgments of K.Subbarao, in *T. Devadasan v Union of India*, the judgments of S.M. Fazal Ali and Krishna Iyer, JJ. in *State of Kerala v N.M. Thomas* and the judgment of Chinnappa Reddy, J. in *K.C. Vasanth Kumar v. State of Karnataka*) is not an argument compelling a review or reconsideration of *Indra Sawhney* rule.

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“194. In view of the above discussion, my conclusions are as follows:

**194.1. *Re Point (1):*** *Indra Sawhney* does not require to be referred to a larger Bench nor does it require reconsideration in the light of subsequent constitutional amendments, judgments and changed social dynamics of the society, for the reasons set out by Ashok Bhushan, J. and my reasons, in addition.

**194.2. *Re Point (2):*** The Maharashtra State Reservation (of Seats for Admission in Educational Institutions in the State and for Appointments in the Public Services and Posts under the State) for Socially and Educationally Backward Classes (SEBC) Act, 2018 as amended in 2019 granting 12% and 13% reservation for Maratha community in addition to 50% social reservation is not covered by exceptional circumstances as contemplated by the Constitution Bench in *Indra Sawhney case*. I agree with the reasoning and



conclusions of Ashok Bhushan, J. on this point.

**194.3. *Re Point (3)*:** I agree with Ashok Bhushan, J. that the State Government, on the strength of the Maharashtra State Backward Class Commission Report chaired by M.C. Gaikwad *has not* made out a case of existence of extraordinary situation and exceptional circumstances in the State to fall within the exception carved out in *Indra Sawhney*.”

67. Question Nos. 4, 5 and 6 essentially pertain to interpretation of Article 342-A of the Constitution of India, which is not relevant for the purpose of these cases.

68. It will also be relevant to take note of paragraphs 459, 474, 476, 480, 481, 515, 520 and 542 dealing with the first three questions rendered in the judgment of Hon'ble Justice Ashok Bhushan.

“459. We have noticed above that the majority judgment in *Indra Sawhney* has laid down that reservation shall not exceed 50% as a rule. In the majority opinion, however, it was held that looking to the diversity of the country there may be some extraordinary situations where reservation in exceptional cases is made exceeding 50% limit. In this respect, we may again refer to paras 809 and 810 of the judgment of *Indra Sawhney* by which the above proposition of law was laid down. Paras 809 and 810 are to the following effect: (SCC p. 735)

“809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of Article 16 should not exceed 50%.



810. While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.”

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474. We may revert back to para 810 where *Indra Sawhney* has given illustration which illustration is regarding certain extraordinary situations. The exact words used in para 810 are: (SCC p. 735)

“810. ... It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the mainstream of national life and in view of conditions peculiar to and characteristic to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out.”

476. This Court in several judgments has noticed that what can be the extraordinary situations as contemplated in para 810 in few other cases. We have referred above the three-Judge Bench judgment in *Union of India v. Rakesh Kumar* {(2010) 4 SCC 50}, where the three-Judge Bench held that exceptional case of 50% ceiling can be in regard to Panchayats in *scheduled areas*. The above three-Judge





Bench has also been approved and reiterated by the Constitution Bench of this Court in *K. Krishna Murthy* {(2010) 7 SCC 202}. In the above cases this Court was examining the reservation in Panchayats. In the context of Part IX of the Constitution, 50% ceiling principle was applied but exception was noticed.

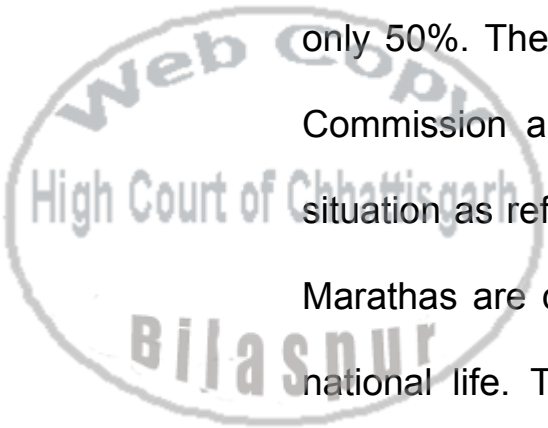
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480. From the above, it is clear that both the Commission and the High Court treated the extraordinary situations with regard to exceeding 50% for granting separate reservation to Marathas, the fact that population of backward class is 85% and reservation limit is only 50%. The above extraordinary circumstances as opined by the Commission and approved by the High Court is not extraordinary situation as referred to in para 810 of *Indra Sawhney* judgment. The Marathas are dominant forward class and are in the mainstream of national life. The above situation is not an extraordinary situation contemplated by *Indra Sawhney* judgment and both the Commission and the High Court fell in error in accepting the above circumstances as extraordinary circumstance for exceeding the 50% limit. At this stage, we may notice that what was said by Dr. Ambedkar in the *Constituent Assembly Debates* dated 30-11-1948 while debating draft Article 10(3) [Article 16(4) of the Constitution]. Dr Ambedkar by giving an illustration said: (CAD Vol. VII)

“... Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be





completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. Let me give an illustration. Supposing, for instance, reservations were made for a community or a collection of communities, the total of which came to something like 70% of the total posts under the State and only 30% are retained as the unreserved. Could anybody say that the reservation of 30% as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely, that there shall be equality of opportunity? It cannot be in my judgment. Therefore the seats to be reserved, if the reservation is to be consistent with clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation.”

**481.** The illustration given by Dr Ambedkar that supposing 70% posts are reserved and 30% may retain as unreserved, can anybody say that 30% as open to general competition would be satisfactory from point of view of giving effect to the first principle of equality, the answer given by Dr Ambedkar was in the negative. Thus, Constituent Assembly by giving illustration has already disapproved principle which is now propounded by the High Court. We cannot approve the view of the High Court based on the same view taken by the Commission.

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**515.** The reservation under Article 16(4) of the Constitution is enabling power of the State to make any provision for reservation of



appointment or posts in favour of other backward class of citizens who in the opinion of the State is not adequately represented in the services under the State. The condition precedent for exercise of power under Article 16(4) are that the backward class is not adequately represented in the services under the State.

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**520.** The word “adequate” is a relative term used in relation to representation of different caste and communities in public employment. The objective of Article 16(4) is that backward class should also be put in mainstream and they are to be enabled to share power of the State by affirmative action. To be part of public service, as accepted by the society of today, is to attain social status and play a role in governance. The governance of the State is through service personnel who play a key role in implementing government policies, its obligation and duties. The State for exercising its enabling power to grant reservation under Article 16(4) has to identify inadequacy in representation of backward class who is not adequately represented. For finding out adequate representation, the representation of backward class has to be contrasted with representation of other classes including forward classes. It is a relative term made in reference to representation of backward class, other caste and communities in public services.

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**542.** *Indra Sawhney* has categorically held that what is required by the State for providing reservation under Article 16(4) is not

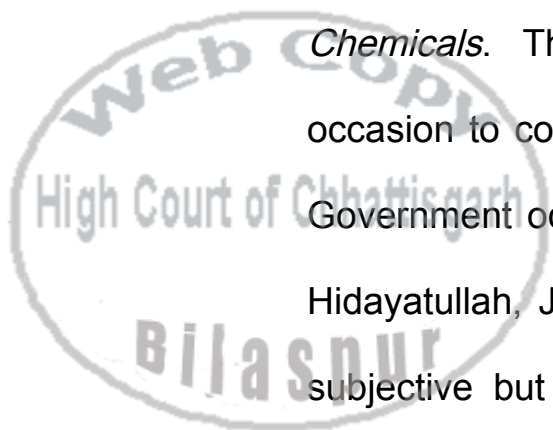


proportionate representation but adequate representation. The Commission thus proceeds to examine the entitlement under Article 16(4) on the concept of proportionate representation in the State services which is a fundamental error committed by the Commission.”

69. While dealing with the scope and reach of judicial scrutiny in *Dr. Jaishri Laxmanrao Patil* (supra), at paragraphs 508, 509 and 515, it is stated as follows:

“508. *Indra Sawhney* had referred to the judgment of this Court in *Barium Chemicals* {AIR 1967 SC 295} for the scope and reach of judicial scrutiny. We need to refer the test enunciated in *Barium Chemicals*. The Constitution Bench in *Barium Chemicals* had occasion to consider the expression “if in the opinion of the Central Government occurring in Section 237 of the Companies Act, 1956”. Hidayatullah, J. laid down that no doubt the formation of opinion is subjective but the existence of the circumstances relevant to the inference as the sine qua non for action must be demonstrable. The following observations were made in para 27: (*Barium Chemicals case*, AIR p. 309)

“27. ... No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out. As my Brother Shelat has put it





trenchantly: (*Barium Chemicals case*, AIR p. 325, para 64)

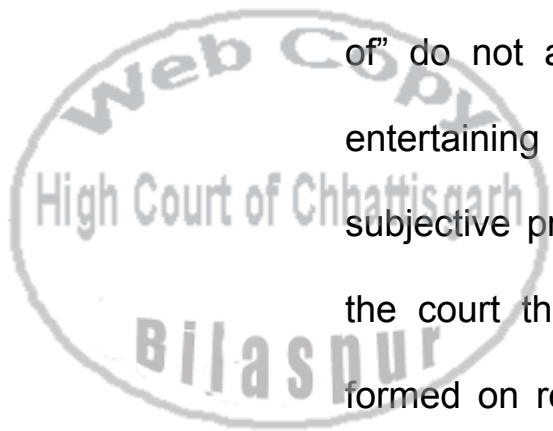
‘64. ... It is not reasonable to say that the clause permitted the Government to say that it has formed the opinion on circumstances which it thinks exist....’

Since the existence of “circumstances” is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least *prima facie*.”

509. Shelat, J. with whom Hidayatullah, J. has agreed in para 63 laid down the following: (*Barium Chemicals case*, AIR p. 324)

“63. ... Therefore, the words, “reason to believe” or “in the opinion of” do not always lead to the construction that the process of entertaining “reason to believe” or “the opinion” is an altogether subjective process not lending itself even to a limited scrutiny by the court that such “a reason to believe” or “opinion” was not formed on relevant facts or within the limits or as Lord Radcliffe and Lord Reid called the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative.”

515. The reservation under Article 16(4) of the Constitution is enabling power of the State to make any provision for reservation of appointment or posts in favour of other backward class of citizens who in the opinion of the State is not adequately represented in the services under the State. The conditions precedent for exercise of power under Article 16(4) are that the backward class is *not adequately represented in the services*





*under the State.”*

70. At paragraph 688, conclusions in *Dr. Jaishri Laxmanrao Patil* (supra) is recorded. Conclusions relevant for our purpose, namely, 688.1 to 688.21 are reproduced here in below.

“688. From our foregoing discussion and finding we arrive at the following conclusions:

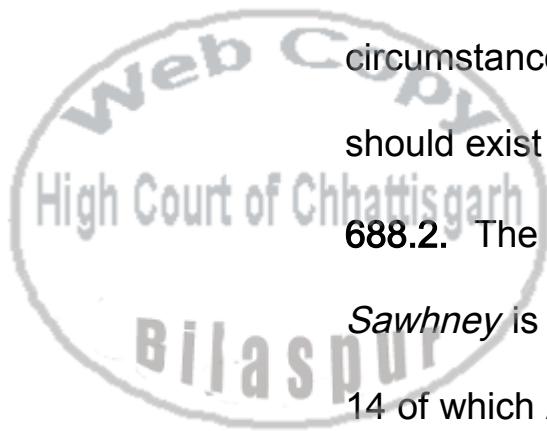
688.1. The greatest common measure of agreement in six separate judgments delivered in *Indra Sawhney* is:

688.1.1. Reservation under Article 16(4) should not exceed 50%.

688.1.2. For exceeding reservation beyond 50%, extraordinary circumstances as indicated in para 810 of B.P. Jeevan Reddy, J. should exist for which extreme caution is to be exercised.

688.2. The 50% rule spoken in *Balaji* and affirmed in *Indra Sawhney* is to fulfil the objective of equality as engrafted in Article 14 of which Articles 15 and 16 are facets. 50% is reasonable and it is to attain the object of equality. To change the 50% limit is to have a society which is not founded on equality but based on caste rule.

688.3. We are of the considered opinion that the cap on percentage of reservation as has been laid down by the Constitution Bench in *Indra Sawhney* is with the object of striking a balance between the rights under Articles 15(1) and 15(4) as well as Articles 16(1) and 16(4). The cap on percentage is to achieve principle of equality and with the object to strike a balance which cannot be said to be arbitrary or unreasonable.





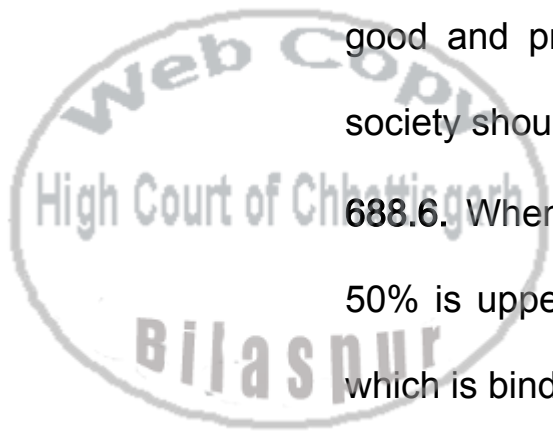
**688.4.** Providing reservation for advancement of any socially and educationally backward class in public services is not the only means and method for improving the welfare of backward class. The State ought to bring other measures including providing educational facilities to the members of backward class free of cost, giving concession in fee, providing opportunities for skill development to enable the candidates from the backward class to be self-reliant.

**688.5.** There can be no quarrel that society changes, law changes, people change but that does not mean that something which is good and proven to be beneficial in maintaining equality in the society should also be changed in the name of change alone.

**688.6.** When the Constitution Bench in *Indra Sawhney* held that 50% is upper limit of reservation under Article 16(4), it is the law which is binding under Article 141 and to be implemented.

**688.7.** We find that the Constitution Bench judgment in *Indra Sawhney* is also fully applicable in reference to Article 15(4) of the Constitution of India.

**688.8.** The setting aside of 50% ceiling by the eleven-Judge Bench in *T.M.A. Pai Foundation* {(2002) 8 SCC 481} as was laid down by *St. Stephen's case* {(1992) 1 SCC 558} i.e. 50% ceiling in admission in aided minority institutions has no bearing on the principle of 50% ceiling laid down by *Indra Sawhney* with respect to reservation. The judgment of *T.M.A. Pai* was in reference to rights of minority under Article 30 and is not relevant for reservation





under Articles 16(4) and 15(4) of the Constitution.

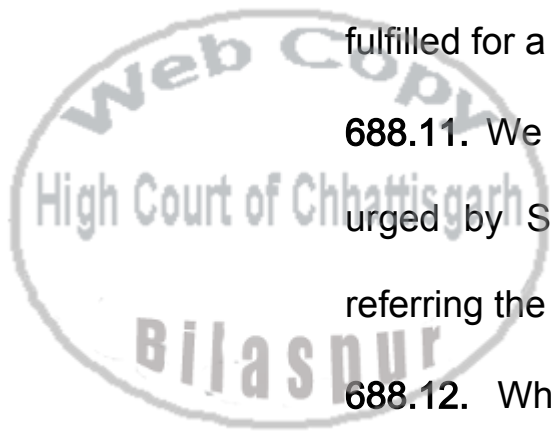
**688.9.** The Constitution (Eighty-first Amendment) Act, 2000 by which clause (4-B) was inserted in Article 16 makes it clear that ceiling of 50% “has now received constitutional recognition”.

**688.10.** We fully endorse the submission of Shri Rohatgi that extraordinary situations indicated in para 810 of *Indra Sawhney case* were only illustrative and cannot be said to be exhaustive. We however do not agree with Mr Rohatgi that para 810 provided only a geographical test. The use of the expression “on being out of the mainstream of national life”, is a social test, which also needs to be fulfilled for a case to be covered by exception.

**688.11.** We do not find any substance in any of the 10 grounds urged by Shri Rohatgi and Shri Kapil Sibal for revisiting and referring the judgment of *Indra Sawhney* to a larger Bench.

**688.12.** What was held by the Constitution Bench in *Indra Sawhney* on the relevance and significance of the principle of stare decisis clearly binds us. The judgment of *Indra Sawhney* has stood the test of time and has never been doubted by any judgment of this Court. The Constitution Bench judgment of this Court in *Indra Sawhney* neither needs to be revisited nor referred to a larger Bench for consideration.

**688.13.** The Constitution Bench in *M. Nagaraj* does not contain any ratio that ceiling of 50% reservation may be exceeded by showing quantifiable contemporary data relating to backwardness. The Commission has completely misread the ratio of the judgment,







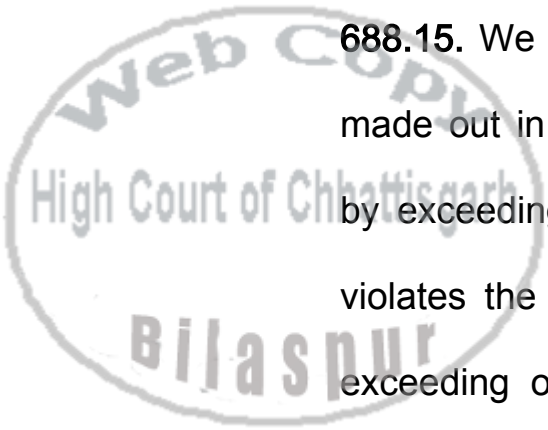
when the Commission took the view that on the quantifiable data ceiling of 50% can be breached.

**688.14.** The Commission and the High Court found existence of the extraordinary situations with regard to exceeding 50% ceiling in respect to grant of separate reservation to Marathas because the population of backward class is 80% and reservation limit is only 50%, containing the Marathas in pre-existing reservation for OBC shall not be justice to them, which circumstance is not covered under the parameters indicated in *Indra Sawhney case* as extraordinary circumstance to breach 50% ceiling.

**688.15.** We have found that no extraordinary circumstances were made out in granting separate reservation of Maratha community by exceeding the 50% ceiling limit of reservation. The 2018 Act violates the principle of equality as enshrined in Article 16. The exceeding of ceiling limit without there being any extraordinary circumstances clearly violates Articles 14 and 16 of the Constitution which makes the enactment ultra vires.

**688.16.** The proposition is well settled that Commissions' reports are to be looked into with deference. However, one of the parameter of scrutiny of Commission's report as approved by this Court is that on the basis of data and materials referred to in the report whether conclusions arrived at by the Commission are justified.

**688.17.** The measures taken under Articles 15(4) and 16(4) can be examined as to whether they violate any constitutional principle,



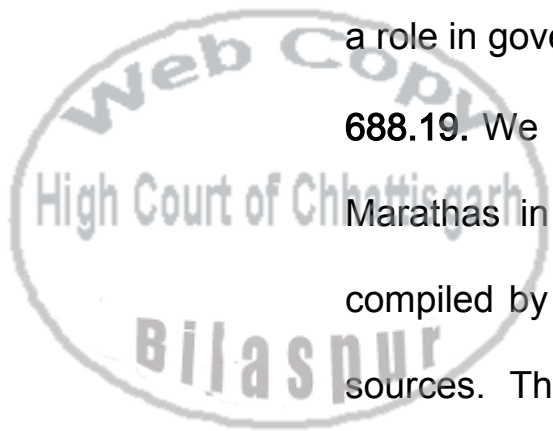


and are in conformity with the rights under Articles 14, 15 and 16 of the Constitution. The scrutiny of measures taken by the State, either executive or legislative, thus, has to pass the test of constitutional scrutiny.

**688.18.** The word “adequate” is a relative term used in relation to representation of different castes and communities in public employment. The objective of Article 16(4) is that backward class should also be put in mainstream to enable to share power of the State by affirmative action. To be part of public service, as accepted by the society of today, is to attain social status and play a role in governance.

**688.19.** We have examined the issues regarding representation of Marathas in State services on the basis of facts and materials compiled by Commission and obtained from the States and other sources. The representation of Marathas in public services in Grades A, B, C and D comes to 33.23%, 29.03%, 37.06% and 36.53% computed from out of the open category filled posts, is adequate and satisfactory representation of Maratha community. One community bagging such number of posts in public services is a matter of pride for the community and its representation in no manner can be said to be not adequate in public services.

**688.20.** The Constitutional precondition for providing reservation as mandated by Article 16(4) is that the backward class is not adequately represented in the public services. The Commission laboured under misconception that unless Maratha community is





not represented equivalent to its proportion, it is not adequately represented. *Indra Sawhney* has categorically held that what is required by the State for providing reservation under Article 16(4) is not proportionate representation but adequate representation.

**688.21.** The Constitutional precondition as mandated by Article 16(4) being not fulfilled with regard to Maratha class, both the Gaikwad Commission's Report/Report of the Gaikwad Commission and consequential legislation are unsustainable.”

71. In *Jarnail Singh & Others-II* (supra), with regard to proportionate representation as test of adequacy in promotional posts, the Hon'ble Supreme Court had observed as follows:

**“3) PROPORTIONATE REPRESENTATION AS TEST OF ADEQUACY**

30. In *R.K. Sabharwal* (supra), it was observed that State Governments may take the total population of a particular Backward Class and its representation in the State services for the purpose of coming to a conclusion that there is inadequate representation in the State services. In *M. Nagaraj* (supra), this Court was of the considered view that the exercise of collecting quantifiable data depends on numerous factors, with conflicting claims to be optimised by the administration in the context of local prevailing conditions in public employment. As equity, justice and efficiency are variable factors and are context-specific, how these factors should be identified and counter-balanced will depend on the facts and circumstances of each case. The attempt of the learned Attorney General for India to impress upon this Court that the proportion of



SCs and STs in the population of India should be taken as the test for determining whether they are adequately represented in promotional posts, did not yield results. This Court in *Jarnail Singh* (supra) found no fault with *M. Nagaraj* (supra) regarding the test for determining the adequacy of representation in promotional posts in the State. While emphasising the contrast in the language used between Article 330 and Articles 16(4-A) and 16(4-B) of the Constitution, this Court declined the invitation of the learned Attorney General for India to hold that the proportion of SCs and STs to the population of India should be the test for determining inadequacy of representation in promotional posts. Therefore, we are not persuaded to express any opinion on this aspect. It is for the State to assess the inadequacy of representation of SCs and STs in promotional posts, by taking into account relevant factors.”

72. While striking down Rule 9.3 of the Madhya Pradesh Medical and Dental Graduate Entrance Examination Rules, 2003, which increased the percent of reservation to 56.94%, the High Court of Madhya Pradesh, in *Mayank Jain* (supra) had observed as follows:

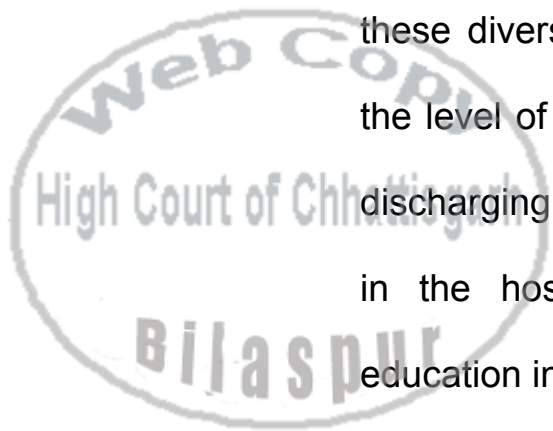
“In this context we may refer with profit to the Constitution Bench decision rendered in the case of *Dr. Preeti Shrivastava v. State of M.P. and Ors.*, {AIR 1999 SC 2894}, wherein the Apex Court held as under:--

"..... While the object of Article 15(4) is to advance equality principle by providing for protective discrimination in favour of the weaker sections so that they may become stronger and be able to



compete equality with others more fortunate, one can not also ignore the wider interests of society while devising such special provisions. Undoubtedly, protective discrimination in favour of backward, including Scheduled Castes and Scheduled Tribes is as much in the interest of society as the protected groups. At the same time, there may be other national interests, such as promoting excellence at the highest level and providing the best talent in the country with the maximum available facilities to excel and contribute to society, which have also to be borne in mind. Special provisions must strike a reasonable balance between these diverse national interests. Moreover, study and training at the level of specialities and super-specialities in medicine involve discharging the duties attached to certain specified medical posts in the hospitals attached to the medical institutions giving education in specialities and super-specialities....."

We are conscious that the aforesaid decision was rendered in the context of reservation for admission to the Post Graduate Course in various professional faculties but we have referred to the aforesaid paragraph to indicate what is the view of the Apex Court in relation to weaker sections and what their Lordships have stated therein. We may repeat at the cost of repetition that the cause put forth by the State for advancement of the weaker section can not distort the dictum of the Apex Court. It was contended before us that in certain exceptional cases extra reservation is permissible. But, in our considered opinion, the





present one does not fit into the said prism. When the students are appearing in the examination harbouring hope that when they would qualify they would be selected their hopes can not be marred or smothered by ushering in a rule of this type. The said Rule does not subserve the constitutional philosophy and as we have noted earlier it runs contrary to the principles laid down by the Apex Court. If we allow ourselves to say so, an innovative attempt has been made to frame a rule to enhance the conception of reservation which the law prescribes. By no stretch of rationalization or ratiocination it can be conceived that this is the field where this innovative approach is warranted. On the contrary, it is absolutely unthinkable.”

73. Grant of reservation under Articles 15(4) or 16(4), either by legislative measure or by an executive order are measures which act as a tool and means to attain the constitutional goal of fulfilment of the principle of equality. Such reservation are enabling provisions to facilitate the State to make any provision for reservation for appointment on a post in favour of backward class of citizens. Unless the educational and economic interest of the weaker sections of the people are promoted by affirmative action, the constitutional goal of establishing social and economic equality will not be attained and as such, while Article 15(4) provides for making any special provision for the advancement of any socially and educationally backward classes of citizens or for the SCs and STs, Article 15(5) provides for making any special provision for advancement of any socially and educationally backward classes of citizens or for the SCs and STs relating to their admission to educational



institutions including aided or unaided private educational institutions other than minority educational institutions referred to in Article 30(1). It is worth remembering that framers of the Constitution intended the Constitution to bring in winds of social change in a caste-ridden society. It needs no reiteration that equality has been recognized as a basic feature of our Constitution and to preserve equality, a harmonious balance has to be struck to ensure that the fundamental ethos and the spirit as encapsulated in Articles 14 and 16 reign supreme and at the same time, to ensure that it galvanises social and economic upliftment of the backward classes. The condition precedent for exercise of power under Article 16(4) is that backward class is not adequately represented in the services under the State. Reservation can be made in service and educational institutions only when the State is satisfied that representation of backward classes of citizens therein is not adequate. In order to ascertain the extent of reservation, the State has to justify the existence of compelling reasons, namely, backwardness, inadequacy in representation and overall administrative efficiency before making provision for reservation.

**74.** The Hon'ble Supreme Court in *Indra Sawhney* (supra) had observed that not only should a class be a backward class for meriting reservations, it should also be inadequately represented in the services under the State. The language of Clause (4) makes it clear that the question whether a backward class of citizens is not adequately represented in the services under the State is a matter within the subjective satisfaction of the State. This opinion can be formed by the State on its own, i.e., on the basis of the material it has in its possession already or it may gather such material through a



Commission/Committee, person or authority. There must be some material upon which the opinion is formed. While observing that in a matter of the present nature, the Court should show due deference to the opinion of the State, it does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. It was further held that Article 16(4) speaks about adequate representation and not proportionate representation and adequate representation cannot be read as proportionate representation. Accordingly, it was held that it was not possible to accept the theory of proportionate representation, though the proportion of population of backward classes to the total population would certainly be relevant. It was held that the power conferred by Article 16(4) should be exercised reasonably and fairly, in a fair manner and within reasonable limits - and what is more reasonable than to say that reservation under Clause 16(4) shall not exceed 50% of the appointments or posts, barring certain extra-ordinary situations. Accordingly, it was held that it is an irresistible conclusion that the reservation contemplated in Article 16(4) should not exceed 50%. While holding 50% to be the rule, it was also observed that it is necessary to point out certain extraordinary situations inherent in the great diversity of our country and the people. It might so happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of the main stream of national life and in view of conditions peculiar to and characteristic to them, they need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out. The Hon'ble Supreme Court also held that for the purpose of





applying the rule of 50%, a year should be taken as the unit and not the entire strength of the cadre, service or the unit, as the case may be.

75. It will be appropriate to extract from paragraph 6 of the return filed to the application for stay wherein the number of posts for SCs, STs and OBCs in the State and the appointments made are indicated.

“6.....It is humbly submitted that, in fact, the total number of vacancies with respect to STs, SCs and OBCs in the State are currently as follows for the *State-cadre* posts: for SCs there are 240 sanctioned *Class I* posts out of which 98 are filled thereby resulting in a vacancy of 142 posts (i.e. 40.83%); for STs there are 483 sanctioned *Class I* posts out of which 155 are filled thereby resulting in a vacancy of 327 posts (i.e. 23.86%); for OBCs there are 230 sanctioned *Class I* posts out of which 103 are filled thereby resulting in a vacancy of 131 posts (i.e. 40.02%). Similarly, for SCs there are 3283 sanctioned *Class II* posts out of which 2000 are filled thereby resulting in a vacancy of 1283 posts (i.e. 60.92%); for STs there are 4758 sanctioned *Class II* posts out of which 2594 are filled thereby resulting in a vacancy of 2164 posts (i.e. 54.52%); for OBCs there are 3020 sanctioned *Class II* posts out of which 1545 are filled thereby resulting in a vacancy of 1475 posts (i.e. 51.16%). Then, for SCs there are 13948 sanctioned *Class III* posts out of which 9449 are filled thereby resulting in a vacancy of 4499 posts (i.e. 67.74%); for STs there are 23816 sanctioned *Class III* posts out of which 20662 are filled thereby resulting in a vacancy of 3154 posts (i.e. 86.76%); for OBCs there are 10971 sanctioned *Class III* posts out of which 12802 are filled thereby





resulting in a surplus of 1831 posts (i.e. 116.69%). Finally, for SCs there are 1125 sanctioned *Class IV* posts out of which 768 are filled thereby resulting in a vacancy of 357 posts (i.e. 68.27%); for STs there are 1817 sanctioned *Class III* posts out of which 1158 are filled thereby resulting in a vacancy of 659 posts (i.e. 63.73%); for OBCs there are 1336 sanctioned *Class III* posts out of which 880 are filled thereby resulting in a vacancy of 456 posts (i.e. 65.87%).

Moreover, with respect to *district-cadre* posts in the State the figures are as follows: for SCs there are 15540 sanctioned *Class III* posts out of which 9564 are filled thereby resulting in a vacancy of 5976 posts (i.e. 61.54%); for STs there are 25290 sanctioned *Class III* posts out of which 18149 are filled thereby resulting in a vacancy of 7141 posts (i.e. 71.76%); for OBCs there are 14027 sanctioned *Class III* posts out of which 10846 are filled thereby resulting in a vacancy of 3181 posts (i.e. 77.32%). Finally, for SCs there are 3370 sanctioned *Class IV* posts out of which 2628 are filled thereby resulting in a vacancy of 742 posts (i.e. 77.98%); for STs there are 13180 sanctioned *Class III* posts out of which 6080 are filled thereby resulting in a vacancy of 7100 posts (i.e. 46.13%); for OBCs there are 4249 sanctioned *Class III* posts out of which 4894 are filled thereby resulting in a surplus of 645 posts (i.e. 115.18%).

In any event, it is humbly submitted that the State Government is duty bound to implement the law enacted by the legislature, and thus the impugned amendment.”



76. A perusal of the above would go to show that a large number of vacancies which are specifically earmarked for STs, SCs and OBCs are not filled up. There is no explanation whatsoever as to why such vacancies are lying unfilled and for how long.

77. In paragraph 17 of the said additional return, it is stated as follows:

“17. That the facts and figures encapsulated in the following tables, clearly provide the basis and justification in the present form and manner in the State of Chhattisgarh, considering the overall picture in the State, which is predominantly populated by tribals and is socially, economically and educationally backward.

Table 1

SC, ST and OBC Representation among Candidates Selected by Chhattisgarh State PSC through Open Competition (i.e., without the Aid of Reservation)

Year	Total Number of Candidates Selected Through Open Competition	Number of SC candidates Selected through Open Competition	Percentage of SC candidates to total candidates (3/2x100)	Number of ST candidates Selected through Open Competition	Percentage of ST candidates to total candidates (5/2x100)	Number of OBC candidates Selected through Open Competition	Percentage of OBC candidates to total candidates (7/2x100)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
2007	150	1	0.67	0	0.00	22	14.67
2008	76	1	1.32	6	7.89	15	19.74
2009	422	30	7.11	73	17.30	76	18.01
2010	128	2	1.56	5	3.91	13	10.16
2011	41	3	7.32	2	4.88	9	21.95
2012	246	4	1.63	6	2.44	80	32.52
Total	1063	41	3.86	92	8.65	215	20.23
Population proportions			11.6		31.8		Estimated to be 42%

Table 2

SC, ST and OBC representation among Students selected for MBBS/BDS course through Open Competition, i.e., without the aid of Reservation, in Pre-Medical Test



Year	Total No. Seats allotted for Competition Non-Reserved seats)	Open (i.e., Seats)	No. of ST candidates selected through open competition	% age of ST candidates Selected through open competition	No of SC Candidates Selected through Open Competition	% age of OBC candidates Selected through open competition	No. of OBC Candidates Selected through Open Competition	% age of OBC candidates Selected through open competition
2008	153		1	0.65	1	0.65	26	16.99
2009	168		2	1.19	2	1.19	17	10.12
2010	190		0	0.00	1	0.53	21	11.05
2011	169		1	0.59	1	0.59	26	15.38
2012	136		0	0.00	0	0.00	27	19.85
Total	816		4	0.49	5	0.61	117	14.34

Table 3

SC, ST and OBC representation among Students selected for Engineering Course through Open Competition, i.e., without the aid of Reservation, in Pre-Engineering Test

Year	Total No. Seats allotted for Open Competition (i.e., Non-Reserved seats)	No of ST candidates selected through open competition	% age of ST candidates Selected through open competition	No of SC Candidates Selected through Open Competition	% age of OBC candidates Selected through open competition	No. of OBC Candidates Selected through Open Competition	% age of OBC candidates Selected through open competition
2008	3229	26	0.81	69	2.14	403	12.48
2009	6682	16	0.24	51	0.76	304	4.55
2010	8196	36	0.44	48	0.59	310	3.78
2011	7424	62	0.84	68	0.92	338	4.55
2012	6448	31	0.48	48	0.74	279	4.33
Total	31979	171	0.53	284	0.89	1634	5.11

Table 4

Distribution households of social groups in Chhattisgarh by employment status (as per NSSO, 61<sup>st</sup> round, 2004-05 survey)

	ST	SC	OBC	Others	All
<b>Rural</b>					
<b>I. Rural Self-employed</b> in agriculture	52.3	21.3	32.6	39.1	38.6
in non-agriculture	2.6	4.8	8.6	24.1	6.5
in all	54.9	26.1	41.2	63.2	45.1
<b>II. Rural Labour</b> Agricultural Labour	29.5	54.3	41.4	12.0	37.5
Other Labour	4.7	9.8	8.1	8.4	7.1
in all	34.2	64.1	49.5	20.4	44.6
<b>URBAN</b>					
	ST	SC	OBC	Others	All
<b>I. Casual Labour</b>	12.0	19.9	26.1	1.3	14.2



Table 5

Distribution of household of social groups in Chhattisgarh by monthly per capita expenditure (Rs.) (as per NSSO, 61<sup>st</sup> round, 2004-05 survey)

RURAL					
	ST	SC	OBC	OTHERS	ALL
Upto Rs.510	79.1	73.3	64.2	56.1	70.8
Rs.510 and above	20.8	26.6	36.0	43.9	29.2
URBAN					
1. Less than Rs. 335	14.5	5.9	7.4	0.1	5.5
2. Rs. 2540 and above	12.6	1.9	0.3	11.2	6.2

Table 6

Proportion of persons (15 yrs & above) among social groups in Chhattisgarh by level of general education (rural + urban) (as per NSSO, 61<sup>st</sup> round, 2004-05 survey)

	ST	SC	OBC	Others	All
NOT LITERATE	54.0	42.9	39.5	13.9	41.6
LITERATE & UPTO PRIMARY LEVEL	28.9	30.6	30.7	20.8	29.0
MIDDLE	9.7	14.0	15.4	15.7	13.4
SECONDARY	2.8	3.8	4.8	11.0	4.7
HIGHER SECONDARY	2.7	4.8	6.0	16.3	5.9
DIPLOMA/ CERTIFICATE	0.2	0.4	0.5	3.7	0.8
GRADUATE & ABOVE	1.9	3.4	3.2	18.4	4.5

Table 7

Proportion of persons (15 yrs & above) among social groups in Chhattisgarh by level of general education (urban) (as per NSSO, 61<sup>st</sup> round, 2004-05 survey)

	ST	SC	OBC	Others	All
NOT LITERATE	34.4	28.5	25.7	7.3	19.8
LITERATE & UPTO PRIMARY LEVEL	17.6	32.0	26.5	16.8	22.5
MIDDLE	11.7	14.5	17.8	12.6	14.6
SECONDARY	4.2	8.3	9.4	14.0	10.5
HIGHER SECONDARY	14.6	5.0	11.8	18.2	13.6
DIPLOMA/ CERTIFICATE	1.7	2.4	1.3	5.6	3.2
GRADUATE & ABOVE	15.9	9.1	7.6	25.3	15.7



Table 8

Proportion of households with no literate adult (15 yrs & above)/adult female member among social groups in Chhattisgarh (as per NSSO, 61<sup>st</sup> round, 2004-05 survey)

	ST	SC	OBC	Others	All
<b>RURAL</b>					
No Literate Adult member	30.5	25.4	21.5	8.3	24.9
No Literate Female adult Member	55.1	55.3	48.5	35.4	51.5
<b>URBAN</b>					
No Literate Adult Member	16.8	11.9	12.2	0.4	8.4
No Literate Female adult Member	30.6	34.6	29.7	4.5	21.4

78. It will also be relevant to extract paragraphs 18 to 30, where explanations to the tables noted above are given here in below:

“18. The explanations/interpretations of the aforesaid tables are as follows:

19. The answering respondent firstly submits that the correct meaning of the term ‘adequacy’ or ‘inadequacy’ of representation in the services of the State must be based on the number of posts that the SCs, STs and OBCs have been able to secure in open competition without the aid of reservation. It should not be measured on the basis of the posts that they have obtained through reservation. This will be clear from the rationale of providing reservation.

20. If, in Indian society, there was no historically inherited inequality and deprivation, including denial or deprivation of education to any social class and consequent impairment of competitive capacity, all social classes would have obtained posts comparable to their proportion in the population. It is well-known that Indian society has



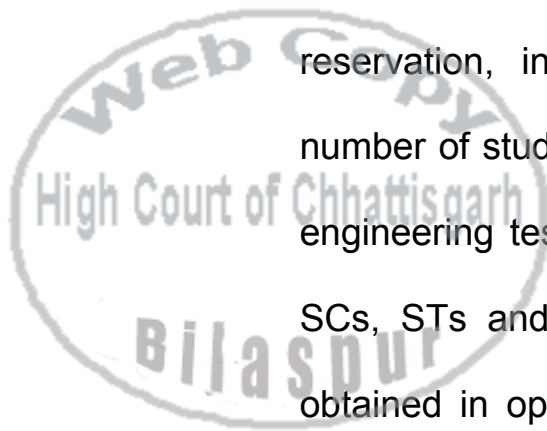
inherited many centuries of extreme social stratification and rigid hierarchies through the caste system resulting in exploitation and deprivation of certain classes and gross inequality in all aspects of life and denial or deprivation of education and other means of advancement to these classes, who have been classified by the Indian Constitution as Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes (or OBCs). Consequently, at the starting point, that is, prior to reservation, it was well-known that SCs, STs and OBCs were not able to compete with the SACs and secure a reasonable number of posts in comparison with their population percentage and, therefore, their representation in the services was nil or very low. That is why reservation was introduced so that they could secure a reasonable number of posts without being exposed to competition among unequal social classes. Since the origin of reservation is in the inability of the SCs, STs and OBCs to secure a reasonable number of posts in open competition for historical reasons, whether their representation in the services has become inadequate or remains inadequate has to be seen on the basis of data which does not take into account posts secured by reservation but only on data on posts secured through open competition.

21. Table 1 shows the number of posts for which selections were made by the State Public Service Commission and the number of SCs, STs and OBCs selected by the PSC on the basis of marks obtained in open competition and without the aid of reservation,



bringing out the factum of their extreme inadequacy of representation. It may be observed from the Table that as against the proportion of Scheduled Castes in the total population, only one-third of them are able to get selected by the Commission in open competition; and, for the Scheduled Tribes even fewer i.e., less than one-fourth are able to get selected in open competition as a proportion of their population percentage.

22. Tables 2 and 3 which though not related to services corroborated the continuing inability of the SCs, STs and OBCs to obtain their due seats in open competition i.e. without the aid of reservation, in educational institutions. These tables show the number of students selected in pre-medical tests (Table-2) and pre-engineering tests (Table-3) from 2008 onwards and the number of SCs, STs and OBCs who were selected on the basis of marks obtained in open competition without the aid of reservation. Their inability to compete with the SACs in securing seats in higher education, as a result of factors such as the centuries-old caste system, naturally reflects in their inability to secure adequate representation in various services. It was to remedy this unacceptable situation that the Central Educational Institutions (Reservation in Admissions) Act, 2006 was enacted with near unanimity by Parliament, which was later upheld by the Supreme Court alongwith the 93<sup>rd</sup> Constitutional Amendment that inserted a new clause (5) in Article 15 of the Constitution in so far it related to institutions covered by the Act.



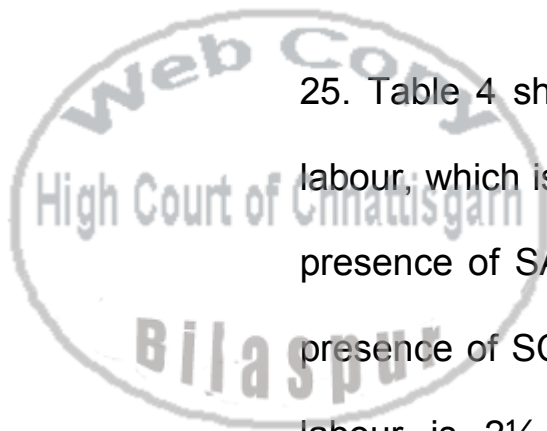




23. The poor and grossly inadequate representation of SCs, STs and OBCs in access to post under the State Government or seats in matters of admissions to professional courses of studies as shown in Tables 1 to 3 is because of their historically inherited inequality over many centuries of exploitation, deprivation and disadvantages which continue to a large extent even today.

24. Tables 4 to 8 throw light on the deprivation and disadvantages suffered by SCs, STs and OBCs compared to the SACs in employment/occupational status, monthly per capita expenditure of these four categories and the level of their general education.

25. Table 4 shows that only 12% of SACs are in rural agricultural labour, which is the most disadvantaged occupational category. The presence of SACs in rural agricultural labour is the least while the presence of SCs, OBCs and STs (in that order) in rural agricultural labour is 2½ to 4½ times more than the former's presence. Conversely, the proportion of SACs in cultivation of own lands, which is the most advantageous occupational category in rural areas, is nearly double that of SCs and considerably higher than that of OBCs; though a higher percentage of STs are owner cultivators, their lands are located in remote areas and are so poorly developed and so poorly linked to the market and have received so little of financial and modern technological inputs, including irrigation, that the benefit from this for the STs is limited. This can be seen when this table is read with Table 5 which shows that in rural Chhattisgarh the largest proportion of STs have the lowest monthly per capita





expenditure (MPCE) (which is the statistical method followed to have an idea of income), followed closely by the SCs and then by the OBCs. The proportion of the SACs in the MPCE category is the least. Conversely, in the MPCE classes of Rs. 510 and above, the proportion of STs is the least, closely followed by the SCs, then by the OBCs while the SACs have the highest proportion.

26. Table 4 also shows the gross disadvantage and deprivation of the SCs, OBCs and STs in their high proportion in urban casual labour which is the most disadvantaged occupational category in the urban area. In this occupational category, the presence of SACs is almost nil, while OBCs, SCs and STs in that order have higher proportion in this category – many multiples of the SACs, ranging from multiples of 10 to 20.

27. Table 6 shows the high proportion of STs followed by the SCs and OBCs among non-literate persons, both rural and urban put together, being about 3 to 4 times more than the SACs. Conversely, among graduates and above, the proportion of STs, SCs and OBCs is minuscule while the proportion of SACs is far higher than them, more than 6 to 9 times more than the three disadvantaged social classes.

28. Table 7 shows the disparity between the SCs, STs and OBCs on one side, and the 'others' (i.e. SACs) on the other side, at different levels of education in the urban area separately since greater opportunities for advancement and upward occupational and social



mobility exist in urban areas compared to rural areas. In the lowest ladder of education, namely, illiteracy, the proportion of SACs is in single digits (7.3%), while illiterate STs, SCs and OBCs are respectively about 5 times, 4 times and 3½ times more than SAC illiterates. Conversely, in the highest ladder of graduates and above, which is the educational level that helps most in advancement and upward occupational and social mobility, the proportion of SACs at 25.3% is the highest, while the SCs, STs and OBCs are represented in this urban educational category to a much lesser extent than the SACs.

28. Table 8 brings out the very high proportion of STs, SCs and OBCs and the low proportion of SACs in the matter of proportion of households with no literate adult and no adult female member for rural and urban areas separately. Among urban SACs, households without a single literate adult member is virtually nil, while such households are about 40 times more among STs and about 30 times more among SCs and Obcs. More details can be seen in the table.

30. It is humbly submitted that, when examined in the light of the aforesaid positions in law and the data produced by the answering respondent, it is self-evident that the impugned amendment (and the consequent notification) is an entirely valid and legitimate exercise of legislative power.”



79. The core issue is whether 58% reservation under the Act of 2011 and Act of 2012 is permissible. Reservation of 76% in district Surguja, 64% in district Surajpur, 80% in district Balrampur-Ramanujganj, 81% in district Jashpur, 66% in district Korias and 74% in Surguja Division incorporated in Schedule II Model Roster in Rules of 1998 vide notification dated 29.11.2012, is also an issue.

80. It was pleaded in a return by the State that the tables forming part of the return provide the basis for revising the percentage of reservation.

81. A bare glance at table 1 and 2 would show that data incorporated in such table also include the data for the year 2012. Obviously, the year 2012 could not have been in consideration when the Amendment Act was enacted in the year 2011. Only on the basis of certain data of six years in table-1, five years in table 2 and 3 and of the year 2004-2005 in respect of the other five tables, increase of reservation from 50% to 58% is sought to be justified on the ground that there is inadequacy of representation in the service of the State and in educational institutions. No particular reasoning is assigned why reservation in respect of SC is brought down to 12% from earlier 16% and reservation in ST is increased to 32% from earlier 20%. It is also not the case presented by the State that the data contained in the tables had been considered. The case presented in the return is that SC population constitute 12% of the population of the State and ST population constitute about 31.76%, which is almost 32%, as per 2001 Census and it would appear that accordingly, reservation is fixed at 12% for SC and 32% for ST proportionate to their respective percentage of population.



82. Special provisions contemplated by Article 15(4), 15(5) or 16(4) must be within reasonable limits. As noted earlier, it was observed in *Balaji* (supra) that a special provision should be less than 50% and how much less than 50% would depend upon the relevant prevailing circumstances in each case. Any reservation contemplated in Article 16(4) should not exceed 50% was held to be the rule in *Indra Sawhney* (supra), which can be breached only on certain extraordinary situations and on a special case made out. It was also observed that such power has to be exercised with extreme caution. In *Indra Sawhney* (supra), it was categorically held what is required by the State for providing reservation under Article 16 is not proportionate representation, but adequate representation, which cannot be read as proportionate representation. The said principle was reiterated in *Dr. Jaishri Laxmanrao Patil* (supra). In *Nagaraaj* (supra) also, ceiling limit of 50% was reiterated. It was also held that reservation under Article 16(4) should not exceed 50% and for exceeding reservation beyond 50%, there has to be extraordinary circumstances as held in *Indra Sawhney* (supra). It was further held that the judgment in *Indra Sawhney* (supra) is fully applicable in reference to Article 15(4). It was further held that Constitution 81<sup>st</sup> Amendment Act 2000 by which clause 4(B) was inserted in Article 16 makes it clear that ceiling of 50% has now received constitutional recognition.

83. In view of the above, the principles enunciated regarding the ceiling of 50% in *Indra Sawhney* (supra) are also applicable in respect of Article 15(5) of the Constitution.

84. On the basis of materials on record, we are of the opinion that no special case is made out for breaching the reservation ceiling limit of 50%



while increasing the reservation to 58%. Inadequacy of representation in services under the State or inadequacy of representation in educational institutions is relevant to the extent reservation is sought to be pegged below 50% but if the ceiling is to be crossed, then inadequacy in representation cannot be the sole determining factor and there has to be exceptional circumstances. Failure to secure a job or a seat in an educational institution by a reserve category candidate competing with candidates belonging to general category cannot be construed as an exceptional circumstance. Tables 4 to 8 seek to project certain disadvantages suffered by SCs, STs and OBCs compared to socially advanced castes. The tables do not explain in any manner why reservation in SCs is to be lowered to 12%, reservation in STs to be increased to 32% and to maintain reservation of 14% in respect of OBCs. No exceptional circumstances is brought on record and no special case is made out. There is no explanation also as to why reservation had to be made to the extent of 76%, 80%, 81%, 66%, 74% in the districts of Surguja, Surajpur, Balrampur-Ramanujganj, Jashpur, Korla and in Surguja Division, respectively.

**85.** In view of the above discussion, Act of 2011 and Section 3 of Act of 2012, and notification dated 29.11.2012 in Rules of 1998 so far as it relates to reservation as indicated in Schedule II Model Roster for districts of Surguja, Surajpur, Balrampur-Ramanujganj, Jashpur, Korla and Surguja Division, are adjudged and declared unconstitutional.

**86.** In *Madras Institute of Development Studies & Another v. K. Sivasubramaniyan & Others*, reported in (2016) 1 SCC 454, the question that had fallen for consideration was whether a candidate who consciously



takes part in the selection process can turn around and question the method of selection. The decisions rendered in *G. Sarana v. University of Lucknow*, reported in (1976) 3 SCC 585, *Manak Lal v. Prem Chand Singhvi*, reported in AIR 1957 SC 425, *Om Prakash Shukla v. Akhilesh Kumar Shukla*, reported in (1986) Supp. SCC 285, *Madan Lal v. State of J&K*, reported in (1995) 3 SCC 486, *Manish Kumar Sahu v. State of Bihar*, reported in (2010) 12 SCC 576, *Ramesh Chandra Shah v. Anil Joshi*, reported in (2013) 11 SCC 309, were taken note of. In the said cases, the Hon'ble Supreme Court had taken a view that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

87. In some of the writ petitions, where advertisements are under challenge, it was observed that the selection and appointment would abide by the final outcome of the writ petitions. In some advertisements, it is indicated that the selection would be governed by the outcome of the decision pending in WPC Nos. 591/2012, 593/2012 and 594/2012. The selected candidates are in service for a long period of time. In the interregnum period, it was submitted during the course of proceedings, that many recruitments had taken place. However, none of the parties have brought on record various recruitments that have taken place. In such circumstances, this Court is of the considered opinion that setting at naught the selections made in terms of the Act of 2011 or setting aside admissions on the basis of Section 3 of the Act of 2012 would cause great hardship and prejudice to such candidates, besides resulting in administrative chaos. Therefore, we are of the opinion that it will be



appropriate for this Court to mould the relief inspite of declaring Act of 2011 and Section 3 of Act of 2012 and the notification dated 29.11.2012 in Rules of 1998 so far as it relates to reservation as indicated in Schedule II Model Roster for districts of Surguja, Surajpur, Balrampur-Ramanujganj, Jashpur, Korla and Surguja Division as unconstitutional. Outcome of the writ petition means the final verdict of the Court whereby relief may be moulded in a given situation for ends of justice in exercise of powers under Article 226 of the Constitution of India. In *Managing Director, ECIL, Hyderabad* (supra), it was held that it is now well settled that the Courts can make the law laid down by them prospective in operation to prevent unsettlement of the settled position to prevent administrative chaos and to meet the ends of justice.

88. Accordingly, we are not inclined to interfere with the admissions taken and appointments issued on the basis of the impugned reservation.

89. In the result, WPC Nos. 591/2012, 592/2012, 593/2012, 594/2012, 652/2012, 653/2012, 936/2012, 1093/2012, 2072/2014 and WPC No. 4665/2019 are allowed. WPC No. 1067/2012, WPS No. 5578/2012, WPC No. 1121/2012, WPC No. 1372/2012, WPS No. 5290/2021, WPS No. 7100/2021, WPS No. 2091/2018, WPS No. 4049/2018, WPS No. 6083/2018, are partly allowed. WPS No. 4240/2014 is disposed of in terms of the directions and observations above.

90. No cost.

Sd/-

(Arup Kumar Goswami)  
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)  
JUDGE