

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH JAIPUR

ORDER

1. D.B. CIVIL WRIT PETITION NO.1645/2016

PETITIONERS :-



1. Captain Gurvinder Singh (Retd.) S/o Sardar Gurbax Singh, Age 56 years, R/o H.no. 8, Sadul colony, Bikaner c/o G-II-81, Bajaj Nagar Apartments, Jaipur.

2. N.K.Jhamar S/o Shri S.M.Jhamar, Age 57 years, R/o B-76, Chhatri Yojna, Vaishali Nagar, Ajmer.

3. Yogendra Rathore S/o Shri Ram Singh Rathore, Age 50 years, R/o 68, Bhartendu Nagar, Khatipura, Jaipur.

4. Samta Aandolan Samiti through its President Shri Parashar Narayan Sharma S/o Shri K.L. Sharma, G-3, Sangam Residency, Plot No. 9-10, Gangaram Ki Dhani, Vaishali Nagar, Jaipur (Raj.)

VERSUS

RESPONDENTS :-

1. State of Rajasthan through Chief Secretary, Government of Rajasthan, Secretariat, Jaipur.

2. Additional Chief Secretary, Department of social Justice and Empowerment, Secretariat, Jaipur.

3. Principal Secretary, Department of Personnel, Government of Rajasthan, Secretariat, Jaipur.

4. Rajasthan State Backward Classes Commission through
Member Secretary, A-46, Shanti Path, Tilak Nagar, Jaipur.

2. D.B. CIVIL WRIT PETITION NO.2795/2016

PETITIONER :-

Kanaram Dhayal s/o Sh. Ganpatram Dhayal, aged about 51 years, by
caste Jat, r/o Dhani Shyam Singh Wali, Tan Mau, P.S. & Tehsil
Shrimadhampur, Distt. Sikar presently residing at 49, Shankar Vihar
Extension, Murlipura, Jaipur

VERSUS

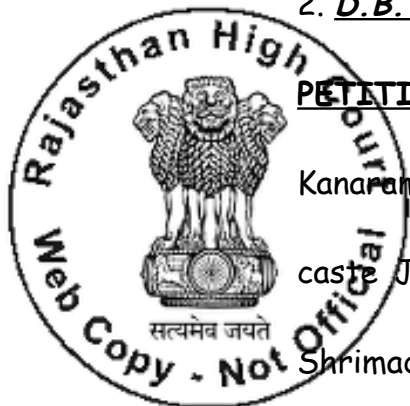
RESPONDENTS :-

1. State of Rajasthan through Chief Secretary, Government of
Rajasthan, Secretariat, Jaipur.
2. Additional Chief Secretary, Department of Social Justice and
Empowerment, Secretariat, Jaipur.
3. Principal Secretary, Department of Personnel, Government of
Rajasthan, Secretariat, Jaipur.
4. Rajasthan State Backward Classes Commission through Member
Secretary, A-46, Shanti Path, Tilak Nagar, Jaipur.

3. D.B. CIVIL WRIT PETITION NO.1511/2016

PETITIONER :-

Sharvan Singh Tanwar S/o Mohan Singh Tanwar, Age - 29 years,
by cast -Rajput, Resident of 28, Anand Vihar-I, PO - Ninder, Tehsil



-Amer, Distt - Jaipur (Rajasthan)

V E R S U S

RESPONDENTS :-

(1) State of Rajasthan through Chief Secretary, Secretariat,

Jaipur.

(2) Principal Secretary, Depart of Personnel, Secretariat,

Jaipur.

(3) Rajasthan Backward Class Commission, Jaipur through its

Chairman

(4) Rajasthan Public Service Commission through its Secretary,

Jaipur Road, Ajmer (Rajasthan)

Date of Order : 09th December 2016

HON'BLE MR. JUSTICE M.N. BHANDARI

HON'BLE MR. JUSTICE J.K. RANKA

Mr. Sanjeev Prakash Sharma, Senior Advocate with

Mr. Shobhit Tiwari

Mr. Gaurav Sharma

Mr. Abhishek Pareek

Mr. Divesh Sharma

Mr. Ankit Sethi

Mr. RB Mathur with

Mr. Nikhil Simlote, for petitioners.

Mr. Sharvan Singh Tanwar, petitioner present in person.

Mr. Ranjeet Kumar, Solicitor General of India

Mr. Rajendra Prasad, Addl. Advocate General with

Mr. Ashish Sharma

Mr. Surya Pratap Singh

Mr. Jatin Agrawal

Mr. G.S. Gill, Additional Advocate General with

Mr. Baldev Singh Sandhu & Mr. Harish C. Kandpal

Mr. RR Baisla, Dy. Government Counsel
Mr. Shiv Mangal, Additional Advocate General with
Mr. Saransh Kumar, Adv.
Mr. Ashok Gaur, Sr. Adv. with
Mr. Shailendra Singh,
Mr. Ashwini Jaiman and
Mr. Ajay Choudhary
Mr. Manish Singhvi with
Mr. Sunil Kumar Jain- for Gadia Lohars
Mr. Rajeev Sagarwal with
Mr. RS Jogi, for applicant Yogi Samaj.

* * * * *

By the Court : (Per Hon'ble Bhandari, J.)

REPORTABLE :

By this bunch of writ petitions, a challenge is made to the Notification dated 16th October, 2015 issued by the State Government and *Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015 (for short "the Act of 2015")*.

In the case of Shrawan Singh Tanwar in DB Civil Writ Petition No.1511/2016, a further challenge is made to the report submitted by the Other Backward Classes Commission (for short "the OBC Commission") recommending five castes for Special Backward Classes with 5 per cent reservation. Five castes have been thereby shifted from the

category of Backward Classes to Special Backward Classes.

In the case of Kanaram Dhayal in DB Civil Writ Petition No.2795/2016, additional challenge is made to Justice Jas Raj Chopra Committee report dated 15th December, 2007.



By the Act of 2015, five castes, earlier falling in the category of Other Backward Classes and getting benefit of reservation, have been brought in the category of Special Backward Classes to provide 5 per cent reservation exceeding the ceiling of 50 per cent.

Learned counsel for the petitioners submitted that efforts of the Government is to somehow provide 5 per cent reservation to Gurjars/Gujjars and other castes. It was after Gurjar/Gujjar agitation for their inclusion in the category of Scheduled Tribes. The Government initially constituted Justice Jas Raj Chopra Committee but when Gurjars/Gujjars could not be included in the category of Scheduled Tribes then they were provided special reservation without quantifiable data. It was under a fear of agitation again.

It is stated that prior to filing of the present

writ petition, the petitioner had preferred Public Interest Litigation (DB Civil Writ Petition No.13491/2009). It was to challenge the ***Rajasthan Scheduled Castes, Scheduled***

Tribes, Backward Classes, Special Backward Classes and Economically Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2008 (for

short "the Act of 2008"). The said writ petition was decided

vide order dated 22nd February, 2012. The State Government

was directed to revisit Sections 3 & 4 of the Act of 2008 as

well as the Notification. The Division Bench found that

quantifiable data have not been collected to provide

reservation beyond 50 per cent. The Court observed that

when five castes were falling in the category of other

backward classes then why category of Special Backward

Classes has been created to provide 5 per cent reservation

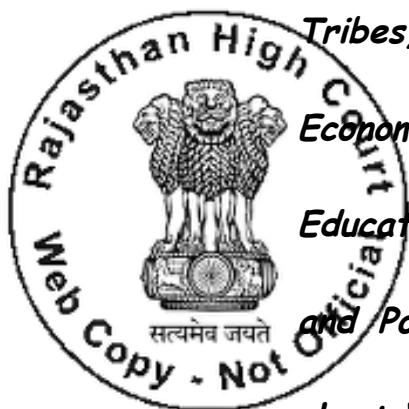
exceeding 50 per cent. Several other observations were made

in the aforesaid judgment.

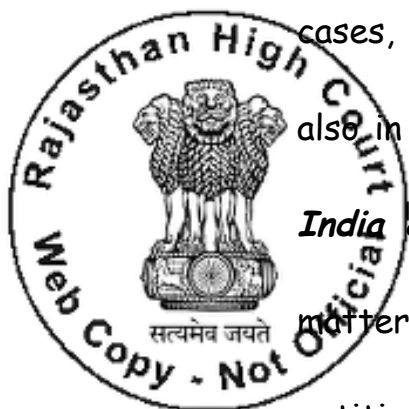
A reference of the judgment of the Apex Court in

the case of ***M. Nagaraj & Ors. Vs. Union of India &***

Ors. reported in ***(2006) 8 SCC 212*** and ***Ashoka Kumar***



Thakur Vs. Union of India & Ors. reported in (2008) 6 SCC 1 was given by the Division Bench. The direction was to keep in mind the law laid down by the Apex Court in various cases, which includes the judgments, referred to above and also in the case of *Indra Sawhney etc. etc. Vs. Union of India & Ors.* reported in (1992) Suppl. 3 SCC 217. The matter was ordered to be led before the Commission. The petitioners were to be given opportunity amongst others to present their case. It was, however, directed that the State would not give effect to the Act of 2008 till then. After the judgment aforesaid, the matter was led before the OBC Commission where the petitioners were also given opportunity of hearing. Several objections were raised before the Commission. The Commission has given its report. It is based on the report of an agency and the State. It was even after considering the instructions given by the State Government to examine the requirement of special backward class status to certain castes, namely, (i) Banjara/Baladiya/Labana, (ii) Gadia Luhar/Gadolia, (iii) Gujar/Gurjar and (iv) Raika/Raibari (Devash). A Notification was then issued on 13th December, 2012.



The petitioners preferred DB Civil Writ Petition No.1862/2013 to challenge the subsequent Notification dated 13th December, 2012 as well as the report of the SBC Commission of the year 2012. It was apart from challenge to the order dated 13th December, 2012 and report given by the ***Institute of Development Studies (for short "IDS") 2012.***



A prayer was also made for exclusion of "Meena" community from the category of Schedule Tribes in view of their adequate representation in services. A Public Interest Litigation, by a writ petition, bearing No.5202/2012 was also filed by one Mukesh Solanki. The Division Bench passed a detailed order on 29th January, 2013 staying the operation of the Notification dated 13th December, 2012 in the said writ petition.

During pendency of those writ petitions, a Notification dated 16th October, 2015 was brought and is under challenge. The petitioners after knowing about issuance of the Notification dated 16th October, 2015 and its retrospective effect, moved an application in pending writ petition bearing No.1862/2013 to invite attention of the

Court towards willful disobedience of its order thus to initiate contempt proceedings by invoking Article 215 of the Constitution of India. An application was submitted by the State Government as well to declare the writ petition to be infructuous. The Division Bench of this Court rendered the writ petition to be infructuous vide its order dated 04th February, 2016 with liberty to raise all the issues in the present writ petition/s. The petitioners filed these writ petitions to challenge validity of the Notification dated 16th October, 2015 apart from the Act of 2015.



Learned counsel for the petitioners have given brief history of the earlier litigation to show present writ petitions to be in continuance to the earlier.

It is submitted that recommendation of the Commission as well as the Act of 2015 are violative of Articles 15 & 16 of the Constitution of India. Article 15 of the Constitution of India prohibits discrimination on the ground of religion/race/caste/sex or place of birth etc. Article 15(4), however, provides that nothing in this article or in clause (2) of Article 29 shall prevent the State from making special provision for advancement of any socially and

educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

In the similar manner, Article 16(2) of the

Constitution of India prohibits discrimination on the grounds of religion/race/caste/sex or place of birth etc. Article 16(4)

of the Constitution of India, however, provides for reservation to the backward class of citizens which, in the

opinion of the State, is not adequately represented in the

services. Article 16(4A) of the Constitution of India was

added by 77th Constitutional Amendment and Article 16(4B)

was inserted by 81st amendment. The amended provision of

Article 16(4B) of the Constitution of India enables the State

Government to consider unfilled vacancy of a year to be

separate class and to be filled in any succeeding year or

years. Such vacancies are not to be considered together with

the vacancy of the year, in which, they are to be filled, for

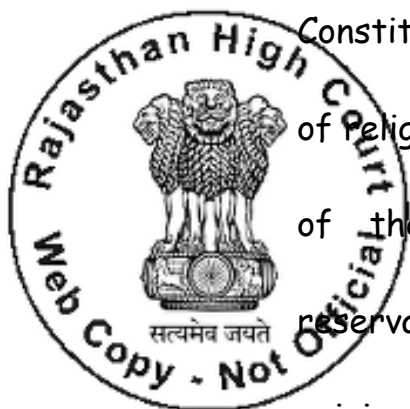
determining ceiling of 50 per cent reservation on the total

number of vacancies, in that year.

According to learned counsel for the petitioners,

Article 16(4B) of the Constitution imposes ceiling of 50 per

cent on the reservation to the vacancies of a year. If the Act



of 2015 is given effect on recruitment, the constitutional mandate of Article 16(4B) cannot be adhered to. It provides reservation beyond 50 per cent even if it is applied on the vacancies of a year. It is thus hit by Article 16 (4B) of the Constitution.



It is further submitted that apart from violation of the constitutional provisions, the Act of 2015 even goes against the judgment of the Constitutional Bench of the Supreme Court in the case of *M.R. Balaji & Ors. Vs. State of Mysore* reported in *1963 AIR 649*. In the said case, Articles 15(4) and 16(4) of the Constitution were considered. The Court found that interest of weaker sections of the society is to be adjudged with the interests of other communities. The judgment on competing claims is undoubtedly a difficult matter, but, under the guise of making special provision, if the State reserves practically all the seats available in the colleges then it would be subverting the object of Article 15(4) of the Constitution of India. In that case, the Court was reluctant to say definitely what would be a proper provision to make but speaking generally and in a broader way, a special provision for reservation should be less

than 50 percent of the seats and how much less than 50 percent, depends on the circumstances of each case. In the said case, recommendation of the Nagana Gowda Committee for 68 per cent reservation was not found proper in the larger interest of the State. The direction was accordingly given to the State Government that while making advancement of the weaker sections of the society, they should approach the task objectively in a rational manner. The recommendation of the committee for reservation to the extent of 68 percent was held to be inconsistent with Article 15(4) of the Constitution of India.



The powers of the Court were also considered by the Apex Court. It was found that the Courts often consider substance of the matter and not its form. The veil of the executive action can be lifted for careful scrutiny. If the executive action, in substance and in truth, has transgressed the constitutional powers, the impugned action should be struck down treating it to be a fraud on the constitution. The determination of the backward class solely based on the caste was held to be in violative of Article 15(4) of the Constitution of India.

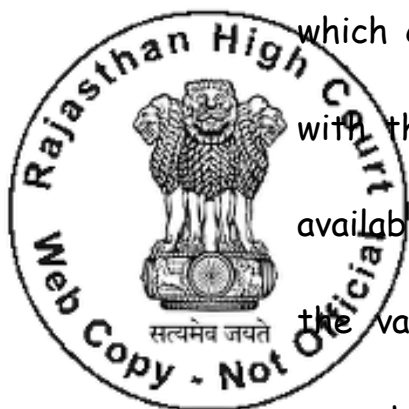
In view of the judgment in the case of M.R.Balaji & Ors. (supra), the State Government should not have provided reservation in the educational institutions beyond 50 percent of the total seats meant for admission. It is moreso when the judgment in the case of M.R.Balaji & Ors. (supra) was affirmed subsequently by the Constitutional Bench of the Apex Court in the case of Indra Sawhney (supra) and also in the case of Ashoka Kumar Thakur (supra).



The Supreme Court further reiterated the same proposition of law in the case of M.Nagaraj (supra) and ***Kumari K.S. Jayashree & Anr. Vs. State of Kerala & Anr.*** reported in ***1976 AIR 2381***. The Commission as well as the State Government failed to appreciate the judgments aforesaid, despite specific directions of the Division Bench, while deciding the Public Interest Litigation vide its judgment dated 22nd February, 2012 in DB Civil Writ Petition No.13491/2009.

Learned counsel further submitted that even as per Article 16(4B) of the Constitution of India, the reservation cannot be provided beyond 50 percent of the

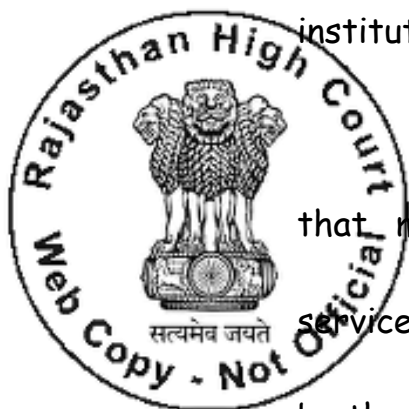
vacancies of a year, though while adhering ceiling of 50 percent, unfilled vacancies of previous year are to be taken separately. The unfilled vacancies are considered to be those which could not be filled in the earlier years in accordance with the provisions for reservation. It may be due to non-availability of the reserve caste candidates to the extent of the vacancies reserved for them. The State Government cannot reserve vacancies of a year beyond 50 per cent. If the Act of 2015 is given effect, reservation would be beyond the ceiling of 50 per cent against the vacancies of a year.



Learned counsel for the petitioners have given reference of several judgments of the Supreme Court and this Court to substantiate their arguments, which would be considered and discussed in the later part of the judgment.

The petitioner Shrawan Singh Tanwer, appearing in person, has further assailed the report of the SBC Commission. Reference of various parts of the report has been given to show recommendation in violation and in ignorance of several judgments of the Supreme Court apart from the Constitution of India. The Commission was under an obligation to see various factors including adequacy of

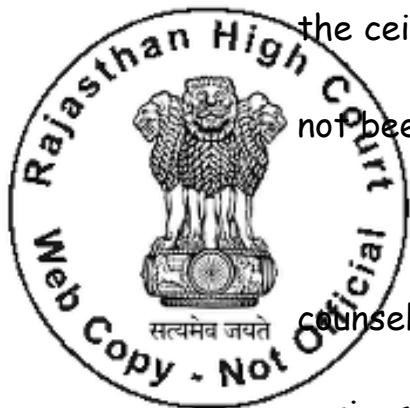
representation of various castes in services. If a caste is adequately represented in services, then to be excluded from reservation. It applies for admission in the educational institutions also.



The statements referred in the report shows that many castes have been adequately represented in services, rather, major benefit of OBC reservation is taken by them, yet not excluded so as to pass on the benefit of the reservation to other castes. The table given in the report reveals percentage of representation of various castes in services. The Commission has considered the case of five castes only leaving others. It ignored the mandate and direction given earlier by the Division Bench in the Public Interest Litigation, decided vide order dated 22nd February, 2012.

The Commission failed to get quantifiable data to recommend special reservation to backward classes by forming a special group for them. It is not that reservation to the five castes, included in the category of special backward classes, was not provided earlier. All the five castes were getting reservation meant for OBC, yet taken in the category

of special backward classes. The Commission was required to address as to what are the extra ordinary reasons to provide a separate and special category of reservation and to cross the ceiling of 50 percent for them. The issues aforesaid have not been addressed by the Commission.



The petitioner, present in person, and learned counsel appearing for the petitioners have made reference of various parts of the report of the Commission to show discrepancies therein apart from non-adherence of mandate of the judgment of Apex Court and the Constitution. It would be discussed by this Court appropriately after considering the arguments of learned counsel for the respondents.

A reference of the object in bringing 81st amendment in the Constitution has also been given. It is to reiterate ceiling of 50 per cent on reservation. It permits reservation beyond 50 per cent against backlog vacancies only. The backlog vacancies are to be taken separately so that it is not affected by ceiling of 50 per cent. The Act under challenge has been enacted in ignorance of the object in bringing 81st amendment in the Constitution of India.

The report of SBC Commission reveals its

exercise only to the extent of recommendation in favour of five castes, whereas, 82 castes were identified for consideration. The Commission seems to have constituted to make recommendations only for five castes leaving the others. The way, recommendations have been made by the SBC Commission reveals nothing but to act as per the wishes of the State Government to provide reservation to few castes.



A reference of the directions of Division Bench of this Court has been given in the report. The Commission was required to get a survey of all the 82 castes by a scientific method. The Commission has admitted that as per the settlement and otherwise, survey was to be conducted through a scientific method and while doing so, it was required to consider the directions of the High Court on various issues. The IDS was given task to conduct survey. The Commission found that the IDS has failed to conduct survey by scientific method on proportionate basis.

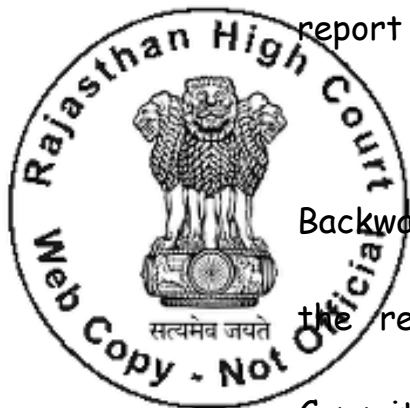
The IDS further failed to make assessment of the backwardness of the caste by taking total population percentage to draw their proportionate representation, thus

report was not found to be reliable. The Commission considered census of 1931 for ascertaining the proportionate population percentage of each caste in the State of Rajasthan, whereas, census of 1931 could not have been taken into consideration to draw quantifiable data. The recent data of each caste should have been taken into consideration with their backwardness in terms of the education and representation in services. The table given under chapter nine of the report for different castes has not been drawn on scientific basis. The recommendations are contrary to the details given in the said Chapter itself, thus report of SBC Commission has contradictory conclusions. The SBC Commission has failed to discharge its duties, as was expected and directed by the Apex Court and this High Court. Thus, report of SBC Commission should be rejected.

The survey report of the IDS was discarded by the Commission, yet references of various factors taken into consideration by the IDS has been given in Chapter nine of the report. In the same manner, no report exists for 25 castes. The Commission should have made survey for all the 82 castes, but, it failed to do so.



Learned counsel and the petitioner, present in person, have given reference of other parts of the report also to show not only discrepancies but an effort to make report to fulfill the wishes of the State Government.



A reference of the 9th report of the State Backward Class Commission has also been given apart from the reference of the report of Justice Jasraj Chopra Committee. It is to show variation in recommendations.

Learned counsel as well as the petitioner in person have made elaborate arguments in reference to various judgments of the Apex Court and the recommendations of the SBC Commission, which would be considered while referring to the rival arguments of the parties.

The locus of the petitioners in maintaining writ petitions has also been explained.

The petitioners Captain Gurvinder Singh and others were litigant earlier also when not only Public Interest Litigation but other petitions were decided by the Division Bench of this Court. The Court, in its earlier judgment dated 22nd December, 2010 left all the issues open for its decision and gave liberty to the petitioners to raise it again, if so

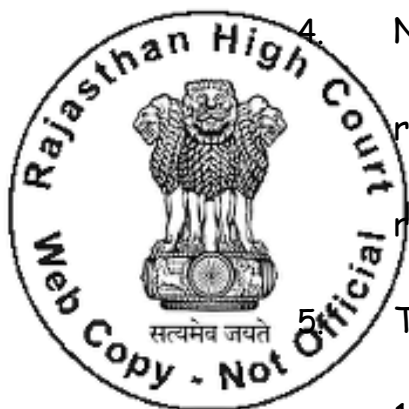
required. The petitioners were given liberty to represent and raise all the issues before the SBC Commission also. Their representations were allowed even by the SBC Commission, thus issue of locus has unnecessarily been raised by the private respondents. It is moreso when the petitioner Nos.2 & 3 in the case of Captain Gurvinder Singh & Ors. are government employees and would be affected by the Act of 2015, thus have locus to challenge it.



The summary of the issues raised for challenge to the report of SBC Commission are as follows :-

1. The SBC Commission has relied on the report of the IDS despite holding it to be unreliable.
2. The IDS has submitted its report in June, 2012 whereas the backwardness table was submitted on 26th December, 2012, which is subsequent to the date of the report by the IDS.
3. As per the report of Mandal Commission, there exists 11 indicators of backwardness covering 22 points. The SBC Commission has excluded economic criteria altogether and, even for the special backwardness, only 8 points have been considered. For educational

backwardness, only two points have been referred, which show non-consideration of all the heads and issues, relevant for consideration.



4. No study has been conducted by the SBC Commission as regards to "Nomadic" status of SBC communities. The report is given only on the basis of old record.

5. The Commission has relied on outdated data of the year 1931.

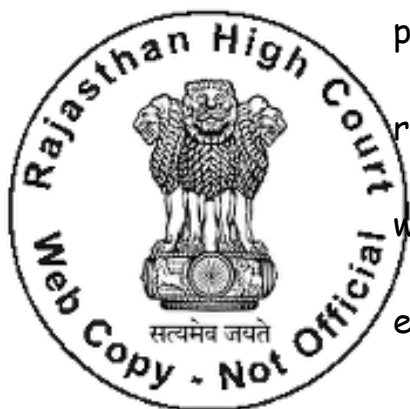
6. The Commission sought and provided representation of various castes in few services only. It was only for 24 services out of 117. The State Government thus failed to provide proper data of representation of various castes in the services.

7. The services under different Government Corporations, Local Self Bodies and other autonomous bodies have been taken on pick- and-choose basis.

8. The SBC Commission failed to consider that reservation to the OBC was provided in the year 1993 and few castes were added in the year 2000-2001, such as "Jats" etc. Their representation in services prior to 2000-2001 has not been considered to arrive at proper

ratio of their representation in services.

9. The SBC Commission further failed to consider effect of reservation on the efficiency of administration. As per the Constitution and dictum of the Apex Court, the report should incorporate as to whether reservation would affect efficiency of administration. If the efficiency of administration is affected, reservation cannot be recommended.



10. No reasons have been given to provide category of special backward class to five castes when they were already getting benefit of reservation for last many years and Gujjars were getting adequate representation.
11. The SBC Commission has considered the case of around 58 different courses of few colleges with few students, whereas, there are more than 4 lac students. The survey of all the educational courses has not been conducted.

As per the statements/tables considered in the report, 42 castes are having representation in the public employment below the representation of "Gurjar/Gujjar"

caste and 23 castes have no representation but they are not included in the list of special backward classes and no reason for it has been assigned. The IDS did not conduct survey of all the castes. A prayer is accordingly made to set aside the report of the SBC Commission, so as the Notification and the Act, under challenge.



The State Government has contested the writ petitions.

Learned Solicitor General Mr. Ranjeet Kumar has made a reference of settlement arrived between Gurjars/Gujjars and the Government of Rajasthan on 07th June, 2007. As per the settlement, a High Powered Committee was constituted. Justice Jasraj Chopra (Retd.) was nominated as Chairman of the Committee. The State Government laid down the terms of the High Powered Committee. It was for inclusion of certain castes in the category of Schedule Tribes as per the criteria laid down by the Government of India.

The Commission was to systematically examine the demand of the Gurjars/Gujjars by carefully studying different representations. The extensive survey was carried

out by the High Powered Committee by even touring the villages.

Justice Jasraj Chopra Committee submitted its report on 15th December, 2007. The State Legislature brought an Act in the year 2008 to provide reservation to special backward classes and economically backward classes. 60 per cent reservation in all was provided and, out of it, 5 per cent was for Special Backward Classes and 14 per cent was to Economically Backward Classes. The State Government included four castes under Sections 3 & 4 of the Act of 2008.



Three writ petitions were filed in the year 2009. The Division Bench of this Court, vide its order dated 12th October, 2009, passed an interim order against the reservation in excess to 50 per cent. The State Government issued an order on 06th May, 2010 to provide one percent reservation to the Special Backward Classes after taking into consideration the interim order passed by this Court.

The writ petitions were thereupon decided vide order dated 22nd December, 2010. It was found that High Powered Committee, led by Justice Jasraj Chopra, did not

collect adequate data. The Court issued few directions, which have been summarized by learned Solicitor General as under :



"(i) The Government shall re-visit Sections 3 and 4 of the Act of 2008 in the light of the relevant judgment of Supreme Court. The State shall also consider the extent of reservation required and whether there was any need to enhance it more than stipulated prior to the 2008 Act.

(ii) The State shall not give effect to Sections 3 and 4 of the Act of 2008 and the Notification with respect to enhancement of financial limit of creamy layer from Rs.2.5 lac to Rs.4.5 lac.

(iii) The State shall also reconsider the provision of 14 per cent reservation to Economic Backward Classes.

(iv) The matter shall be referred to the Rajasthan State Backward Classes Commission ("SBCC") and the Government shall place quantifiable data of numerous factors, which are

necessary, in light of the judgment of the Apex Court.



(v) Petitioners shall also be given opportunity amongst others in accordance with law to present their case before the Commission.

(vi) The exercise given above shall be completed within a period of one year.

(vii) Stay shall continue till the matter is decided afresh and even if the State decides to enhance reservation beyond the percentage, which was existing prior to the Act of 2008, the State shall not give effect to the said enhanced percentage of reservation for a period of two months thereafter."

After the judgment aforesaid, the State Government entered into an agreement with the IDS to collect quantifiable and comparative data of 82 different castes in respect of social, educational and economical backwardness and their representation in government services.

Pursuant to the agreement, the IDS submitted its report on 31st May 2011. The Government of Rajasthan thereupon constituted Rajasthan SBC Commission to make a report in consonance with the judgment of High Court dated 22nd December, 2010. The SBC Commission submitted its report in the month of November, 2012. Five castes were identified for providing 5 per cent reservation by taking them in Special Backward Class category.



The State Government, thereupon, issued an order on 30th November, 2012 to provide five percent reservation to Special Backward Class in the educational institutions as well as in services under the State of Rajasthan. A challenge to the said order and the report submitted by IDS was made. The other writ petition was to challenge certain provisions of the Act of 2008. This Court passed an interim order on 29th January, 2013, whereby, operation of the order as well as the Notification was stayed till disposal of the petition.

The State Government filed an application for clarification as well as for modification of the interim order. The High Court was pleased to clarify its order for 01 per cent reservation in favour of the special backward class.

The State Government, thereupon, issued Notification to bring the Act of 2015 and is under challenge. The Act of 2015 provides 5 per cent reservation to five castes in the category of special backward class. The Act was given effect from 16th October, 2015.



The challenge to the Notification as well as the Act of 2015 apart from the report of the SBC Commission etc. has been made.

The challenge to the Act of 2015 has been made on misconception of ceiling of 50 per cent on reservation. The reservation is permissible beyond 50 per cent under the Constitution and judgments of the Supreme Court. Learned counsel for petitioners have failed to take proper interpretation of the constitutional provisions as well as the judgments of the Apex Court while advancing the arguments for challenge to the Notification of 2015. Articles 15(4) and 16(4) of the Constitution of India do not prescribe any numerical limit on reservation. In the case of Indra Sawhney (supra), the Apex Court held that reservation should not ordinarily exceed 50 per cent. The judgment of the Apex Court in the case of M.R.Balaji & Ors. (supra) was clarified

from binding rule of ceiling of 50 per cent to mere rule of prudence. The Apex Court, however, carved out exceptional circumstances to permit reservation beyond 50 per cent. It is in an extra ordinary situation. The ceiling of 50 per cent on reservation is an ordinary rule, excess to it is an exception, hence, ceiling of 50 per cent has not been put either by the Constitution of India or by the Apex Court.



A reference of Article 16(4) of the Constitution of India has also been given. It does not preclude the State Government to provide reservation beyond 50 percent.

81st Constitutional Amendment in the year 2000 has not made any change in the law laid down by the Apex Court in the case of Indra Sawhney (supra). It was to clarify that for "carry-forward vacancies", reservation can exceed to 50 per cent. The Parliament thus introduced Article 16(4B) of the Constitution of India for carry forward reserve vacancies and not to put ceiling of 50 per cent on reservation.

The challenge to the Article 16(4A) and 16(4B) of the Constitution of India was decided by the Apex Court in the case of M.Nagaraj & Ors. (supra). The petitioners have relied on certain paras of the judgment in the case of M.Nagaraj &

Ors. (supra) to urge ceiling of 50 per cent as a strict rule.

The Apex Court in the said case followed the judgment of

Indra Sawhney (supra) on ceiling limit of 50 per cent. It is to

be applied ordinarily but can exceed under extra ordinary

situation, thus it is incorrect to submit ceiling of 50 per cent

on reservation.

A further reference of the judgment in the case of

S.V. Joshi & Ors. Vs. State of Karnataka reported in

(2012) 7 SCC 41 has been given. There, depending on the

quantifiable data, reservation beyond 50 per cent has been

made permissible.

The petitioners have not considered Article 16 (4B) of

the Constitution of India with the object, it was inserted.

Article 16(4B) of the Constitution of India refers about

ceiling of 50 per cent reservation for backlog vacancies. It

has to be read in reference to the judgment of the Apex

Court in the case of Indra Sawhney (supra). The ceiling of 50

per cent on reservation is a general rule but exception has

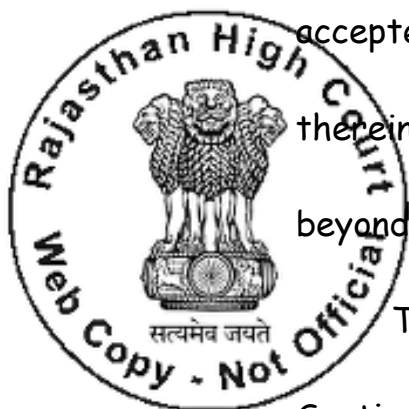
been allowed in para 810 of the said judgment. In view of the

above, Article 16 (4B) of the Constitution of India does not

propound theory of ceiling of 50 per cent on reservation. A



reference of the judgment of the Division Bench in Writ Petition No.13491/2009 decided on 22nd December, 2010 has also been given where challenge to the Act of 2008 was not accepted on the aforesaid ground. If the directions given therein are considered properly, it permits reservation beyond 50 percent but should be based on quantifiable data.



The respondent State Government had revisited Sections 3 and 4 of the Act of 2008. The SBC Commission could collect quantifiable data before recommending reservation for special backward classes thus the challenge to the Notification and the Act of 2015 on the ground of ceiling of 50 per cent on reservation is not tenable.

Learned Solicitor General and Additional Advocate General Mr.Rajendra Prasad, appearing for the State of Rajasthan, further submitted that after the judgment of the Division Bench in the first bunch of writ petitions, the State Government entered into an agreement with the IDS for collection of quantifiable datas of 82 different castes included the category of other backward classes. The IDS is a reputed autonomous organisation in the field of social surveys. The report of the IDS has been indirectly endorsed

by the Apex Court in the case of **Ram Singh & Ors. Vs. Union of India** reported in **(2015) 4 SCC 697**. The IDS submitted its report in the month of June, 2012 based on quantifiable data. The said report was placed before the SBC Commission. The Commission thereafter gave its report. The legislative wisdom was invoked to provide 5 per cent reservation to special backward classes vide impugned Notification and the Act of 2015.



A challenge to the report of the SBC Commission has been made in ignorance of the quantifiable data. It was in respect of all the issues, namely, backwardness, inadequacy of representation as well as effect on the efficiency of administration. The Commission as well as the State Government could make out an exceptional case to exceed to the ceiling of 50 per cent. The extra ordinary circumstances have been given to provide 5 percent special reservation to five castes.

Para 810 of the judgment in the case of **Indra Sawhney** (supra) was referred specifically to reinforce the arguments on the ceiling of 50 per cent on reservation.

The castes included in the category of special backward

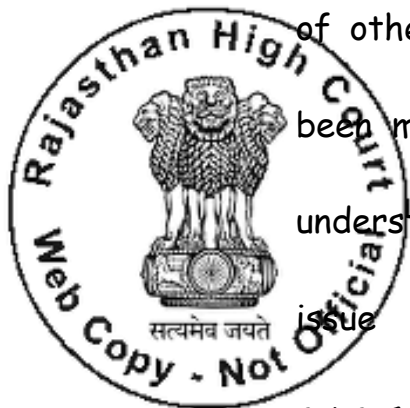
classes are "Nomadic", resulting in severe backwardness. The historical background of those castes was also taken into consideration by the SBC Commission. A case of special reservation in their favour has thus made out.



The data provided by the IDS were taken into consideration by the SBC Commission meticulously. It did not accept the data blindly, rather serious criticism to the methodology adopted by the IDS has been made. It shows independence of the Commission apart from the application of mind to draw proper conclusions for recommendations of special reservation in favour of five castes.

The Commission had considered various historical documents, research papers, representation of different castes in services and data pertaining to admission in the educational institutions. In doing so, if some discrepancy had occurred, it deserves to be condoned as held by the Apex Court in the case of Ram Singh & Ors. (supra). A small discrepancy should not be accepted to doubt the correctness of the report. The petitioners have given reference of various castes, which are having no representation or lessor representation in the services as well as in the educational

courses as compared to the Gurjars/Gujjars and other four castes, which have been given special reservation. It is to show that despite no representation or lesser representation of other castes, recommendations in their favour have not been made. The aforesaid argument is based by misplaced understanding of law. As per the judgment of the Apex Court, issue relating to the backwardness, inadequacy of representation in service and educational institutions apart from effect on the efficiency in the administration is to be seen. In view of the above, the recommendations of the Commission may not be set aside.



Learned Senior Advocate Mr. Ashok Gaur, appearing for the respondent No.4, raised objection about locus standi of the petitioner Captain Gurvinder Singh. It is submitted that no fundamental or legal rights of the petitioner have been infringed. To maintain the writ petition, the petitioner should fall in the definition of "person aggrieved". The petitioner is not one who can be said to be "person aggrieved". A reference of the judgment in the case of *Calcutta Gas Company Pvt. Ltd. Vs. State of West Bengal* reported in *AIR 1962 SC 1044* has been given apart from the judgment in the case of

Ayaabkhan Noorkhan Pathan VS. State of Maharashtra

reported in ***2013(4) SCC 465***.

It is further stated that report of the SBC Commission

of the November, 2012 has not been challenged. In absence

of challenge to the report of the SBC Commission,

consequential Notification and enactment cannot be

challenged. It is settled proposition of law that without

challenging the basic order, consequential order or

Notification cannot be challenged. The infirmity in the report

can be shown only when it is challenged and not otherwise,

thus the arguments for challenge to the report should not be

accepted in absence of its challenge. To support the

arguments, a reference of the judgment in the case of

Edukanti Kistamma (Dead) through LRs Vs. Venatareddy

(Dead) through LRs reported in ***2010(1) SCC 756*** has been

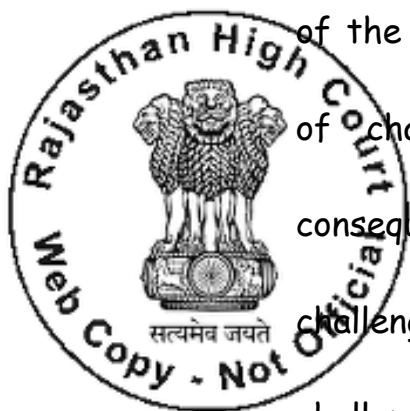
given.

Learned Senior Counsel urged about limited scope of
judicial review, if the report is prepared by an expert body.

The report submitted by the Commission is based on

historical background, surveys, quantifiable and comparative

data of backwardness of all the five castes. The sufficiency



or insufficiency of data should not be examined by this Court unless the report reflects a perverse or impossible view. The report has been given after hearing of all the parties and was accepted by the Government.



A reference of the judgment in the case of **Heinz India Pvt. Ltd. Vs. State of Uttar Pradesh** reported in **2012(5) SCC 443** apart from the judgment in the case of **Ratan Lal Bagri Vs. State of Rajasthan** reported in **2016(1) WLC (Raj.) 618** has been given.

The interpretation of Articles 15(4) and 16(4) of the Constitution of India has not been taken correctly for assailing the Act of 2015. Both the provisions give power to provide reservation and ceiling of 50 per cent is not provided therein for appointment in services and admission in the educational institutions. After 81st amendment in the Constitution of India, a challenge to it was made. The Apex Court upheld the constitutional amendment. It has permitted reservation beyond 50 per cent thus the argument of learned counsel for the petitioners about ceiling of 50 per cent on reservation in services is not tenable. The SBC Commission found extraordinary reasons to provide reservation beyond

50 percent. It is based on quantifiable data collected through an agency deployed by the State of Rajasthan and also after getting data from the State. The judgment in the case of

B. Archana Reddy & Ors. Vs. State of AP reported in 2005(6) ALT 364 has also been referred.

Learned counsel further submitted that in the case of *M. Nagaraj & Ors. (supra), Suraj Bhan Meena Vs. State of Rajasthan* reported in 2011(1) SCC 647 and *UP Power Corporation Vs. Rajesh Kumar* reported in 2012 (7) SCC 1, ceiling of 50 per cent has not been imposed on the reservation. The alleged limit of 50 per cent is not otherwise provided under Article 15(4) of the Constitution of India.

The report submitted by the SBC Commission shows extraordinary reasons in favour of five castes. The quantifiable data collected shows social and educational backwardness of all the five castes. It is apart from the inadequacy of representation in government services so as in the educational courses. The reservation is not going to cause adverse effect on efficiency of administration, thus triple tests to justify special reservation in favour of five castes have been satisfied by the Commission. The Commission has



considered all the relevant issues and even the judgments of Apex Court, thus it has made compliance of the judgment of Division Bench of this Court.



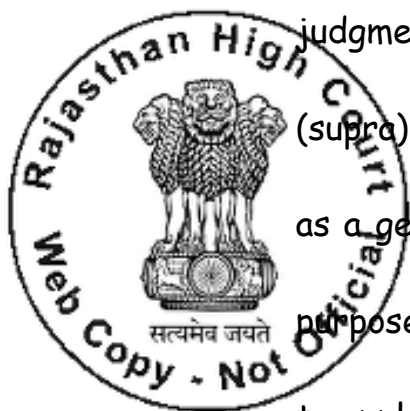
Learned counsel has further made a reference of the report of SBC Commission to show that a proper procedure was adopted to get relevant quantifiable data. Nine factors were taken into consideration before making recommendations. Chapter Six of the report talks about traditional and social background of five castes, whereas, Chapter nine makes analysis of quantifiable data.

The reference of indicators adopted by the IDS has rightly been taken into consideration, though the report of IDS was earlier held to be not reliable. The details were still relevant, thus taken into consideration to show inadequate representation in services and their educational backwardness.

Learned counsel Dr. Manish Singhvi, appearing for Gadiya Lohars, has also opposed the writ petitions. It is submitted that the argument of ceiling of 50 per cent advanced in the case of Indra Sawhney (supra) is no longer applicable after 81st amendment in the Constitution of India.

The object and reasons in bringing 81st amendment in the Constitution of India was referred. A reference of judgment of the Apex Court in the case of Indra Sawhney (supra) has been given where ceiling of 50 per cent was taken as a general rule without exclusion of backlog vacancies. The purpose of Article 16(4B) of the Constitution of India is not to apply as ceiling of 50 per cent on backlog vacancies . It was to overcome from the judgment in the case of Indra Sawhney (supra). The ceiling of 50 per cent on the vacancies of a given year can be complied by carry forward of excess vacancies above 50 per cent. Even ceiling of 50 per cent emphasised by the Apex Court in the case of Indra Sawhney (supra) is with just exception. The Apex Court in the subsequent judgment has permitted reservation above 50 per cent, if extraordinary reasons exists thus reservation beyond 50 per cent is permissible.

Learned counsel Dr.Manish Singhvi has made a reference of Article 15(4) of the Constitution of India, which provides reservation in educational institutions. The aforesaid provision is not subject to Article 16(4B) of the Constitution



of India. Article 15(4) of the Constitution of India does not provide ceiling, as alleged to have been imposed under Article 16(4B) of the Constitution of India, yet it has been challenged by the petitioners.



In the case of M.Nagaraj & Ors. (supra), the Apex Court has taken cognizance of excessive reservation. The extent of reservation has been left open and to be decided on the facts of each case. The aforesaid judgment was subsequent to the constitutional amendment thus applies to the present case. The judgment in the case of S.V. Joshi (supra) permits reservation beyond 50 percent if quantifiable data exists. In the case of Ashoka Kumar Thakur (supra), the State Authorities failed to supply quantifiable data to support reservation beyond 50 percent thus judgment aforesaid was given on its own facts.

A reference of judgment of Division Bench of this Court in Special Appeal No.13491/2009 dated 22nd February, 2010 has also been given to show that reservation beyond 50 percent is permitted if quantifiable data are available. In the background aforesaid, neither the Constitution of India nor the Apex Court and even this Court have put a cap of 50 per

cent on reservation for admission in the institutions and service.

The argument on the scope of judicial review of the report of the SBC Commission has also been made. In the case of Ram Singh (supra), it is held that recommendation of the expert committee is ordinarily binding on the State Government. In the present case, the SBC Commission has given a detailed report by making out an exceptional case for 5 per cent reservation to special backward classes. The report was accepted by the Government to provide reservation thus the Court should be slow to interfere in the recommendations made by the SBC Commission being an expert body. The judicial review of the report is not permissible. The petitioners have made reference of those judgments where the Court interfered in the reservation because quantifiable data were not collected by the State Government prior to reservation in services.

In case of *Himachal Pradesh Scheduled Tribes Employees Federation & Anr. Vs. Himachal Pradesh Samanaya Varg Karamchari Kalyan Mahasandh & Ors.* reported in (2013) 10 SCC 308, the Supreme Court



permitted reservation once the quantifiable datas are made available, which is the case herein also. In the case of **Sardar Inder Singh Vs. State of Rajasthan** reported in **1957 SCR**

605, it is held that matters, exclusively in the domain of legislature, are not open for determination by the Court.

Learned counsel has shown element of "public interest" for special reservation to Gadiya Lohars looking to their historical background and other elements. The Constitution of India is required to be taken into consideration apart from the recommendations of the Justice Venkatachaliah Commission on working of Indian Constitution.

A reference of judgment of the Apex Court in the case of **Workmen Vs. Meenakshi Mills Ltd.** reported in **(1992) 3 SCC 336** has also been given. The judgment in the case of Indra Sahwney (supra) also permits reservation beyond 50 per cent. The Gadiya Lohar is a "Nomadic" community thus needs special treatment for their advancement. A reference of recommendations of Justice Lokur Committee to justify the report of the SBC Commission so as the Notification under challenge has been given. The National Commission has also stated Gadiya Lohars of Eastern Rajasthan to be



"Nomadic".

Justice Jasraj Chopra Committee and Kaka Kelkar Committee have also highlighted and recommended for special

treatment to Gadiya Lohars. The plight of the community has been considered by the SBC Commission in its report to provide special reservation to them.



It is also urged that even if there are deficiencies in the SBC Commission report, it may be ignored as they are not significant. The Gadiya Lohars are socially as well as educationally backward having inadequate representation in services and in the educational institutions.

The clarification about reservation in OBC and SBC categories to five castes has also been made. It is submitted that after 5 per cent special reservation to five castes, they would not be entitled to the reservation meant for OBC and one percent surviving under the Act of 2008. The five castes would be entitled to the reservation only in their own category created in pursuance of the Act of 2015 thus confusion created by the petitioners is without any basis and otherwise to be clarified by this Court. Looking to the aforesaid, the writ petitions deserve to be dismissed.

We have considered rival submissions of learned counsel for respective parties and scanned the record carefully.



The bunch of writ petitions have been filed to challenge the Notification dated 16th October, 2015 and the Act of 2015. The writ petitions also challenge the order dated 06th 2010 to provide one percent reservation in favour of special backward classes and also the report dated 15th December, 2007 given by Justice Jasraj Chopra (retired) Committee.

A challenge to the OBC Commission report of November, 2012 has also been made in one writ petition with further prayer to constitute a permanent statutory body as per directions of the Apex Court in the case of Indra Sawhney (supra).

The challenge to the aforesaid is made on various grounds, however, before considering the issues raised by the petitioners, it would be proper to give facts of the case.

(1) Resume of the facts :-

An agitation was made by the Gurjars/Gujjars in the State of Rajasthan to include them in the category of

Scheduled Tribes. It affected law and order in the State. It even affected Railways as well as road transport. An agreement was entered between Gurjars/Gujjars and the

State of Rajasthan and, thereupon, a Notification dated 07th

June 2007 was issued to constitute High Powered Committee. Justice Jasraj Chopra (retired) was nominated as

Chairperson of the Committee. The State Government, vide

Notification dated 12th June, 2007, laid down the term of

reference for High Powered Committee, which is as follows :

"In terms of criteria laid down by the Government of India for inclusion in the category of Scheduled Tribes, this Committee would systematically examine the demand of Gujjars caste by carefully studying different representations and opinion in this regard received by it and as per the report to the Government with its conclusions within three months time."

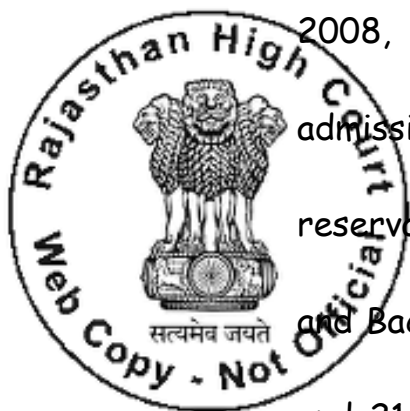
The High Powered Committee submitted its report on 15th December, 2007. The State Government considered the said report and, thereupon, the **Rajasthan Scheduled Castes, Scheduled Tribes, Backward Classes, Special Backward Classes and Economically Backward**



Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2008 was brought. Under the Act of

2008, total 68 percent reservation was provided for admission in the educational institutions and services. The reservation in favour of Scheduled Castes, Scheduled Tribes and Backward Classes was maintained to the extent of 16, 12 and 21 per cent respectively. Five per cent reservation was provided for special backward class, whereas, 14 per cent for economically backward classes. The State Government, thereupon, issued another Notification on 25th August, 2009 and made amendment in Sections 3 and 4 of the Act of 2008 to include four other castes therein, namely, (i) Banjara/Baladiya/Labana, (ii) Gadia Luhar/Gadolia, (iii) Gujar/Gurjar and (iv) Raika/Raibari (Devashi). The challenge to the Act of 2008 was made by Captain Gurvinder Singh and others through a writ petition. The High Court passed an interim order on 12th October, 2009 to restrain reservation above 50 per cent.

The writ petition bearing No.13491/2009 and connected writ petitions were decided by this Court vide



judgment dated 22nd December, 2010. The Division Bench of this Court found that High Powered Committee headed by Justice Jasraj Chopra (retired) did not provide adequate data. The writ petition was disposed of with the following directions, which are summarised hereunder :



(i) The Government shall revisit Sections 3 & 4 of the Act of 2008 in the light of the relevant judgments of the Supreme Court.

(ii) The State Government should also consider the extent of reservation and whether there was any need to enhance it more than stipulated, prior to the 2008 Act.

(iii) The State Government was restrained to give effect to Sections 3 & 4 of the Act of 2008 with respect of enhancement of financial limits of creamy layer from Rs.2.5 lac to Rs.4.5 lac.

(iv) The State would also reconsider 14 per cent reservation to Economically Backward Classes.

(v) It would be referred to the Rajasthan State

Backward Classes Commission ("SBCC"). The Government was directed to provide quantifiable data of numerous factors, which are necessary in light of the judgments of the Apex Court.



(vi) The petitioners would be given opportunity amongst others to present their case before the Commission.

(vii) The exercise to be completed within a period of one year.

After the judgment dated 22nd December, 2010, the Government entered into an agreement with the IDS on 31st May, 2014. It was for collection of quantifiable and comparative data of 82 different castes falling in the category of other backward classes. It is to assess their social, educational and economic backwardness apart from their representation in the government services. The IDS submitted its report in the month of June, 2012.

The State Government, vide its order dated 07th June, 2012 and 08th June, 2012, nominated members and Chairperson of Rajasthan Special Backward Classes Commission. The SBC Commission was directed to submit

report within a period of one year. The SBC Commission submitted its report in the month of November, 2015 itself, i.e., within five months after its constitution. The SBC

Commission recommended 5 per cent special reservation to five castes, out of which, four castes were included by the State Government vide its Notification dated 25th August, 2009. The Government of Rajasthan issued an order on 30th

November, 2012 to provide 5 per cent special reservation to five castes recommended by the SBC Commission. It invited fresh litigation. The petitioner - Captain Gurvinder Singh filed a writ petition bearing No.1862/2013 and the other writ petition was by Mukesh Solanki bearing No.520/2013. It was to challenge Sections 3 & 4 of the Act of 2008 as well as the order dated 30th November, 2012 etc.

The Division Bench of this Court passed an interim order on 29th January, 2013 against the government order and the Notification dated 30th November, 2012. The operation of the order was stayed till disposal of the petition. The State Government moved an application for modification/clarification of the interim order. The Division Bench of this Court, vide its order dated 04th March, 2013,



permitted the Government to provide one per cent reservation in favour of special backward class but the application for vacation of stay order was dismissed.



The State Legislature, thereupon, issued a Notification dated 16th October, 2015. It was to bring *Rajasthan Special Backward Classes (Reservation of Seats Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015.*

The present three writ petitions have been filed to challenge the said Notification and the Act of 2015 apart from the report of SBC Commission in one writ petition and the report of Justice Jasraj Chopra Committee.

After filing of the present writ petitions, the Division Bench of this Court dismissed the writ petition bearing No.1862/2013 after rendering it to be infructuous but with liberty to raise all the issues in the present writ petition, which was filed prior to disposal of the earlier writ petition.

The resume of the facts shows that after Gurjar/Gujjars' agitation, the Government has issued various

orders and Notifications apart from enactment in the year 2008 and, now the Act of 2015 to provide special reservation to five castes, earlier getting reservation in the category of

OBC. It is by carving out a special category called as special backward class. The reservations to different categories are now as follows :



- (i) Scheduled Castes - 16 percent
- (ii) Scheduled Tribes - 12 percent
- (iii) Backward Classes - 21 percent
- (iv) Special Backward Classes - 5 percent

The petitioners have raised various grounds to challenge the Notification dated 16th October, 2015 and the Act of 2015 apart from the reports of Justice Jasraj Chopra Committee and of the SBC Commission. It is not only in reference to constitutional provisions but the judgments of the Apex Court. The objections to the maintainability of the writ petition/s have been raised.

(2) Locus standi of the petitioners :-

It is alleged that the writ petition has been filed

without showing infringement of fundamental or legal rights.

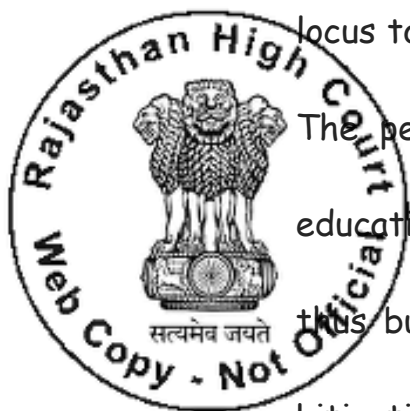
The petitioner Captain Gurvinder Singh and others do not fall in the definition of "person aggrieved", thus they have no

locus to challenge the Notification as well as the Act of 2015.

The petitioners have neither applied for admission in the educational courses nor are in service. The petitioners are

thus busy bodies and, otherwise, it is not a Public Interest Litigation, which can be maintained other than by the "person aggrieved".

Learned counsel for the petitioners submitted that objection has been taken for the sake of it. Captain Gurvinder Singh and others were the petitioners in Writ Petition No.13491/2009 as well as in subsequent Writ Petition No.1862/2013. The writ petition No.13491/2009 was decided vide judgment dated 22nd December, 2010 with a direction to revisit certain provisions and matter to be sent to the Commission. The issues raised therein were kept open by the Court with liberty to raise it again, if so required. The petitioners were given opportunities before the SBC Commission. They participated in the proceedings before the SBC Commission and nobody raised an objection to their



locus standi. Two other petitioners are in government services, thus are "person aggrieved". The petitioner, in person, Mr. Shrawan Singh Tanwar has even challenged the SBC Commission report, being aggrieved by it. The petitioner No. 4 in the case of Captain Gurvinder Singh & Ors. is a registered society. The object of the society is to work for equality amongst the citizens. It is to oppose casteism, religionism, communalism, etc., thus has maintained the writ petition to challenge the Notification dated 16th October, 2015 and the Act of 2015, which infringes Articles 15(4) and 16(4B) of the Constitution of India.



Captain Gurvinder Singh and others were the petitioners in Writ Petition No.13491/2009 decided by this Court vide its order dated 22nd December, 2010 along with two other writ petitions. The said writ petition was not dismissed on the ground of locus standi of the petitioners, rather, perusal of operative portion of the order dated 22nd December, 2010 shows a direction to provide an opportunity to the petitioners amongst others to present their case before SBC Commission. The operative portion of the order dated 22nd December, 2010 in the case of Captain Gurvinder

Singh & Ors. along with two other writ petitions is quoted hereunder for ready reference :



"As agreed, let the matter be referred to the Rajasthan State Backward Classes Commission and the State Government shall place before the Commission the quantifiable data of numerous factors which is necessary in light of the Apex Court decisions in the case of M.Nagaraj (supra) and Ashoka Kumar Thakur (supra). As collection of quantifiable data is going to consume sufficient time, let this exercise be completed within a period of one year. The petitioners shall also be given opportunity amongst others in accordance with law to present their case before the Commission. It is reiterated that stay shall continue till the matter is decided afresh and even if the State decides to enhance reservation beyond the percentage which was existing prior to coming into force the Act of 2008, the State shall not give effect to the said enhanced percentage of reservation for a period of two months thereafter. As agreed, we leave all the questions raised in the petitions

to be examined by the State at first instance in light of amended provisions of Articles 15 and 16 of the Constitution and decisions of Apex Court in Indra Sawhney (supra), M.Nagaraj (supra), Ashoka Kumar Thakur (supra), Suraj Bhan Meena (supra) and S.V.Joshi (supra)."



The para, quoted above, shows various directions and, therein, the petitioners were also ordered to be given opportunity to present their case before the SBC Commission in accordance with law. It is not in dispute that Captain Gurvinder Singh and others were given an opportunity of hearing by SBC Commission.

In the second inning of litigation by Captain Gurvinder Singh and others, the writ petition bearing No.1862/2013 was decided vide order dated 04th February, 2016 along with another writ petition of Mukesh Solanki. There, the writ petitions were rendered infructuous in view of the Notification and the Act under challenge but after noticing pendency of the present writ petition. The petitioners were given liberty to raise all the issues in the present writ

petition.

The directions given in both the judgments were not assailed by any of the parties, thus became final. In the light of the aforesaid, Captain Gurvinder Singh and others cannot be non-suited on the ground of their locus. It is more so when petitioner No.4 is a registered society, which is created with the object to claim equality amongst the citizens thus it cannot be said that petitioners do not fall in the definition of "person aggrieved".



The respondent No.4 has given reference of the judgment of the Apex Court in the case of Calcutta Gas Company Pvt. Ltd. (supra) and also in the case of Ayaabkhan Noorkhan Pathan (supra) to support his arguments. The judgment aforesaid has no application to the facts of this case.

In the case of Ayaabkhan Noorkhan Pathan (supra), the challenge was to a caste certificate of an individual in the hands of a stranger. The Apex Court held that stranger should not be permitted to meddle in the proceedings against an individual unless he falls in the category of aggrieved person. The legal right of the petitioners herein has been

canvassed. The petitioner Nos. 2 & 3 in the petition of Captain Gurvinder Singh & Ors. are in service, thus affected by reservation to special backward classes and the petitioner

No.4 is a registered society to espouse the cause for equality.

Their legal rights have been earlier recognised, thus not only

this Court but the SBC Commission has given opportunity of

hearing to them, hence, the objection regarding

maintainability of the writ petition on the ground of locus

standi of the petitioners cannot be accepted. Accordingly,

the objection regarding maintainability of the writ petition

on the ground of locus standi is decided against the private

respondents.

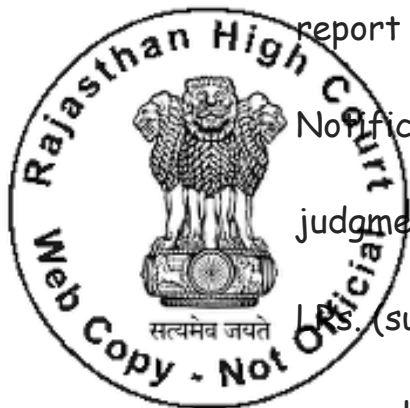
The second objection is in regard to maintainability of the writ petition in absence of challenge to the report of SBC Commission.

(3) In absence of challenge to the report of SBC Commission, the consequential Notification and the Act of 2015 cannot be challenged :-

Learned counsel for the private respondents submitted that in absence of challenge to the report of the SBC Commission, the Notification dated 16th October, 2015 and



the Act of 2015 cannot be challenged. When the enactment is on the basis of recommendation of the SBC Commission, it was necessary for the petitioners to first challenge the report of the SBC Commission and then to challenge the Notification and the Act of 2015. A reference of the judgment in the case of *Edukanti Kistamma (Dead)* through *S. (supra)* has been given.



Learned counsel for the petitioners have contested the issue in reference to the earlier litigation where the report of the SBC Commission was also challenged and, while disposing the said writ petition, bearing No.1862/2013, a liberty was given to the petitioners to raise all the issues in the present writ petition.

We have considered second objection and find that in the writ petition preferred by Captain Gurvinder Singh and others, a challenge to the report of SBC Commission has not been made though the grounds have been raised. In the case of *Shrawan Singh Tanwar*, a challenge to the report of the SBC Commission has also been made. The bunch of the petitions has been taken together for hearing with the consent of learned counsel for the parties. In view of the

challenge to the report of the SBC Commission in one writ petition heard along with connected writ petitions, second objection is of no substance. Accordingly, the judgment in the case of Edukanti Kistamma (Dead) through LRs (supra) has no application to the facts of this case.



It is necessary to observe that Notification dated 16th October, 2015 and the Act of 2015 have been challenged not only in reference to the report of the SBC Commission but also in reference to Articles 15(4) and 16(4B) of the Constitution of India. It is even in reference to the judgments of the Apex Court. The scrutiny of legal issues in reference to the constitutional provisions and the judgments of the Apex Court needs to be made thus writ petitions are otherwise maintainable. It cannot be accepted that unless the SBC Commission report is challenged, the Act of 2015 cannot be assailed even on legal grounds and, otherwise, the report of the SBC Commission has been challenged in one writ petition.

In the light of the aforesaid, second objection regarding maintainability of the writ petitions is also rejected.

The State of Rajasthan has not raised objection regarding maintainability of the writ petitions. It seems to be for the reasons given above.



All the issues raised by the petitioners and defended by the respondents need elaborate discussion. This Court has formulated following issues for its consideration :

(I) (A) Whether ceiling of 50 per cent exists on reservation in public employment as well as for admission in the educational institutions in view of the judgment of the Apex Court?

(B) Whether reservation can be based on caste?

The petitioners have challenged the Notification dated 16th October, 2015 and the Act of 2015 apart from the report of the SBC Commission providing reservation beyond 50 per cent in educational institutions as well as in public employment.

A reference of Articles 15(4) and 16(4) of the Constitution of India have been given apart from the amendment made thereunder from time to time. The

judgments of the Apex Court as well as this Court apart from other High Courts have been cited to substantiate the arguments. The respondents have countered it by giving interpretation to the provisions of the Constitution of India and relied the judgments of the Apex Court.



The issue aforesaid needs elaborate discussion not only in reference to the judgments of the Apex Court but the amendment made in the Constitution of India. It is, more specifically, 81st amendment in the Constitution of India after the judgment of the Apex Court in the case of Indra Sawheny (supra). For ready reference, Articles 15 and 16 of the Constitution of India are quoted hereunder :

"Article 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 condition with regard to



(a) access to shops, public restaurants, hotels and palaces 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 the 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 the Scheduled Tribes.

Article 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 or, 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 favor 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 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

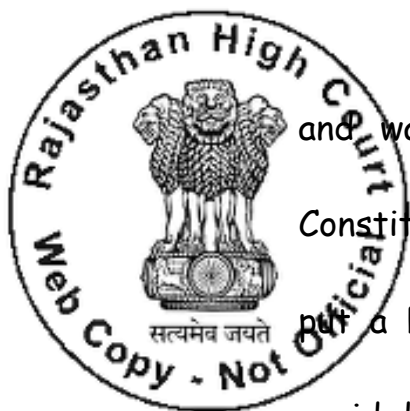
institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."



Article 15 of the Constitution prohibits discrimination on the grounds of religion, race, caste, sex or place of birth etc. Clause (3) of Article 15, however, permits

the Government to make special provision for women and children. Clause (4) of Article 15 permits the State Government to make special provision for advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. The word "socially and educationally backward classes of citizens" has been used and not the socially and educationally backward "caste" so as to avoid discrimination on the ground of religion or caste. We find that the word "classes of citizens" has been made interchangeable with the word "caste" to identify socially and economically backward classes. The practice to identify the caste for the "classes of citizens" has been adopted from the beginning. It is in ignorance of the constitutional mandate. The framers of the Constitution

never thought to divide society by caste or religion thus specific prohibition for it was provided in Articles 15 and 16 of the Constitution.

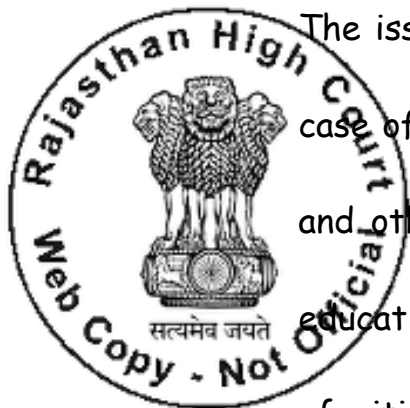


The caste system is prevalent from the beginning and was even in the knowledge of the framers of the Constitution thus only Articles 15 and 16 of the Constitution put a bar on discrimination based on caste and religion to avoid division of country by caste. While making amendment in Article 15 to bring Article 15(4) of the Constitution, Parliament was cautious in using the word "classes of citizens". Clause (4) of Article 15 of the Constitution was brought to see advancement of socially and educationally backward classes of citizens. The time has come to adhere to the provisions of the Constitution in strict terms without substitution of the word "classes of citizens" by "caste of citizens".

The reservation in educational courses as well as public employment is prevalent for more than last six decades and there is no exclusion of any caste, rather, there exists inclusion of certain castes.

It is expected of the Central as well as the State

Governments to revisit the system of reservation so that socially and educationally backward classes of citizens can be uplifted within time frame. It is by framing a proper policy.

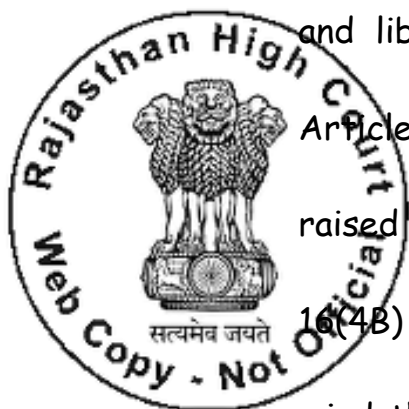


The issue aforesaid was discussed by the Apex Court in the case of M.R. Balaji & Ors. (supra). It is by providing financial and other assistance to attract classes, who are socially or educationally backward. The advancement of those categories of citizens may not be only by way of reservation but by evolving other methods as well. The financial assistance for education would be for upliftment of the citizens with overall development and, in doing so, they would not require any reservation in due course of time resulting in overall development of the country itself.

The reservation should not be provided to achieve political goals as it results in caste based agitation to bargain with the Government. It was recently seen in the State of Haryana where agitators disrupted normal life of the citizens.

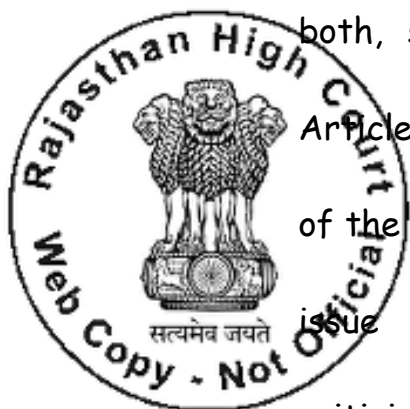
It is time to review the policy by the legislature with an aim to achieve the objects, for which, Constitution

was framed and, while doing so, Preamble of the Constitution should be kept in mind. The Preamble refers to sovereign, socialist, secular, democratic republic with equality of status and liberty. The equality of status has been reflected in Articles 14, 15 and 16 of the Constitution of India. The issue raised by the petitioners in reference to Articles 15(4) or 16(4B) of the Constitution is to be viewed after keeping in mind the Preamble of the Constitution of India. It is apart from the judgments of the Apex Court on the issue.



The judgment in the case of M.R. Balaji & Ors. (supra) is in reference to Article 15(4) of the Constitution of India. In the said case, the State of Mysore was endeavoring since 1958 to make special reservation for advancement of socially and educationally backward classes of citizens. The orders and Notifications for it were always challenged before the Court, since then. The Apex Court found that the Commission therein should have taken into consideration not only traditional apathy but poverty and lack of education in rural areas apart from many other issues to find out socially and educationally backwardness of classes of citizens. It was found that the Nagana Gowda Committee, constituted by the

State Government, had taken "caste" to be sole basis for determination of socially and educationally backwardness of the classes of citizens. It has also reiterated requirement of both, socially and educationally backwardness, to attract Article 15(4) of the Constitution of India. In paras 21 to 29 of the judgment in the case of M.R. Balaji & Ors. (supra), the issue of reservation, solely based on caste, has been criticised and thereupon paras 30 to 34 deal with the extent of reservation. Paras 21 to 23, 25, 29, 34, 35, 37 of the said judgment are quoted hereunder for ready reference :



"21. 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. In 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 Art.15(4). This position is not disputed before us by the learned Advocate-General for the State. The backwardness under Art.15(4) must be social and educational. It is not either social or educational, but it is both social and educational;

and that takes us to the question as to how social and educational backwardness has to be determined.



22. Let us take the question of social backwardness first. By what test should it be decided whether a particular class is socially backward or not ? The group of citizens to whom Article 15(4) applies are described as 'classes of citizens', not as castes of citizens. A class, according to the dictionary meaning, shows division of society according to status, rank or caste. In the Hindu social structure, caste unfortunately plays an important part in determining the status of the citizen. Though according to sociologists and Vedic scholars, the caste system may have originally begun on occupational or functional basis, in course of time, it became rigid and inflexible. The history of the growth of caste system shows that its original functional and occupational basis was later over-burdened with considerations of purity based on ritual concepts, and that led to its ramifications which introduced inflexibility and rigidity. This artificial growth inevitably tended to create a feeling of superiority and inferiority and to foster narrow caste



loyalties. Therefore, in dealing with the question as to whether any class of citizens is socially backward or not, it may not be irrelevant to consider the caste of the said group of citizens. In this connection, it is, however, necessary to bear in mind that the special provision is contemplated for classes of citizens and not for individual citizens as such, and so, though the caste of the group of citizens may be relevant, its importance should not be exaggerated. If the classification of backward classes of citizens was based solely on the caste of the citizen, it may not always be logical and may perhaps contain the vice of perpetuating the caste themselves.

23. Besides, if the caste of the group of citizens was made the sole basis for determining the social backwardness of the said group, that test would inevitably break down in relation to many sections of Indian society which do not recognise castes in the conventional sense known to Hindu society. How is one going to decide whether Muslims, Christians or Jains, or even Lingayats are socially backward or not ? The test of castes would be inapplicable to those groups, but that



would hardly justify the exclusion of these group in toto from the operation of Art. 15(4). It is not unlikely that in some States some Muslims or Christians or Jains forming groups may be socially backward. That is why we think that though castes in relation to Hindus may be a relevant factor to consider in determining the social backwardness of groups or classes of citizens, it cannot be made the sole or the dominant test in that behalf. Social backwardness is on the ultimate analysis the result of poverty, to a very large extent. The classes of citizens who are deplorably poor automatically become socially backward. They do not enjoy a status in society and have, therefore, to be content to take a backward seat. It is true that social backwardness which results from poverty is likely to be aggravated by considerations of caste to which the poor citizens may belong, but that only shows the relevance of both caste and poverty in determining the backwardness of citizens.

25. What then is the test applied by the State in passing the impugned order ? We have already seen that the Nagan Gowda



Committee appointed by the State was inclined to treat the caste as almost the sole basis in determining the question about the social backwardness of any community. The Committee has no doubt incidentally referred to the general economic condition of the community as a contributory factor; but the manner in which it has enumerated the backward and more backward classes leaves no room for doubt that the predominant, if not the sole, test that weighted in their minds was the test of caste. When we consider the impugned order itself, the position becomes absolutely clear. The impugned order has adopted the earlier order of July 10, 1961, with some changes as to the quantum of reservation, and so, it is necessary to examine the earlier order in order to see what test was applied by the State in classifying the backward Classes. In its preamble, the order of July 10, 1961, clearly and unambiguously states that the Committee had come to the conclusion that in the present circumstances, the only practicable method of classifying the Backward Classes in the State is on the basis of castes and communities and the State Government accepts this test. In other



words, on the order as it stands there can be no room for doubt that the classification of backward and more backward classes was made by the State Government only on the basis of their castes which basis was regarded as a practicable method. It is true that in support of the inclusion of the Lingayats amongst the Backward Classes the order refers to some other factors, but neither the Report of the Nagan Gowda Committee, nor the orders passed by the State Government on July 10, 1961, and July 31, 1962, afford any indication as to how any test other than that the caste was applied in deciding the question. The learned Advocate-General has contended that the statement in the preamble of the order of July 10, 1961 should not be literally construed and he has argued that the words used in the relevant portion are inartistic and he has suggested that the order is not based on the sole basis of castes. We are not impressed by this argument. We have considered both the orders in the light of the Report and the recommendations made by the Nagan Gowda Committee and we are satisfied that the classification of the socially backward classes of citizens made by the



State proceeds on the only consideration of their castes without regard to the other factors which are undoubtedly relevant. If that be so, the social backwardness of the communities to whom the impugned order applies has been determined in a manner which is not permissible under Art. 15(4) and that itself would introduce an infirmity which is fatal to the validity of the said classification.

29. In this connection, it is necessary to add that the sub-classification made by order between Backward Classes and More Backward Classes does not appear to be justified under Art. 15(4). Art. 15(4) authorises special provision being made for the really backward classes. In introducing two categories of Backward Classes, what the impugned order, in substance, purports to do is 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, and that, in our opinion, is not the scope of Art. 15(4). The result of the method adopted by the impugned order is that nearly 90% of the population of the State is treated as backward, and that illustrates how the order in fact divides

the population of the State into most advanced and the rest, and puts the latter into two categories of Backward and More Backward. The classification of the two categories, therefore, is not warranted by Art. 15(4).



34. The learned Advocate-General has suggested that reservation of a large number of seats for the weaker sections of the society would not affect either the death or efficiency of scholarship at all, and in support of this argument, he has relied on the observations made by the Backward Classes Commission that it found no complaint in the States of Madras, Andhra, Travancore-Cochin and Mysore where the system of recruiting candidates from other Backward Classes to the reserve quota has been in vogue for several decades. The Committee further observed that the representatives of the upper classes did not complain about any lack of efficiency in the offices recruited by reservation (p. 135). This opinion, however, is plainly inconsistent with what is bound to be the inevitable consequence of reservation in higher university education. If admission to professional and technical colleges is



unduly liberalised it would be idle to contend that the quality of our graduates will not suffer. That is not to say that reservation should not be adopted; reservation should and must be adopted to advance the prospects of the weaker sections of society, but in providing for special measures in that behalf care should be taken not to exclude admission to higher educational centers to deserving and qualified candidates of other communities. A special provision contemplated by Art. 15(4) like reservation of posts and appointments contemplated by Art. 16(4) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the states and the centers have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be subverting the object of Art. 15(4). In this matter again, we are reluctant to say definitely what would be a proper provision to make. 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. In this particular case it is remarkable that when the State issued its order on July 10, 1961, it emphatically expressed its opinion that the reservation of 68% recommended by the Nagan Gowda Committee would not be larger interests of the State. What happened between July 10, 1961, and July 31, 1962, does not appear on the record. But the State changed its mind and adopted the recommendation of the Committee ignoring its earlier decision that the said recommendation was contrary to the larger interests of the State. In our opinion, when the State makes a special provision for the advancement of the weaker sections of society specified in Art. 15(4), it has to approach its task objectively and in a rational manner. Undoubtedly, it has to take reasonable and even generous steps to help the advancement of weaker elements; the extent of the problem must be weighted, the requirements of the community at large must be borne in mind and a formula must be evolved which would strike a reasonable balance between the several

relevant considerations. Therefore, we are satisfied that the reservation of 68% directed by the impugned order is plainly inconsistent with Art. 15(4).



35. The petitioners contend that having regard to the infirmities in the impugned order, action of the State in issuing the said order amounts to a fraud on the Constitutional power conferred on the State by Art. 15(4). This argument is well-founded, and must be upheld. When it is said about an executive action that it is a fraud on the Constitution, it does not necessarily mean that the action is actuated by malafides. An executive action which is patently and plainly outside the limits of the constitutional authority conferred on the State in that behalf is struck down as being ultra vires the State's authority. If, on the other hand, the executive action does not patently or overtly transgress the authority conferred on it by the Constitution, but the transgression is covert or latent, the said action is struck down as being a fraud on the relevant constitutional power. It is in this connection that courts often consider the substance of the matter and not its form and in ascertaining the substance of the matter, the appearance or the cloak, or the veil of the executive action is carefully scrutinized and if it appears that notwithstanding the appearance, the cloak or the veil of the executive action, in substance and in



truth the constitutional power has been transgressed, the impugned action is struck down as a fraud on the Constitution. We have already noticed that the impugned order in the present case has categorised the Backward Classes on the sole basis of caste which, in our opinion, is not permitted by Art. 15(4); and we have also held that the reservation of 68% made by the impugned order is plainly inconsistent with the concept of the special provision authorised by Art. 15(4). Therefore, it follows that the impugned order is a fraud on the Constitutional power conferred on the State by Art. 15(4).

37. Whilst we are dealing with this question, it would be relevant to add to that the provisions of Art. 15(4) are similar to those of Art. 16(4) which fell to be considered in the case of *The General Manager, Southern Railway v. Rangachari* (1970) IILLJ2895C. In that case, the majority decision of this Court held that the power of reservation which is conferred on the State under Art. 16(4) can be exercised by the State in a proper case not only by providing for reservation of appointments, but also by providing for reservation of selection posts. This conclusion was reached on the basis that it served to give effect to the



intention of the Constitutional-makers to make adequate safeguards for the advancement of Backward Classes and to secure their adequate representation in the Services. The judgment shows that the only point which was raised for decision of this Court in that case was whether the reservation made was outside Art.16(4) and that posed the bare question about the construction of Art.16(4). The propriety, the reasonableness or the wisdom of the impugned order was not questioned because it was not the respondent's case that if the order was justified under Art.16(4), it was a fraud on the Constitution. Even so, it was pointed out in the judgment that the efficiency of administration is of such a paramount importance that it would be unwise and impermissible to make any reservation at the cost of efficiency of administration; that, it was stated, was undoubtedly the effect of Art.335. Therefore, what is true in regard to Art.15(4) is equally true in regard to Art.16(4). There can be no doubt that the Constitution-makers assumed, as they were entitled to, that while making adequate reservation under Art.16(4), care would be taken not to

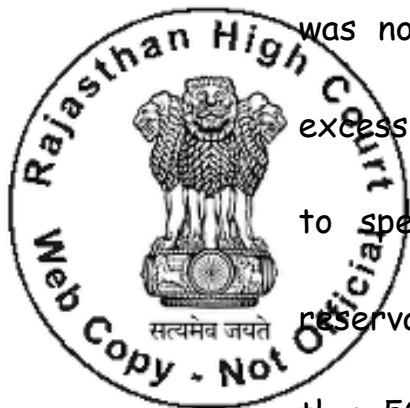


provide for unreasonable, excessive or extravagant reservation, for that would, by eliminating general competition in a large field and by creating wide-spread dissatisfaction amongst the employees, materially affect efficiency. Therefore, like the special provision improperly made under Art. 15(4), reservation made under Art. 16(4) beyond the permissible and legitimate limits would be liable to be challenged as a fraud on the Constitution. In this connection it is necessary to emphasize that Art. 15(4) is an enabling provision; it does not impose an obligation, but merely leaves it to the discretion of the appropriate government to take suitable action, if necessary."

The Apex Court has not accepted caste to be the sole basis to determine classes of citizens. It is not only in Hindu religion but backwardness may exist in other religions, like, Muslims, Christians, Jains and even Lingayats. They cannot be provided benefit of reservation based on caste. The extent of reservation has also been discussed elaborately in paras 34 & 35 of the judgment, referred above.

A balance is required to be maintained between

two sets of citizens while applying Article 15(4) of the Constitution. The reservation therein was provided to the extent of 68 percent in the educational institutions, which was not approved by the Apex Court. It was held to be excessive, affecting other citizens. The Court was reluctant to speak generally but, in a broad way, observed that reservation should be less than 50 per cent. How much less than 50 per cent would depend upon prevailing circumstances of each State. The reservation to the extent of 68 per cent was taken to be in violation of the constitutional powers conferred on the State under Article 15(4) of the Constitution. The Notification was struck down finding it to be a fraud on the constitutional powers.



In para 35, the Court observed about reservation based on caste and to the extent of 68 per cent in few lines, which are; we have already noticed that the impugned order in the present case has categorised the Backward Classes on the sole basis of caste which, in our opinion, is not permitted by Article 15(4) and we have also held that the reservation of 68% made by the impugned order is plainly inconsistent with the concept of the special provision authorised by Article 15(4). Therefore, it follows that the impugned order is a fraud on the Constitutional power conferred on the State by Article

15(4).

The Apex Court has considered the issue of extent of reservation from time to time. The judgment in the case of Indra Sawhney (supra) has been referred by learned Solicitor General of India to show that reservation beyond 50 per cent to be permissible.



To appreciate the argument, we may now refer the judgment of the Apex Court in the case of Indra Sawhney (supra). The question No.6 was framed to decide extent of reservation. The discussion on the issue has been made in paras 804 to 810 and they are quoted thus :

"804. In Balaji, a Constitution Bench of this Court rejected the argument that in the absence of a limitation contained in Article 15(4), no limitation can be prescribed by the court on the extent of reservation. It observed that a provision under Article 15(4) being a "special provision" must be within reasonable limits. It may be appropriate to quote the relevant holding from the judgment:

When Article 15(4) refers to the special provision for the advancement of certain classes or Scheduled Castes or Scheduled Tribes, it must not be ignored



that the provision which is authorised to be made is a special provision; it is not a provision which is exhaustive in character, so that in looking after the advancement of those classes, the State would be justified in ignoring altogether the advancement of the rest of the society. It is because the interests of the society at large would be served by promoting the advancement of the weaker elements in the society that Article 15(4) authorises special provision to be made. But if a provision which is in the nature of an exception completely excludes the rest of the society, that clearly is outside the scope of Article 15(4). It would be extremely unreasonable to assume that in enacting Article 15(4) the Parliament intended to provide that where the advancement of the Backward Classes or the Scheduled Castes and Tribes was concerned, the fundamental rights of the citizens constituting the rest of the society were to be completely and absolutely ignored....A Special provision contemplated by Article 15(4) like reservation for posts and appointments



contemplated by Article 16(4) must be within reasonable limits. The interests of weaker sections of society which are a first charge on the State and the center have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges, that clearly would be adverting the object of Article 15(4). In this matter again, we are reluctant to say definitely what would be a proper provision to make. 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.

In *Devadasan* this rule of 50% was applied to a case arising under Article 16(4) and on that basis the carry-forward rule was struck down. In *Thomas*, however the correctness of this principle was questioned. Fazal Ali, J. observed:



This means that the reservation should be within the permissible limits and should not be a cloak to fill all the posts belonging to a particular class of citizens and thus violate Article 16(1) of the Constitution indirectly. At the same time Clause (4) of Article 16 does not fix any limit on the power of the government to make reservation. Since Clause (4) is a part of Article 16 of the Constitution it is manifest that the State cannot be allowed to indulge in excessive reservation so as to defeat the policy contained in Article 16(1). As to what would be a suitable reservation within permissible limits will depend upon the facts and circumstances of each case and no hard and fast rule can be laid down, nor can this matter be reduced to a mathematical formula so as to be adhered to in all cases. Decided cases of this Court have no doubt laid down that the percentage of reservation should not exceed 50%. As I read the authorities, this is however, a rule of caution and does not exhaust all categories. Suppose for instance a State has a large number of backward class of citizens which



constitute 80% of the population and the Government, in order to give them proper representation, reserves 80% of the jobs for them can it be said that the percentage of reservation is bad and violates the permissible limits of Clause (4) of Article 16? The answer must necessarily be in the negative. The dominant object to this provision is to take steps to make inadequate representation adequate.

Krishna Iyer, J. agreed with the view taken by Fazal Ali, J. in the following words:

I agree with my learned brother Fazal Ali, J. in the view that the arithmetical limit of 50% in any one year set by some earlier rulings cannot perhaps be pressed too far. Overall representation in a department does not depend on recruitment in a particular year, but the total strength of a cadre. I agree with his construction of Article 16(4) and his view about the 'carry forward' rule.

Mathew, J. did not specifically deal with this aspect but from the principles of 'proportional equality' and 'equality of results' espoused by the learned Judge, it

is argued that he did not accept the 50% rule. Beg, J. also did not refer to this rule but the following sentence occurs in his judgment at pages 962 and 963:



If a reservation of posts under Article 16(4) for employees of backward classes could include complete reservation of higher posts to which they could be promoted, about which there could be no doubt now, I fail to see why it cannot be partial or for a part of the duration of service and hedged round with the condition that a temporary promotion would operate as a complete and confirmed promotion only if the temporary promotee satisfies some tests within a given time.

Ray, C.J., did not dispute the correctness of the 50% rule but at the same time he pointed out that this percentage should be applied to the entire service as a whole.

805. After the decision in Thomas, controversy arose whether the 50% rule enunciated in Balaji stands overruled by Thomas or does it continue to be valid. In

Vasant Kumar, two learned judges came to precisely opposite conclusions on this question. Chinnappa Reddy, J. held that Thomas has the effect of undoing the 50% rule in Balaji whereas Venkataramiah, J. held that it does not.



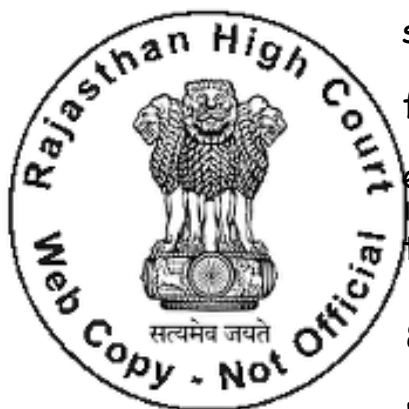
806. It is argued before us that the observations on the said question in Thomas were obiter and do not constitute a decision so as to have the effect of overruling Balaji. Reliance is also placed upon the speech of Dr. Ambedkar in the Constituent Assembly, where he said that reservation must be confined to a minority of seats (See para 28). It is also pointed out that Krishna Iyer, J. who agreed with Fazal Ali, J. in Thomas on this aspect, came back to, and affirmed, the 50% rule in Karamchari Sangh (at pp. 241 and 242). On the other hand, it is argued for the respondents that when the population of the other backward classes is more than 50% of the total population, the reservation in their favour (excluding Scheduled Castes and Scheduled Tribes) can also be 50%.

807. We must, however, point out that Clause (4) speaks of adequate representation and not proportionate representation. Adequate



representation cannot be read as proportionate representation. Principle of proportionate representation is accepted only in Articles 330 and 332 of the Constitution and that too for a limited period. These articles speak of reservation of seats in Lok Sabha and the State Legislatures in favour of Scheduled Tribes and Scheduled Castes proportionate to their population, but they are only temporary and special provisions. It is therefore 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. Just as every power must be exercised reasonably and fairly, the power conferred by Clause (4) of Article 16 should also be exercised in a fair manner and within reasonable limits - and what is more reasonable than to say that reservation under Clause (4) shall not exceed 50% of the appointments or posts, barring certain extraordinary situations as explained hereinafter. From this point of view, the 27% reservation provided by the impugned Memorandums in favour of backward classes is well within the reasonable limits. Together with reservation in favour of Scheduled Castes and Scheduled

Tribes, it comes to a total of 49.5%. In this connection, reference may be had to the Full Bench decision of the Andhra Pradesh High Court in Narayan Rao v. State 1987 A.P. 53, striking down the enhancement of reservation from 25% to 44% for O.B.Cs. The said enhancement had the effect of taking the total reservation under Article 16(4) to 65%.



808. It needs no emphasis to say that the principle aim of Article 14 and 16 is equality and equality of opportunity and that Clause (4) of Article 16 is but a means of achieving the very same objective. Clause (4) is a special provision - though not an exception to Clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the restatements of the principle of equality enshrined in Article 14. The provision under Article 16(4) - conceived in the interest of certain sections of society - should be balanced against the guarantee of equality enshrined in Clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr. Ambedkar himself contemplated reservation being "confined to a minority of seats" (See his speech in Constituent Assembly, set out in para 28). No other

member of the Constituent Assembly suggested otherwise. It is, thus clear that reservation of a majority of seats was never envisaged by the founding fathers. Nor are we satisfied that the present context requires us to depart from that concept.



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 main stream 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."

Para 809, quoted above, shows irresistible conclusion that reservations contemplated in Clause (4) of

Article 16 should not exceed 50 per cent. In para 810 of the said judgment, ceiling of 50 per cent reservation was taken as a rule, however, exception was carved out in extra ordinary

situations inherent in the great diversity of the country and the people. The relaxation in strict rule of 50 per cent is to be applied with extreme caution and if special case is made

The Apex Court therein considered the judgment of Constitutional Bench in the case of M.R.Balaji & Ors. (supra)

and also the judgment in the case of **State of Kerala & Anr.**

Vs. N.M. Thomas & Ors. reported in (1976) 2 SCC 310 to conclude ceiling of 50 per cent as a rule with exception in

extra ordinary situation. Sub-para 4 of para 860 of the judgment in the case of Indra Sawhney (supra) is also quoted

hereunder for ready reference :

"860. For the sake of ready reference, we also record our answers to questions as framed by the counsel for the parties and set out in para 26. Our answers question-wise are:

(1).....

(2).....

(3).....

(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 main-stream 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."

In the light of the judgment of the Constitutional Bench of the Apex Court in the case of Indra Sawhney

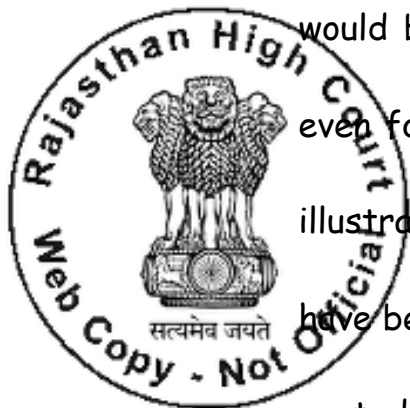
(supra), it can conveniently be concluded that ceiling of 50 per cent on reservation is to be taken as a rule but, in extraordinary situation, it would be permissible to exceed the ceiling. While applying the relaxation to the general rule of 50 per cent, an extreme caution has to be taken. It is only when special case is made out or there exists extraordinary situation.



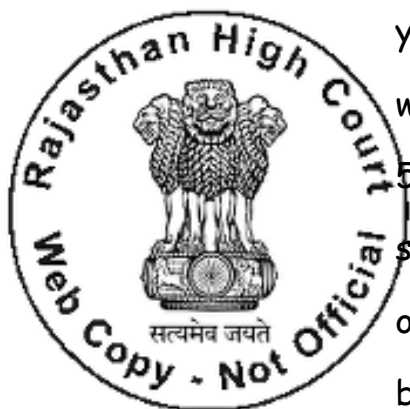
The Apex Court in the said judgment further emphasised requirement of permanent body for entertaining, examining, recommending for inclusion and exclusion of caste in the list of other backward classes of citizens. The permanent body was to be constituted within the period of four months. The exclusion was also emphasised.

The Apex Court in the case of Indra Sawhney (supra) further considered the judgment in the case of *T.Devadason Vs. Union of India & Anr.* reported in **AIR 1964 SC 179**. The issue therein was in regard to carry forward of vacancies in case it remained unfilled from reserve category. It was held that ceiling of 50 per cent should be applied as a rule and it would be even to carry forward vacancies. The conclusion thereby was that even if

there are carry forward of vacancies, ceiling of 50 per cent would be applied. When the vacancies are advertised, it may include even backlog of vacancies, yet ceiling of 50 per cent would be applicable thus no exception to ceiling was allowed even for the backlog vacancies. The Apex Court has given an illustration for it in para 817 of its judgment and conclusions have been drawn in para 818. Both the paras are relevant thus quoted hereunder for ready reference because subsequently 81st amendment in the Constitution of India was made in the light of the observations made therein :-



"817. We are of the respectful opinion that on its own reasoning, the decision in so far as it strikes down the Rule is not sustainable. The most that could have been done in that case was to quash the appointments in excess of 50%, inasmuch as, as a matter of fact, more than 50% of the vacancies for the year 1960 came to be reserved by virtue of the said Rule. But it would not be correct to presume that that is the necessary and the only consequence of that rule. Let us take the very illustration given at pp. 691-2, - namely 100 vacancies arising in three successive years and 18% being the reservation quota - and examine. Take a case, where in the first year, out of 18



reserved vacancies 9 are filled up and 9 are carried forward. Similarly, in the second year again, 9 are filled up and another 9 are carried forward. Result would be that in the third year, $9 + 9 + 18 = 36$ (out of a total of 100) would be reserved which would be far less than 50%; the rule in Balaji is not violated. But by striking down the Rule itself, carrying forward of vacancies even in such a situation has become impermissible, which appears to us indefensible in principle. We may also point out that the premise made in Balaji and reiterated in Devadasan, to the effect that Clause (4) is an exception to Clause (1) is no longer acceptable, having been given up in Thomas. It is for this reason that in Karamchari Sangh, Krishna Iyer, J. explained Devadasan in the following words:

In Devadasan's case the court went into the actuals, not into the hypotheticals. This is most important. The Court actually verified the degree of deprivation of the 'equal opportunity' right....

.... What is striking is that the Court did not take an academic view or make a notional evaluation but checked up to



satisfy itself about the seriousness of the infraction of the right....Mathematical calculations, departing from realities of the case, may startle us without justification, the apprehension being misplaced. All that we need say is that the Railway Board shall take care to issue instructions to see that in no year shall SC&ST candidates be actually appointed to substantially more than 50% of the promotional posts. Some excess will not affect as mathematical precision is different in human affairs, but substantial excess will void the selection. Subject to this rider or condition that the 'carry forward' rule shall not result, in any given year, in the selection of appointments of SC&ST candidates considerably in excess of 50% we uphold Annexure I.

We are in respectful agreement with the above statement of law. Accordingly, we over-rule the decision in Devadasan. We have already discussed and explained the 50% rule in paras 93 to 96. The same position would apply in the case of carry forward rule as well. We, however, agree that an year should be taken as the unit or

basis, as the case may be, for applying the rule of 50% and not the entire cadre strength.

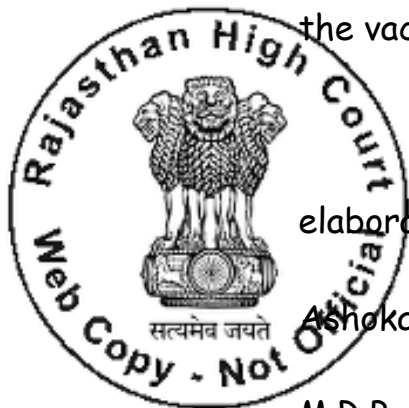


818. We may reiterate that a carry forward rule need not necessarily be in the same terms as the one found in Devadasan. A given rule may say that the unfilled reserved vacancies shall not be filled by unreserved category candidates but shall be carried forward as such for a period of three years. In such a case, a contention may be raised that reserved posts remain a separate category altogether. In our opinion, however, the result of application of carry forward rule, in whatever manner it is operated, should not result in breach of 50% rule.

81st amendment in the Constitution was brought on 09th June, 2000 and is relevant and to be seen in seriatim of the events.

The reference of objects and reasons in bringing 81st amendment in the Constitution has been given by learned counsel Dr. Manish Singhvi. It is to nullify the effect of the judgment putting ceiling of 50 per cent on backlog vacancies.

The plain reading of Clause (4B) of Article 16 of the Constitution of India, however, reveals that reference of ceiling of 50 per cent has been given and is to be applied on the vacancies of the year in which they are to be filled.



The issue of reservation based on caste has been elaborately discussed by the Apex Court in the case of Ashoka Kumar Thakur (supra), Indra Sawhney (supra) and M.R.Balaji (supra). It is with a direction of exclusion of caste from Backward Class otherwise to be considered failure of the system. The issue of period was also discussed. Para 666 in the case of Ashoka Kumar Thakur (supra) is quoted hereunder to sum up the issue :

"666. Caste has divided this country for ages. It has hampered its growth. To have a casteless society will be realization of a noble dream. To start with, the effect of reservation may appear to perpetuate caste. The immediate effect of caste based reservation has been rather unfortunate. In the pre-reservation era people wanted to get rid of the backward tag -- either social or economical. But post reservation, there is a tendency even among those who are considered as 'forward', to seek 'backward'



tag, in the hope of enjoying the benefits of reservations. When more and more people aspire for 'backwardness' instead of 'forwardness' the country itself stagnates. Be that as it may. Reservation as an affirmative action is required only for a limited period to bring forward the socially and educationally backward classes by giving them a gentle supportive push. But if there is no review after a reasonable period and if reservation is continued, the country will become a caste divided society permanently. Instead of developing an united society with diversity, we will end up as a fractured society for ever suspicious of each other. While affirmative discrimination is a road to equality, care should be taken that the road does not become a rut in which the vehicle of progress gets entrenched and stuck. Any provision for reservation is a temporary crutch. Such crutch by unnecessary prolonged use, should not become a permanent liability. It is significant that Constitution does not specifically prescribe a casteless society nor tries to abolish caste. But by barring discrimination in the name of caste and by providing for affirmative caste. When the differences in status among

castes are removed, all castes will become equal. That will be a beginning for a casteless egalitarian society."



In view of the judgment of the Apex Court, referred to above, ceiling of 50 per cent is to be taken as a rule and exception can be in the extra ordinary situation when a special case is made out. It is also that reservation should not be made solely based on caste. The answer of the first question is given accordingly. The finding aforesaid is not to affect next issue in reference to Article 16(4B) of the Constitution of India.

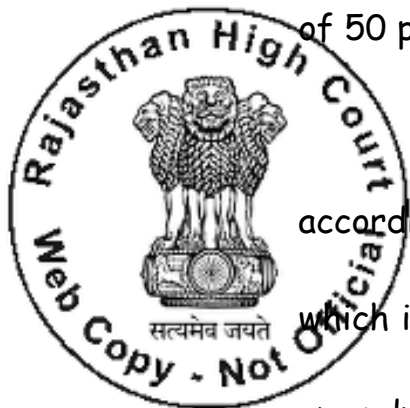
(ii) whether Clause (4B) of Article 16 of the Constitution of India can be construed to be constitutional amendment to provide ceiling of 50 per cent on the vacancy of a year?

To make a proper interpretation of Clause (4B) of Article 16 of the Constitution, it has to be divided in two parts.

The first part is for backlog vacancies not to be included in total vacancies of the year for ceiling of 50 per

cent.

The second part makes a reference of vacancy of the year in which it is to be filled for determination of ceiling of 50 per cent reservation.

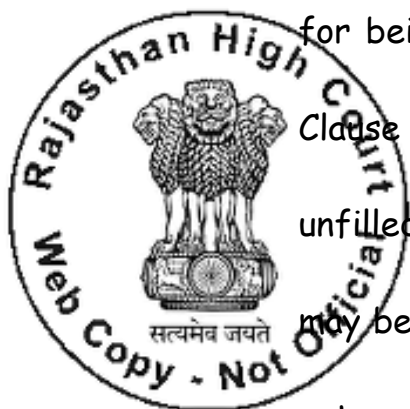


The ceiling of 50 per cent on reservation would accordingly be applicable on the vacancy of the year only in which it is to be filled and not on the backlog vacancies. The amendment does not relax ceiling of 50 per cent on the vacancies of the year, in which, it is to be filled. Clause (4B) of Article 16 of the Constitution of India has to be read without inclusion or exclusion of words used therein.

It is, however, argued on behalf of the State that even if Article 16(4B) of the Constitution of India imposes ceiling of 50 per cent, it is only for the vacancies which are to be filled in that year. The provision can be enforced even with 54 per cent reservation. While restricting the reservation to the extent of 50 per cent on the vacancy of a year, excess to be carried forward in the next year. By undertaking the said exercise, Article 16(4B) of the Constitution of India would not be violated.

We have given due consideration to the arguments

aforesaid. In this regard, the meaning of "unfilled or backlog vacancies" needs to be considered. The "backlog vacancies", referred as "unfilled vacancies" are those which are reserved for being filled in the year in accordance with Clause (4) or Clause (4A) of Article 16 of the Constitution but remains unfilled. It is to be taken as separate class of vacancies. It may be due to non-availability of adequate number of reserve category candidates or their failure to obtain required marks in the selection, if provided.



If it is assumed that 4 per cent vacancies are to be considered as unfilled or backlog vacancies every year then with carry forward of those vacancies every year, it would accumulate and become more than 100 per cent after few years leaving no vacancy for general category.

The interpretation of Article 16(4B) of the Constitution of India, given above, needs further consideration in the light of the judgments of the Apex Court and this Court subsequent to the constitutional amendment.

The judgment in the case of M.Nagaraj & Ors. (supra) has been referred by learned counsel for respective parties. The Apex Court has considered various issues in

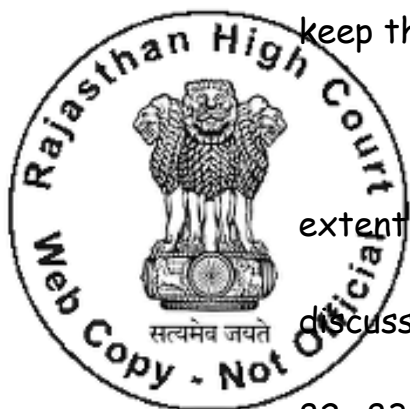
reference to Article 16(4), (4A) and (4B) of the Constitution of India apart from Articles 14, 15, 335, 368 and the Preamble of the Constitution of India. It was in the matter of promotion but general principles have been laid down by the Constitutional Bench of the Apex Court in the case supra after amendment in Article 16 of the Constitution of India.



The reference of paras 55 to 57, 85, 88, 89, 95, 112, 116, 117, 119, 121 and 123 have been given by the respondents, whereas, learned counsel for the petitioners have given reference of paras 46, 51, 100, 102 of the said judgment, however, this Court would refer the relevant paras of the said judgment for proper evolution of the issue.

In para 49 of the said judgment, the Apex Court held that reservation is necessary for transcending caste and not for perpetuating it. The reservation has to be used in a limited sense otherwise it will perpetuate casteism in the country. The observation regarding perpetuation of casteism is of relevance and to be taken into consideration in reference to passage of time, after independence. The State as well as the Central Government are required to consider as to whether continuance of reservation based on caste would

be in the interest of the country or it would perpetuate the casteism. It may divide the country based on caste and would be opposed to the idea of framers of the Constitution to keep the nation one with equality between the citizens.



In para 53 of the said judgment, the issue of extent of reservation has been framed and, thereupon, discussion was made in subsequent paras. Para Nos.53 to 59, 82, 83, 85, 88, 89 and 95 of the judgment in the case of M.Nagaraj & Ors. (supra) are quoted hereunder for ready reference :

"53. The question of extent of reservation involves two questions:

1. Whether there is any upper limit beyond which reservation is not permissible?
2. Whether there is any limit to which seats can be reserved in a particular year; in other words the issue is whether the percentage limit applies only on the total number of posts in the cadre or to the percentage of posts advertised every year as well?



54. The question of extent of reservation is closely linked to the issue whether Article 16(4) is an exception to Article 16(1) or is Article 16(4) an application of Article 16(1). If Article 16(4) is an exception to Article 16(1) then it needs to be given a limited application so as not to eclipse the general rule in Article 16(1). But if Article 16(4) is taken as an application of Article 16(1) then the two articles have to be harmonized keeping in view the interests of certain sections of the society as against the interest of the individual citizens of the society.

Maximum limit of reservation possible

55. Word of caution against excess reservation was first pointed out in ***The General Manager, Southern Railway and Anr. v. Rangachari*** Gajendragadkar, J. giving the majority judgment said that reservation under Article 16(4) is intended merely to give adequate representation to backward communities. It cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees. A reasonable balance must be struck between the claims of backward classes

and claims of other employees as well as the requirement of efficiency of administration.



56. However, the question of extent of reservation was not directly involved in *Rangachari*. It was directly involved in *M.R. Balaji and Ors. v. The State of Mysore and Ors.* with reference to Article 15(4). In this case, 60% reservations under Article 15(4) was struck down as excessive and unconstitutional. Gajendragadkar, J. observed that special provision should be less than 50 per cent, how much less would depend on the relevant prevailing circumstances of each case.

57. But in *State of Kerala and Anr. v. N.M. Thomas and Ors.* (1976)ILLJ376SC Krishna Iyer, J. expressed his concurrence to the views of Fazal Ali, J. who said that although reservation cannot be so excessive as to destroy the principle of equality of opportunity under Clause (1) of Article 16, yet it should be noted that the Constitution itself does not put any bar on the power of the Government under Article 16(4). If a State has 80% population which is backward then it

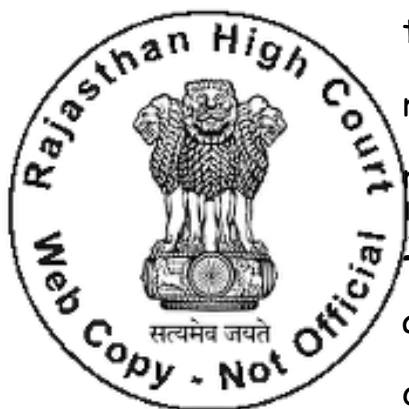
would be meaningless to say that reservation should not cross 50%.

58. However, in *Indra Sawhney* the majority held that the rule of 50% laid down in *Balaji* was a binding rule and not a mere rule of prudence.



59. Giving the judgment of the Court in *Indra Sawhney*, Reddy, J. stated that Article 16(4) speaks of adequate representation not proportionate representation although proportion of population of backward classes to the total population would certainly be relevant. *He further pointed out that Article 16(4) which protects interests of certain sections of society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be harmonised because they are restatements of principle of equality under Article 14. (emphasis added).*

82. Before dealing with the scope of the constitutional amendments we need to recap the judgments in *Indra Sawhney* and *R.K. Sabharwal*. In the former case the majority held that 50% rule should be applied to each year otherwise it may happen that the open



competition channel may get choked if the entire cadre strength is taken as a unit. However in *R.K. Sabharwal*, this Court stated that the entire cadre strength should be taken into account to determine whether the reservation up to the quota-limit has been reached. It was clarified that the judgment in *Indra Sawhney* was confined to initial appointments and not to promotions. The operation of the roster for filling the cadre strength, by itself, ensure that the reservation remains within the ceiling-limit of 50%.

83. In our view, appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that upper ceiling-limit of 50% is not violated. Further, roster has to be post- specific and not vacancy based.

85. The Supreme Court in its judgment dated 16.11.92 in *Indra Sawhney* stated that reservation of appointments or posts under Article 16(4) is confined to initial appointment



and cannot extend to reservation in the matter of promotion. Prior to the judgment in Indra Sawhney reservation in promotion existed. The Government felt that the judgment of this Court in Indra Sawhney adversely affected the interests of SCs and STs in services, as they have not reached the required level. Therefore, the Government felt that it was necessary to continue the existing policy of providing reservation in promotion confined to SCs and STs alone. We quote hereinbelow Statement of Objects and Reasons with the text of the Constitution (Seventy-Seventh Amendment) Act, 1995 introducing Clause (4A) in Article 16 of the Constitution:

THE CONSTITUTION (SEVENTY-SEVENTH AMENDMENT) ACT, 1995

STATEMENT OF OBJECTS AND REASONS.-The Scheduled Castes and the Scheduled Tribes have been enjoying the facility of reservation in promotion since 1955. The Supreme Court in its judgment dated 16th November, 1992 in the case of Indra Sawhney v. Union of India, however, observed that reservation of appointments or posts under Article 16(4) of the Constitution is confined to initial



appointment and cannot extend to reservation in the matter of promotion. This ruling of the Supreme Court will adversely affect the interests of the Scheduled Castes and the Scheduled Tribes. Since the representation of the Scheduled Castes and the Scheduled Tribes in services in the States have not reached the required level, it is necessary to continue the existing dispensation of providing reservation in promotion in the case of the Scheduled Castes and the Scheduled Tribes. In view of the commitment of the Government to protect the interests of the Scheduled Castes and the Scheduled Tribes, the Government have decided to continue the existing policy of reservation in promotion for the Scheduled Castes and the Scheduled Tribes. To carry out this, it is necessary to amend Article 16 of the Constitution by inserting a new Clause (4A) in the said Article to provide for reservation in promotion for the Scheduled Castes and the Scheduled Tribes.

2. The Bill seeks to achieve the aforesaid object.

An Act further to amend the Constitution of India

Be it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:-



1. Short title. - This Act may be called the Constitution (Seventy-seventh Amendment) Act, 1995.

2. Amendment of Article 16. - In Article 16 of the Constitution, after Clause (4), the following clause shall be inserted, namely:

(4A) Nothing in this Article shall prevent the State from making any provision for reservation in matters of promotion 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.

The said Clause (4A) was inserted after Clause (4) of Article 16 to say that nothing in the said Article shall prevent the State from making any provision for reservation in matters of promotion to any class(s) of posts in the services under the State in

favour of SCs and STs which, in the opinion of the States, are not adequately represented in the services under the State.



88. In the circumstances, Clause (4A) of Article 16 was once again amended and the benefit of consequential seniority was given in addition to accelerated promotion to the roster-point promotees. Suffice it to state that, the Constitution (Eighty-Fifth Amendment) Act, 2001 was an extension of Clause (4A) of Article 16. Therefore, the Constitution (Seventy-Seventh Amendment) Act, 1995 has to be read with the Constitution (Eighty-Fifth Amendment) Act, 2001.

89. We quote hereinbelow Statement of Objects and Reasons with the text of the Constitution (Eighty-Fifth Amendment) Act, 2001:

THE CONSTITUTION (EIGHTY-FIFTH AMENDMENT) ACT, 2001

STATEMENT OF OBJECTS AND REASONS.-The Government servants belonging to the Scheduled Castes and the Scheduled Tribes had been enjoying the



benefit of consequential seniority on their promotion on the basis of rule of reservation. The judgments of the Supreme Court in the case of Union of India v. Virpal Singh Chauhan : AIR1996SC448 and Ajit Singh Januja (No.1) v. State of Punjab : (1996)IILLJ154SC , which led to the issue of the O.M. dated 30th January, 1997, have adversely affected the interest of the Government servants belonging to the Scheduled Castes and Scheduled Tribes category in the matter of seniority on promotion to the next higher grade. This has led to considerable anxiety and representations have also been received from various quarters including Members of Parliament to protect the interest of the Government servants belonging to Scheduled Castes and Scheduled Tribes.

2. The Government has reviewed the position in the light of views received from various quarters and in order to protect the interest of the Government servants belonging to the Scheduled Castes and Scheduled Tribes, it has been decided to negate the effect of O.M. dated 30th January 1997 immediately. Mere



withdrawal of the O.M. dated 30th will not meet the desired purpose and review or revision of seniority of the Government servants and grant of consequential benefits to such Government servants will also be necessary. This will require amendment to Article 16(4A) of the Constitution to provide for consequential seniority in the case of promotion by virtue of rule of reservation. It is also necessary to give retrospective effect to the proposed constitutional amendment to Article 16(4A) with effect from the date of coming into force of Article 16(4A) itself, that is, from the 17th day of June, 1995.

3. The Bill seeks to achieve the aforesaid objects.

Received the assent of the President on the 4-1-2002

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Fifty-second Year of the Republic of India as follows:

1. Short title and commencement.- (1) This

Act may be called the Constitution (Eighty-fifth Amendment) Act, 2001.

(2) It shall be deemed to have come into force on the 17th day of June 1995.



2. Amendment of Article 16.- In Article 16 of the Constitution, in Clause (4A), for the words "in matters of promotion to any class", the words "in matters of promotion, with consequential seniority, to any class" shall be substituted.

95. By Clause (4B) the "carry-forward"/"unfilled vacancies" of a year is kept out and excluded from the overall ceiling-limit of 50% reservation. The clubbing of the backlog vacancies with the current vacancies stands segregated by the Constitution (Eighty-First Amendment) Act, 2000. Quoted hereinbelow is the Statement of Objects and Reasons with the text of the Constitution (Eighty-First Amendment) Act, 2000:

THE CONSTITUTION (EIGHTY FIRST AMENDMENT) ACT, 2000

STATEMENT OF OBJECTS AND REASONS.- Prior to August 29, 1997, the vacancies reserved for the Scheduled



Castes and the Scheduled Tribes, which could not be filled up by direct recruitment on account of non-availability of the candidates belonging to the Scheduled Castes or the Scheduled Tribes, were treated as "Backlog Vacancies". These vacancies were treated as a distinct group and were excluded from the ceiling of fifty per cent reservation. The Supreme Court of India in its judgment in the Indra Sawhney v. Union of India held that the number of vacancies to be filled up on the basis of reservations in a year including carried forward reservations should in no case exceed the limit of fifty per cent. As total reservations in a year for the Scheduled Castes, the Scheduled Tribes and the other Backward Classes combined together had already reached forty-nine and a half per cent and the total number of vacancies to be filled up in a year could not exceed fifty per cent, it became difficult to fill the "Backlog Vacancies" and to hold Special Recruitment Drives. Therefore, to implement the judgment of the Supreme Court, an Official Memorandum dated August 29, 1997 was issued to provide that the fifty per cent limit shall apply to

current as well as "Backlog Vacancies" and for discontinuation of the Special Recruitment Drive.



2. Due to the adverse effect of the aforesaid order dated August 29, 1997, various organisations including the Members of Parliament represented to the central Government for protecting the interest of the Scheduled castes and the Scheduled Tribes. The Government, after considering various representations, reviewed the position and has decided to make amendment in the constitution so that the 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) of Article 16 of the Constitution, shall be considered 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 percent, reservation on total number of vacancies of that year. This amendment in the Constitution would enable the State to

restore the position as was prevalent before August 29, 1997.

3. The Bill seeks to achieve the aforesaid object.

An Act further to amend the Constitution of India.

Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:



1. Short title: This Act may be called the Constitution (Eighty-first Amendment) Act, 2000.

2. Amendment of Article 16: In Article 16 of the Constitution, after Clause (4A), the following Clause shall be inserted, namely: -

(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."



The conclusions drawn by the Apex Court make a reference of ceiling of 50 per cent reservation apart from the concept of creamy-layer. The administrative efficiency is a constitutional requirement to maintain structure of equality of opportunity in public employment.

Para No.100 of the judgment in the case of M.Nagaraj & Ors. (supra) concludes with following finding : As stated above, Article 16(4B) lifts the 50% cap on carry-over vacancies (backlog vacancies). The ceiling- limit of 50% on current vacancies continues to remain.

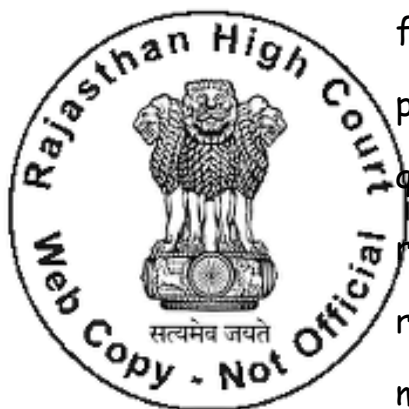
Para 123 of the judgment is also relevant where following conclusion was drawn : It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely. The ceiling of 50 per cent is thus reiterated therein while upholding the amendment in Articles 16(4A) and 16(4B).

In the case of Ashoka Kumar Thakur (supra), various issues were considered again, which includes, as to whether identification of backward classes can be based on "caste". After considering various judgments of the Apex Court, it was held that "caste" cannot be the sole basis for identification of backward classes and if it is determined based on caste alone, it would violate Article 15(1) of the Constitution of India. The caste was, however, permitted to be starting point to find out as to whether the "caste" as a whole can be classified as a backward class. In view of the aforesaid, the "caste" can be taken into consideration to find out backwardness but it cannot be the sole basis, otherwise, it will hit Articles 15(1) and 16 of the Constitution of India.



In the case of *Anil Chandra & Ors. Vs. Radha Krishna Gaur & Ors.* reported in *2009 (9) SCC 454* same issue was decided. Para Nos.17 & 18 of the said judgment are quoted hereunder for ready reference :

"17. In the present case and in the facts and circumstances stated herein earlier, we are of the view that it was the constitutional obligation of the State, at the time of providing reservation in the matter of



promotion to identify the class or classes of posts in the service for which reservation is required, however, neither any effort has been made to identify the class or classes of posts for which reservation is to be provided in promotion nor any exercise has been done to quantify the extent of reservation. Adequate reservation does not mean proportional representation. Rule 8(A) has been inserted mechanically without taking into consideration the prerequisites for making such a provision as required under Article 16(4A) of the Constitution of India. 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. However, in this case, as stated, the main issue concerns the "extent of reservation" and in this regard, the State should have shown the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for reservation.

18. As observed in *M. Nagaraj and Ors. v. Union of India and Ors.*(SCCP. 278, PARA 123) , it has been held that :



"123.....The State is not bound to make reservation for SC/ST 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 of the Constitution. It is 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."

The paras, quoted above, show the extent of reservation. The judgment in the case of *M.Nagaraj & Ors.* (supra) has been referred to show ceiling of 50 per cent under Article 16(4B) of the Constitution on vacancy of the year. It is also held that reservation cannot be provided on

proportional representation.

The judgment in the case of Suraj Bhan Meena (supra) has also been referred by learned counsel for the petitioners to support their arguments. The Apex Court in the said judgment held that quantifiable data is a condition precedent to show inadequate representation of members of Scheduled Castes and Scheduled Tribes. The reservation without quantifiable data would be illegal.



The other judgment referred by learned counsel for the petitioners is in the case of UP Power Corporation (supra). Para No.81 of the said judgment is quoted hereunder where conclusion on the various issues has been drawn by the Apex Court :

"81. From the aforesaid decision in M. Nagaraj Case and the paragraphs we have quoted hereinabove, the following principles can be carved out:

- (i) Vesting of the power by an enabling provision may be constitutionally valid and yet 'exercise of power' by the State in a given case may be arbitrary, particularly, if the State fails to

identify and measure backwardness and inadequacy keeping in mind the efficiency of service as required under Article 335.



(ii) Article 16(4) which protects the interests of certain sections of the society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be harmonized because they are restatements of the principle of equality under Article 14.

(iii) Each post gets marked for the particular category of candidates to be appointed against it and any subsequent vacancy has to be filled by that category candidate.

(iv) The appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that the upper ceiling-limit of 50% is not violated. Further roster has

to be post-specific and not vacancy based.



(v) The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4A) of Article 16 is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4A). Therefore, Clause (4A) will be governed by the two compelling reasons - "backwardness" and "inadequacy of representation", as mentioned in Article 16(4). If the said two reasons do not exist, then the enabling provision cannot be enforced.

(vi) If the ceiling-limit on the carry-over of unfilled vacancies is removed, the other alternative time-factor comes in and in that event, the time-scale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the time-scale is not kept, then posts will continue to remain vacant for years

which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the duration depending upon the fact-situation.



(vii) If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335, then this Court will certainly set aside and strike down such legislation.

(viii) The constitutional limitation under Article 335 is relaxed and not obliterated. As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on the facts of each case.

(ix) The concepts of efficiency, backwardness and inadequacy of representation are required to be identified and measured. That exercise depends on the availability of data. That exercise depends on numerous factors. It is for this reason that the enabling

provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimize these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment.



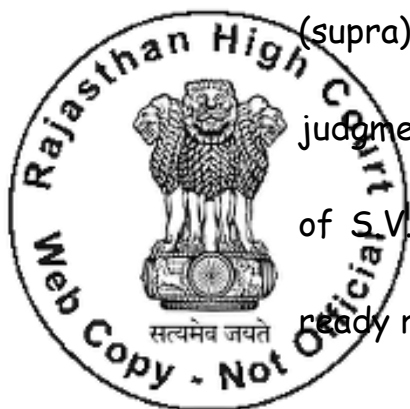
- (x) Article 16(4), therefore, creates a field which enables a State to provide for reservation provided there exists backwardness of a class and inadequacy of representation in employment. These are compelling reasons. They do not exist in Article 16(1). It is only when these reasons are satisfied that a State gets the power to provide for reservation in the matter of employment.

The summary of the conclusions shows as to how and up to what extent reservation can be provided.

The judgment in the case of S.V.Joshi & ors. (supra) has been relied by learned Solicitor General of India so as the private respondents. The reservation can exceed

the ceiling of 50 per cent if quantifiable data are available with the State Government. The reference of earlier judgments of the Apex Court in the case of M.Nagaraj & Ors.

(supra) and Ashoka Kumar Thakur (supra) apart from other judgments has been given in para 13 of judgment in the case of S.V. Joshi & Ors. (supra), which is quoted hereunder for ready reference :

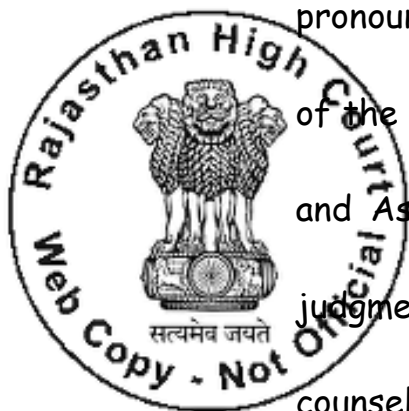


"13. Further, after the filing of the writ petition, various pronouncements have been made by the judgments of the Constitution Benches of this Court in M.Nagaraj v. Union of India and Ashoka Kumar Thakur v. Union of India. Under the said decisions, which have been rendered in the light of the Constitution (Eighty-first Amendment) Act, 2000 and the Constitution (Ninety-third Amendment) Act, 2005, reservation exceeding fifty per cent could be made only on the basis of quantifiable data before the Government. It appears that till today, this exercise has not been undertaken and the State Government has not collected the quantifiable data.

It has not presented such data before the Court."

The writ petition therein was filed before pronouncement of the judgment by the Constitutional Bench of the Supreme Court in the case of M.Nagaraj & Ors. (supra) and Ashoka Kumar Thakur (supra). The reference of those judgments has been given in the para quoted above. Learned counsel appeared therein did not make a reference of Article 16(4B) of the Constitution of India though, reference of the constitutional amendment has been made. Para 10 of the judgment in the case of S.V.Joshi & Ors. (supra) is quoted hereunder, which clarify that State action should be subject to the subsequent judgment of the Apex Court in the cases referred above thus the judgment aforesaid has to be read in reference to the aforesaid :

"10. We may state that, subsequent to the filing of this writ petition in 1994, Article 15 and 16 of the Constitution have been amended vide the Constitution (Ninety-third Amendment) Act, 2005 and the Constitution (Eighty-first Amendment) Act, 2000, respectively. Moreover, subsequent decisions in



M.Nagaraj v. Union of India and Ashoka Kumar Thakur v. Union of India, are also required to be kept in mind by the State Government, if at all, it seeks to pass any other order in near future."



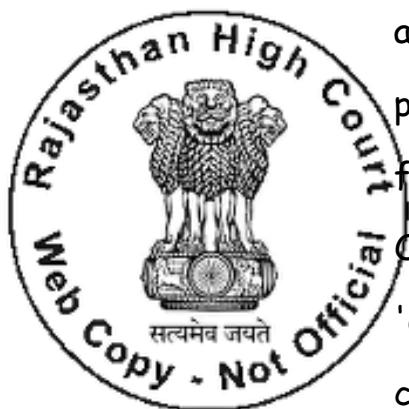
The judgment of the Apex Court in the case of M. Nagaraj (supra) held ceiling of 50 per cent on reservation in reference to Article 16(4B) of the Constitution (see para 100, 110 and 121 to 124).

The judgment in the case of B.Archana Reddy & Ors. (supra) has also been relied. Para Nos. 191 & 192 of the said judgment are quoted hereunder for ready reference :

"191. This point requires consideration of two aspects. Accepting the recommendation of B.C. Commission, the impugned Ordinance provides 5% reservation for Muslims over and above the existing 46% reservation. With this, 51 % of the positions in educational institutions and public employment would become reserved. According to the learned Counsel, reservation of 51 % is unreasonable and violates Articles 15(4) and 16(4) as well as Balaji principle approved by Indra Sawhney I. Per contra, two



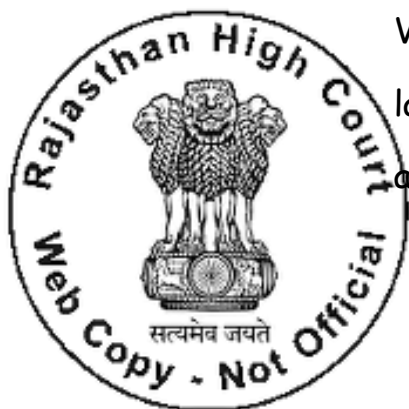
submissions are made on behalf of the respondents. The learned Advocate General for the State would contend that provision of reservations for Muslims by declaring them as backward is valid. The same cannot be defeated by the quantum of reservation provided, in which event, the Court can always approve the reservations in favour of Muslims and leave it to the State to work out the percentage of reservation in the manner construed by the Court. So to say as an alternate submission he would urge to consider retaining Section 3 and severing Sections 4 and 5 of the Ordinance which provides 5% reservation. The other learned Counsel supporting the Ordinance are emphatic that provision of 51% reservation including 5% for Muslims does not in any manner impinge the law declared by the Supreme Court. According to the learned Counsel, the extra 1% is saved by the prevalent "extraordinary situation" referred to by the Supreme Court in paragraph 810 of *Indra Sawhney I*. Sri R.K. Dhawan, learned Senior Counsel appearing for one of the interveners in W.P.No. 13832 of 2005 would urge that the excess over 50% being only 1% is 'de minimis' ('De minimis' means "the Law does not care for or take



notice of very small or trifling matters", (see Black's Law Dictionary; 1990 edn. p.431)), that Muslim population being 9.25%, provision of 5% reservation to them cannot be said unjustified and that percentages are to be reviewed on periodical basis and therefore, would not furnish the valid ground for invalidation of the Ordinance. We may mention that doctrine of 'de minimis' has no application when the constitutional guarantee to equality and equal protection of laws is flouted with impunity, without any justification. If 1 % excess reservation cannot be sustained on any such ground, de minimis is not available. (See Indian Bank's Association v. Devkala Consultancy Service [2004] 267 ITR 179(SC)).

192. In Balaji, the Supreme Court adverted to question of reasonableness of reservation exceeding 50%. On the premise that Clause (4) of Article 15 and Clause (4) of Article 16(4) being in the nature of exception, it was held that a special provision contemplated under these clauses must be within reasonable limits. The Court then 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

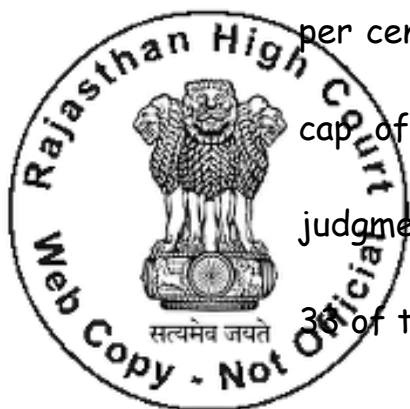
circumstances in each case". The view that enabling provision in two articles is an exception was not accepted in Thomas. But, rule of 50% reservation survived in Thomas, Vasanth Kumar and Indra Sawhney I. In the last cited decision, majority explained this rule as under.



While 50% shall be the rule, it is necessary not to put out of 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. (emphasis supplied)"

A reference of the order in the case of ***Shri Sanjeet Shukla Vs. State of Maharashtra & Ors.*** in ***Civil Appellate Jurisdiction Public Interest Litigation (S)***

No.20360/2014 dated 14th November, 2014 has also been given. In the said case also, width of reservation was considered. The reservation was provided to the extent of 73 per cent. The Bombay High Court framed the question about cap of 50 per cent reservation. The summary of all the judgments of the Apex Court has been given in para Nos.12 to 36 of the order.



In the case of *M. Nagaraj & Ors. (supra)*, the Supreme Court directed the concerned State to show compelling reasons in the form of quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment, in addition to compliance of Article 335 of the Constitution of India for maintaining administrative efficiency. Thus, the direction in the case of *M.Nagaraj (supra)* was for collection of quantifiable data to show backwardness of the class and inadequacy of representation of that class in public employment for the purpose of justifying the extent of reservations in favour of that class even within 50 per cent ceiling limit of reservations.

Moreover, as recently as on 15 July 2014 in *Rohtas Bhankhar vs. Union of India* reported in 2014(8) SCC 872, another Constitution Bench of the Supreme Court has reiterated the conclusions recorded in the case of M. Nagaraj & Ors. (supra).



For the aforesaid reasons, prima facie, we are of the view that in matters of reservation of appointments/posts in public services, after the constitutional amendments in the year 2000, the Supreme Court has laid down a constitutional mandate that "the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling limit of 50 per cent. In view of the law laid down by the Supreme Court in such emphatic terms, no exceptions are permitted.

The order of the Bombay High Court in the case of Sanjeet Shukla (supra) was not interfered by the Apex Court on its challenge. The observation about ceiling limit of 50 per cent given under Article 16(4B) of the Constitution of India has been endorsed without exception. Therein, the judgment in the case of *Rohtas Bhankhar (supra)* has also been referred.

The judgment in the case of Ram Singh & Ors. (supra) was on the reservation to "Jaats" and has been struck down by the Apex Court. It includes reservation to Jaats of Dholpur and Bharatpur in OBC category in the State of Rajasthan also.



The summary of the judgments, referred above, reveals that ceiling of 50 per cent on reservation is a rule, excess to it can be in extra ordinary situation, which should be based on quantifiable data.

The constitutional amendment thereupon in Article 16 (4B) of the Constitution, however, does not show permissibility of reservation above 50 per cent for the vacancies of the year. The exception is for backlog vacancies. If true meaning of the constitutional provisions is taken, ceiling of 50 per cent for the vacancies of the year, in which, it is to be filled, exists. The State cannot provide reservation beyond 50 per cent of the vacancies of the year, in which, it is to be filled. The judgment on the constitutional amendment shows permission to cross the ceiling of 50 per cent in a given case but learned counsel, appearing in those cases, did not refer to basic structure of the amended provisions of Article

16(4B) of the Constitution of India and, in any case, ceiling of 50 per cent of the reservation needs to be applied as a rule on the vacancies of the year, in which, it is to be filled.

Article 16(4B) of the Constitution puts a cap of 50 per cent on reservation on the vacancies of the year. To consider, para Nos.100, 110 and 121 to 124 in the case of M. Nagaraj & Ors. (supra) are quoted hereunder and is an answer to the question:



"100. As stated above, Article 16(4B) lifts the 50% cap on carry-over vacancies (backlog vacancies). The ceiling-limit of 50% on current vacancies continues to remain. In working-out the carry-forward rule, two factors are required to be kept in mind, namely, unfilled vacancies and the time factor. This position needs to be explained. On one hand of the spectrum, we have unfilled vacancies; on the other hand, we have a time-spread over number of years over which unfilled vacancies are sought to be carried-over. These two are alternating factors and, therefore, if the ceiling-limit on the carry-over of unfilled vacancies is removed, the other alternative time-factor comes in and in that event, the time-scale has



to be imposed in the interest of efficiency in administration as mandated by Article 335. If the time-scale is not kept then posts will continue to remain vacant for years, which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the time-cap depending upon the fact-situation. What is stated hereinabove is borne out by Service Rules in some of the States where the carry-over rule does not extend beyond three years.

110. As stated above, the boundaries of the width of the power, namely, the ceiling-limit of 50% (the numerical benchmark), the principle of creamy layer, the compelling reasons, namely, backwardness, inadequacy of representation and the overall administrative efficiency are not obliterated by the impugned amendments. At the appropriate time, we have to consider the law as enacted by various States providing for reservation if challenged. At that time we have to see whether limitations on the exercise of power are violated. The State is free to exercise its discretion of providing for reservation subject to



limitation, namely, that there must exist compelling reasons of backwardness, inadequacy of representation in a class of post(s) keeping in mind the overall administrative efficiency. It is made clear that even if the State has reasons to make reservation, as stated above, if the impugned law violates any of the above substantive limits on the width of the power the same would be liable to be set aside.

CONCLUSION:

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 OBC on one hand and SCs and STs on the other hand as held in *Indra Sawhney*, the concept of post-based Roster with in-built 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, the main issue concerns the "extent of reservation". In this regard the concerned State 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 SC/ST in matter of promotions. However if they



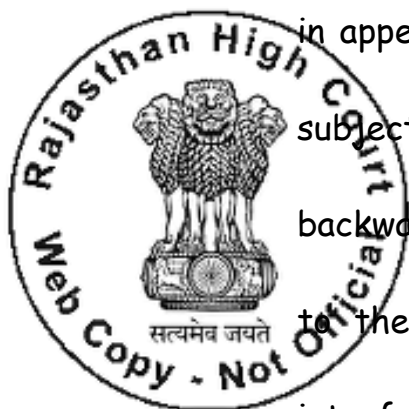
wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling 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.

124. Subject to above, we uphold the constitutional validity of the Constitution (Seventy-Seventh Amendment) Act, 1995, the Constitution (Eighty-First Amendment) Act, 2000, the Constitution (Eighty-Second Amendment) Act, 2000 and the Constitution (Eighty-Fifth Amendment) Act, 2001."

In the light of the discussion made above, we hold that as per Article 16(4B) of the Constitution of India, ceiling of 50 per cent on reservation on the vacancies of the year, in which they are to be filled, exists. The exception is for the backlog or unfilled post/s of previous year/years.

Extent of Judicial Review :

It is urged on behalf of the State and the protagonists of the Act of 2015 that this Court does not sit in appeal over the expert analysis by the Commission or the subjective satisfaction of the State with regard to backwardness of five castes. All these areas are consecrated to the realm of the policy choices of the State and no interference is called for.



In Indra Sawhney's case, after tracing the meandering course of review standard applications by the U.S. Supreme Court, from *De Funis v. Charles Odegaard* 416 US 312 (1974) to *Metro Broadcasting Inc v. Federal Communications Commission*, 497 US 547 (1990), no single, uniform pattern of thought can be discerned from these decisions and the ideas appear to be still in the process of evolution. (*Indra Sawhney*, para 732). Dealing with the question as to the extent of judicial review in issues of identification of Backward Classes and the percentage of reservations made for such classes, it was observed that there is no particular or special standard of judicial scrutiny in matters arising under Articles 15(4) and 16(4). The extent

and scope of judicial scrutiny depends upon the nature of the subject-matter, the nature of the right affected, the character of the legal and constitutional provisions applicable and so on.

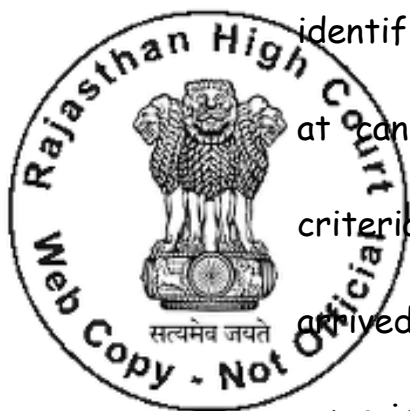


It was considered whether the policy of the Government could be subject to judicial review. Referring to the arena of Supreme Court judgments on the extent of judicial review of the policy choices of Government, the Apex Court in the case of Indra Sawhney (supra) held that the action of the Government making a provision for reservation in favour of any Backward Class of citizens is a matter of policy of the Government; what is best for the Backward Classes and in what manner the policy should be formulated and implemented bearing in mind the object to be achieved by such reservations is a matter for decision exclusively within the province of the Government and such matters do not ordinarily attract the power of judicial review, except on settled grounds(perversity and the like).

Sawant, J. reiterated the decision adopted by Jeevan Reddy. J and concluded that there are no special principles of judicial review nor does the scope of judicial

review expand when the identification of Backward Class and the percentage of reservations kept for them is called in question. So long as the correct criterion for the identification of Backward Class is applied, the result arrived at cannot be questioned on the ground that other valid criteria was also available for such identification. The result arrived at even if marginally defective would not violate the exercise; No method is perfect when sociological findings are in issue. It was, however, emphasised that when the criterion applied for identifying Backward Class is either perverse or per se defective or unrelated to such identification and even if, it is not calculated to give the result or is calculated to give, by the very nature of the criterion, a contrary or unintended result, the criterion is open for judicial examination.

It is the State which has to form an opinion whether the conditions postulated for reservations are satisfied, however, the satisfaction on the basis of which an opinion is formed by the State must be rationally supported by objective criteria; considering all relevant matters and eschewing all irrelevant matters; after a proper assessment



of the competing claims of classes of citizens. It should evaluate relative backwardness before the conclusion that particular classes of citizens are so backward and so inadequately represented in the public services as to be worthy of special protection by means of reservation. It was held that State action, whether legislative or executive, is open to challenge if in conflict with the Constitution, the governing Act or the general principles of the land or is so arbitrary and unreasonable that no fair-minded authority would ever have made it.



After a brief survey of the standards of judicial review and scrutiny applied to test suspect classifications by the U.S. decisions, held that though the State has substantial latitude in determination of either backwardness or the inadequacy of representation, if the principles for identification are invalid, the classification violates constitutional limits, if the analysis is illegal and invalid or the policy is adopted for extraneous considerations, the Court could apply the corrective. The legality must be weighed alongside the guaranteed rights to citizens and the Court may "smoke out" any illegitimate use or transgression of the

constitutional limits.

From an analysis of the several opinions in the case of Indra Sawhney (supra), as to the appropriate standards of judicial review in matters pertaining to affirmative action, it appears to us that the area is broadly left open. What is clear however is that the extent and level of scrutiny is relative to the legal or constitutional right and interest involved in a specific claim, presented before the Court.

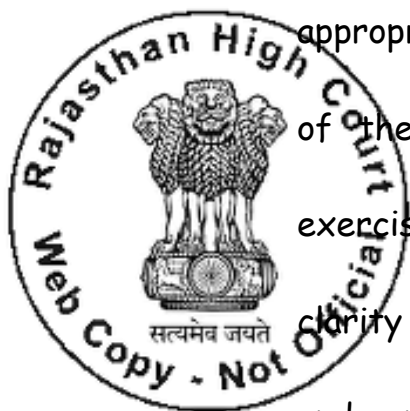


When a reservation policy of the State is challenged, several issues fall into consideration. These are;

- (a) The constitutional limits within which State action may be pursued, such as the explicit or clearly implied constitutional prohibitions as to classificatory parameters;
- (b) The relevance or rationality of the criteria adopted by the State or an expert body accredited by the State to perform the exercise.
- (c) The adequacy (in legal terms) of the data considered in the exercise;
- (d) The rationality of the synthesis between the evolved criteria and the collected data, for analysis; and

(e) The rationality of the conclusions arrived at by the expert body and the decision of the State.

In our considered view, identification of an appropriate standard of review, relevant to the examination of the several steps and aspects involved in the State exercise of declaration of a Special Backward Class, lends clarity to the task of judicial review and advances coherence and consistency to litigative outcomes. In view of the above, judicial review is not barred but jurisdiction would be limited to the issues given above.



On the Report of SBC Commission :

The SBC Commission was reconstituted by the order dated 07th/08th June, 2012 and the Commission submitted its report in the month of November, 2012, i.e., after four months of its constitution. The report is divided in ten chapters to deal with different heads.

The procedure adopted by the SBC Commission is given in Chapter three. A reference of the report submitted by the IDS apart from primary and secondary data collected in relation to Backward/Special Backward Classes has given given. The State Government was requested to supply

comparative caste-wise data to find out representation of 82 castes. Reference of various judgments and objections made by Captain Gurvinder Singh and Samta Andolan Samiti, etc. has been given.

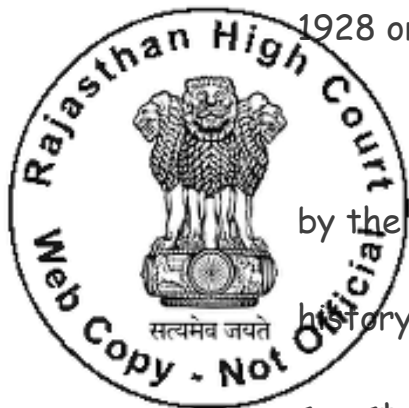


Chapter Four refers to the memorandums for reservation of Special Backward Classes. The Commission has dealt with the representation of (i) Gujjar/Gurjars caste followed by (ii) Raika, Raibari (Debasi) caste, (iii) Banjara, Baladia, Labana caste, (iv) Gadia Lohar, Gadolia caste and (v) Gadaria (Gadari), Gayri caste.

In Chapter Five, the objections and arguments of the petitioners and others have been referred.

Chapter Six speaks about traditional and social background of castes referred above. In the said Chapter, consideration is mainly as to whether those castes fall in the category of Nomadic/Pastrolist. The perusal of the report shows reference of old record and literature to hold them to be Nomadic. It is not making reference of the present status of all the five castes or even of last ten years. The SBC Commission has drawn its conclusions based on the old material, which may not be so relevant for the status of those

castes at present. The literature taken into consideration is of "Rajputane ka Itihas" written by Gouri Shanker Heera Chand Ojha, Vikram Samvat 1993, which comes to the year 1928 or 1929.



A reference of "Ramayan Era" has also been given by the Commission without realising that they are not to write history of different castes. The Commission was expected to see status of the castes in relevant era. It may be of past ten years from the year 2012 or may be of 20 years. A reference of census of 1931 has also been given, though, the Apex Court has directed to re-consider the status of the castes every ten years. The Commission thus failed to make consideration in reference to the judgment of the Apex Court. It is when all the five castes are getting benefit of reservation for last few decades.

Chapter Seven refers to the reports given by various Commissions and Committees. The indicators used by the Mandal Commission have also been referred. The basis to include Gurjar/Gujjar, Banjara, Raibari, Gadia Lohar, etc. in the category of special backward class has been taken into consideration.

A further reference of the report of Justice Jasraj Chopra Committee has been given for inclusion of Gurjar/Gujjar community in Scheduled Tribes apart from the report of Justice Shashikant Sharma Committee.



In Chapter Eight, analysis of the judgments of the Apex Court has been made. The consideration of quantifiable data given by the State Government for reservation to five castes in Special Backward Class has been considered in Chapter Nine. Chapter Ten draws conclusion and makes recommendations. Therein, the report submitted by IDS has been discussed thoroughly.

The IDS was directed to make assessment of 82 castes and to submit report within six months. A survey was to be made by applying scientific method but, according to the report of SBC Commission, the IDS failed to apply scientific method, while making survey. The relevant part of the said report is quoted hereunder for ready reference :

“समझौते में यह शर्त थी कि इन जातियों का सर्वे करने के लिए नमूना सर्वे तकनीक अपनायी जाएगी और संस्थान द्वारा प्रयुक्त वैज्ञानिक विधियों से



परिणाम का निष्कर्ष निकाला जाएगा। यह भी शर्त थी कि सर्वे माननीय उच्च न्यायालय द्वारा निर्देशित मानदण्डों/संकेतकों को ध्यान में रखकर किया जायेगा, अर्थात् इसमें सामाजिक पिछड़ापन, शैक्षणिक पिछड़ापन एवं सरकारी नौकरियों में प्रतिनिधित्व इत्यादि का समावेश होगा। परन्तु रिपोर्ट के विश्लेषण से यह तथ्य सामने आया कि सर्वे में जो नमूना विभिन्न जाति/वर्गों का शहरी एवं ग्रामीण क्षेत्र का लिया गया उसमें वैज्ञानिक विधि या आनुपातिक सूत्र का अभाव था। नमूना लिए जाने में उस जाति की राज्य में जनसंख्या प्रतिशत के संकेतक को भी काम में नहीं लिया गया एवं ना ही ग्रामीण नमूने व शहरी नमूने का कोई आनुपातिक सूत्र काम में लिया गया जो कि निम्न सारिणी से स्पष्ट है।"

The SBC Commission considered various survey reports submitted by IDS. It was found to be contrary or against the public opinion in reference to various castes. The SBC Commission thus asked the IDS to clarify various issues, which were replied by IDS on 26th October, 2012. Relevant part of SBC Commission report, referring to the clarifications by IDS is also quoted hereunder for ready reference :

“अतः आयोग ने विकास अध्ययन संस्थान, जयपुर के



निदेशक से यह सूचना एवं स्पष्टीकरण प्राप्त किया कि उपरोक्त सूचकांक के निर्धारण में किन-किन संकेतकों को क्या-क्या वरीयता दी गई? सर्वे के दौरान विभिन्न जाति/वर्गों के परिवारों व व्यक्तियों की संख्या का निर्धारण शहरी एवं ग्रामीण सर्वे परिवारों का प्रतिशत का निर्धारण क्या रखा गया एवं सन् 1931 की जनगणना में विभिन्न जातियों की अनुपातिक जनसंख्या के संकेतकों को क्या वरीयता दी गई? इन सभी बिन्दुओं पर पुनः विचार कर सर्वे की प्रश्नावली में पूछे गये प्रश्नों को संख्यात्मक विश्लेषण (Quantitative Analysis) के दौरान जो सूचकांकों की गणना की गई व संख्यात्मक विश्लेषण (Quantitative Analysis) में जो अभिवृत्तीय विश्लेषण (Attitudinal Analysis) एवं अन्तर्निहित वस्तु विश्लेषण (Content Analysis) किया गया उनमें किन-किन संकेतकों को कितना-कितना महत्व दिया गया व उपरोक्त विश्लेषण में विभिन्न आयोगों द्वारा अपनाये गये मापदण्ड को किस प्रकार से मूल्यांकन में काम में लिया गया आदि बिन्दुओं को विचारार्थ समावेशित कर स्थिति स्पष्ट करें।

विकास अध्ययन संस्थान द्वारा दिनांक 26.10.2012 को इस सन्दर्भ में प्रेषित स्पष्टीकरण में स्पष्ट किया

कि सर्वे के दौरान निम्न व्यवहारिक कठिनाईयां रही:-



(1) अज्ञात सूचना आधार पर सर्वे किया गया। सन् 1931 की जनगणना के अलावा ओबीसी की जनसंख्या बाबत अन्य कोई सूचना उपलब्ध नहीं थी।

(2) 81 पिछड़ी जाति वर्ग की शहरों में व गांवों में कितनी-कितनी प्रतिशत जनसंख्या मौजूद है यह सूचना उपलब्ध नहीं थी। जिसके कारण किसी जाति वर्ग का प्रतिनिधित्व सर्वे में (असमान अर्थात बहुत ज्यादा एवं बहुत कम) रहा जिस कारण से सूचकांक का निर्णय अन्यथा प्रभावित रहा।

(3) कुछ जाति पिछड़ा वर्ग केवल शहरों में ही मिले व कुछ जाति वर्ग केवल गांवों में ही मिले, जिससे असमान प्रतिनिधित्व सर्वे के दौरान आया जिस कारण सर्वे अन्यथा प्रभावित रहा।

(4) कई पिछड़ा वर्गों के आवास की स्थिति की जानकारी नहीं थी जिसके कारण जानकार

व्यक्तियों की सहायता ली गई। नतीजा यह रहा कि सांयोगिक (Random) सर्वे के स्थान पर सोद्देश्य नमूना (Purposive Sampling) व्यवस्था काम में ली गई। जिससे भी परिणाम प्रभावित रहा।



(5) परिणामस्वरूप 25 अति पिछड़ा वर्ग जातियों का इस सर्वे के दौरान 5 घरों से 46 घरों के सर्वे के आधार पर तुलनात्मक निष्कर्ष निकाला, जिससे तुलनात्मक निष्कर्ष अन्यथा प्रभावित हुआ। विकास अध्ययन संस्थान ने यह माना कि इन कारणों से कतिपय निर्णय आम जन धारणा के अनुरूप नहीं जा सके एवं इसके लिए संस्थान ने जिन जाति पिछड़ा वर्ग/जाति के 100 से कम घरों का सर्वे किया, उसके आधार पर अन्य जातियों से तुलनात्मक सूचकांक को सही नहीं मानते हुए उन 25 अति पिछड़ा जातियों/वर्गों का सूचकांक व शेष जाति/वर्गों का सूचकांक अलग तैयार किया गया।

(6) जो सर्वे किया गया वह उस परिवार द्वारा स्वयं बताई गई सूचना पर आधारित है एवं इसमें परिवार द्वारा दी गई सूचना का कहीं भी प्रति परीक्षण (Cross Examination) नहीं किया

गया।"

The SBC Commission discarded the survey report for 25 castes holding it to be improper and, after naming those castes, following observations were made, which are also quoted hereunder for ready reference :



“जिनका सूचकांक का निर्धारण तो किया गया है परन्तु सर्वे में इनमें 100 घरों से कम का सर्वे किया गया है। उपरोक्त सूचकांक के आधार पर 3 जाति/वर्ग का सूचकांक उपरोक्त 5 विशेष पिछड़ी जातियों से ज्यादा है। जिनमें नट (गैर हिन्दू) का सूचकांक 45.84 है। परन्तु सर्वे में इनका केवल 13 ग्रामीण व 9 शहरी अर्थात 22 घरों के सर्वे के आधार पर तुलनात्मक सूचकांक परिगणित किया जिसकी वजह से सही निष्कर्ष नहीं निकाला जा सकता। इसी प्रकार मोगिया/मोग्या का सूचकांक ग्रामीण 65 परिवार व शहरी शून्य कुल 65 परिवारों के आधार पर निकाला गया है तथा खेरवाल जाति वर्ग का सूचकांक 62.82 है जो कि ग्रामीण 40 व शहरी शून्य कुल 40 परिवारों के आधार पर निकाला गया है। उपरोक्त तीनों जाति/वर्गों के सूचकांक कम परिवारों के सर्वे एवं शहरी तथा ग्रामीण का



सही अनुपात नहीं लेने के कारण दूषित माना जाकर इन सभी 25 वर्ग/जाति का विस्तृत सर्वे कर पिछड़ेपन के सूचकांक नये सिरे से आधारित करने की आवश्यकता है। अतः अध्ययन संस्थान द्वारा इन 25 जाति/वर्गों के पिछड़ेपन पर प्राप्त निष्कर्ष सत्यता से परे हैं एवं पुनः निर्धारण आवश्यक है।

आयोग का निष्कर्ष रहा है कि असमान एवं अपर्याप्त सर्वे के निष्कर्षों के आधार पर उपरोक्त 25 वर्गों के तुलनात्मक पिछड़ेपन का सूचकांक निर्धारण का निर्णय सही नहीं आ सकता।"

The final observation of SBC Commission in reference to the report of IDS shows that proper survey was not conducted by IDS and it decided to call for the details of representation of various castes in the State services and educational institutions. Relevant part to call for the report from the Government after making comments on the report of IDS is also quoted hereunder :

“विकास अध्ययन संस्थान ने उपरोक्त जो सर्वे किया उसके निष्कर्ष आंकलन में सर्वे की निम्न

सीमाओं से अत्यन्त प्रभावी रहे हैं:-

- (1) सर्वे टीम ने जो सैम्पल सर्वे किया है उसमें 13 जातियों का तो शहरी क्षेत्रों में एक भी घर का सर्वे नहीं किया गया। ये जातियां हैं गडरिया, सिन्धी मुसलमान, डांगी, काछी, लोधी (लोधा), मोगिया (मोग्या), राठ, खेरवा, लोधे तंवर, कोतवाल, खेलदार, हेला, जागरी।



इसी तरह से 4 जातियों का ग्रामीण क्षेत्र में एक भी घर का सर्वे नहीं हुआ। ये हैं मोची (गैर हिन्दू), सिकलीगर, ठठेरा व चूनगर।

- (2) इसी तरह से 16 जातियों का शहरी क्षेत्र में एक से 10 घरों के बीच का ही सर्वे किया गया है जिनमें कन्बी/कल्वी/पटेल/पाटीदार, अन्जना/डांगरी पटेल/कुलमी, धाकड़, विशनोई, मेव, रायसिख, चारण सौंधिया, किरार खारोल, घांची, बागरिया, गद्दी, मुलतानी, नट तमोली, एवं चूनगर।

इसी तरह से ग्रामीण क्षेत्र में 11 जातियां

ऐसी भी हैं जिनमें कुल 1 से 10 परिवारों के बीच का ही सर्वे हुआ है जिनमें गाडित नागौरी, कूंजडा, फारूकी भटियारा, न्यारिया, पटवा, सिलावट, सतिया सिन्धी सपेरा (गैर हिन्दू), सिरकीवाल, हैला, जागरी है।



(3) शहरी क्षेत्रों में 8 जातियां गिरी, मैर, मदारी, चोबदार, सतिया सिन्धी, सपेरा, सिरकीवाल, ठठेरा एवं ग्रामीण क्षेत्र की 4 जातियां भडभूजा, नट, तमोली खेलदार का भी मात्र 11 से 20 परिवारों का ही सर्वे किया गया है।

उपरोक्त अध्ययन के विश्लेषण से आयोग इस निष्कर्ष पर पहुंचा कि इतने कम सर्वे के आधार पर जहां 81 जाति/वर्गों में से 13 जातियों का तो शहरी तथा 4 जातियों का ग्रामीण में किसी भी घर का सर्वे नहीं हुआ है, 27 जातियां जिनमें 16 शहरी और 11 ग्रामीण में से 1 से 10 घरों के बीच का सर्वे हुआ व 12 जातियां जिनमें 8 शहरी व 4 ग्रामीण का 11 से 20 घरों के बीच का सर्वे हुआ, इतने कम सर्वे में इन जातियों के बारे में सर्वे के आधार पर किसी निष्कर्ष पर पहुंचना



न्यायोचित नहीं होगा। इसके साथ ही सर्वे में मुख्य पैरामीटर यह भी रहा कि टीम ने जो सर्वे किया उसमें उत्तरदाता ने जो बताया उसकी बिना सन्तुष्टि/सम्पुष्टि के ही विश्वास करके उसी के आधार पर निष्कर्ष दिया है। साथ ही सर्वे की एक खामी यह भी रही है कि सरकारी सेवा के बाद में जो ग्रामीण शहरों में निवास करने लग गये उनका शहरों में सर्वे नहीं हुआ एवं गांव में भी सर्वे नहीं हुआ। इस कारण भी सर्वे से उस क्षेत्र के निवासियों का सरकारी नौकरियों में प्रतिनिधित्व की सही स्थिति का आंकलन नहीं किया जा सकता।

अतः आयोग ने यह निर्णय लिया कि राज्य सरकार में नियुक्त सरकारी नौकरियों में पिछड़ा वर्ग की 81 जातियों के जातिवार आंकड़े प्राप्त किये जाये। इस सम्बन्ध में सदस्य सचिव ने मुख्य सचिव एवं प्रमुख शासन सचिव, कार्मिक को उपरोक्त आंकड़े उपलब्ध करवाने हेतु कहा। प्रमुख शासन सचिव, कार्मिक ने यह बताया कि चयन सूची में अन्य पिछड़ा वर्ग ही लिखा होता है तथा जातिवार चयन सूची तैयार नहीं होती है। अतः अन्य पिछड़ी जातियों का जातिवार



नौकरियों में विवरण एकत्रित करना बहुत मुश्किल काम है। क्योंकि सभी जिलों व सभी विभागों से जातिवार आंकड़े प्राप्त करने में कम से कम 6 माह का समय लगने की संभावना है। आयोग ने पुनः इस पर विचार किया और यह निर्णय लिया कि प्रमुख प्रमुख विभागों में गत 5 वर्ष में राजस्थान लोक सेवा अयोग से जो नियुक्तियां हुई हैं वे मुख्यतः प्रथम व द्वितीय श्रेणी की हैं। विभागों से उन नियुक्तियों के कुल पदों, अन्य पिछड़ा वर्ग के लिए रिजर्व पद, सामान्य पदों के विरुद्ध अन्य पिछड़ा वर्ग के चयन, कुल अन्य पिछड़ा वर्ग का चयन और उनका जातिगत एवं संख्यागत 5 वर्ष (2007 से 2012) जाति प्रमाण पत्र/सर्विस बुक में उल्लेखित जातिगत आंकड़े प्राप्त किये जाये। इस बाबत निम्न विभागों से सूचना प्राप्त की गई।"

The State Government supplied statements showing representation of various castes in the services from the year 2007 to 2012 but it is not for all the departments. The representation of various castes in the educational institutions has also been given. The SBC Commission

thereupon considered even the report of IDS, though, earlier said to be not based on proper survey.

The State Government requested for six months

time for survey of all the castes, but the Commission directed to collect data of last five years only, that too, in pursuance of the selection made by the RPSC. The report by the State Government is based on selection in Class I and Class II services only. This itself makes recommendation of the Commission to be defective and not in consonance to the judgment of the Apex Court. The Commission was required to get complete data of representation of 82 castes in all the departments and not of few and two classes of services. It even ignored the selection made by the departments at their own. This itself made their survey incomplete.

If the report of IDS or the State Government for representation of various castes in the services is also taken into consideration, it shows "zero" representation of many castes, yet they were not taken into consideration while making recommendations.

It seems that Commission was to make recommendations only for five castes, which were earlier



given special reservation leaving other castes though it should have made proper survey of all the 82 castes.



The statement submitted by the State Government showing representation of various castes in services from the year 2007 to 2012 is reproduced hereunder to show that many castes are having "zero" representation in services, whereas, few castes are having proportionately excessive representation, yet not recommended for exclusion. It is more so when the Apex Court has directed for exclusion of the caste, if adequately represented. The Commission has failed to discharge its obligation properly while making the report :

राजस्थान सरकार में वर्ष 2007 से
2012 तक आरपीएससी से चयनित
राज्य सेवा के पिछड़ा वर्ग के
अधिकारियों की जातिवार सूचना

विभाग	कार्मिक विभाग	गृह विभाग	राजस्थान लेखा सेवा	वाणिज्यकर विभाग	राज्य बीमा	महिला एवं बाल विकास	उद्योग	सहकारिता	ग्रामीण विकास एवं पंचायती राज	कुल	संसद 1931 की जनसंख्या का प्रतिशत		
समाजिक न्याय नाम जाति वर्ग	आरएएस	आरपीएस	आरएसीएस	आरसीटीएस	आई एन एस	आर डब्ल्यू सी डी सी	आरआई एनएस	आरसीएस	ग्रामीण विकास राज्य सेवा				
कुल चयन	169	55	89	194		52	18	32	223	830			
ओबीसी में चयनितों की संख्या	54	12	18	36	3	10	4	7	47	191			
ओबीसी में चयनित + सामान्य के विरुद्ध चयनित ओबीसी की संख्या	60	21	29	63	4	14	5	9	76	281			
1	गाडिया-लुहार, गाडोलिया									0	0.074		
2	राईका, रैबारी(देबासी)								1	1	0.172		
3	बंजारा, बालदिया, लबाना									0	0.199		
4	गडरिया (गाडरी), गायरी, घोसी (ग्वाला)									0	0.656		
5	गूजर, गुर्जर	2		1	1				3	8	4.737		
6	जाट	20	10	10	18	2	5	1	2	32	100	9.097	
7	चारण	5	5	4	11	1	2		1	11	40	0.285	
8	यादव, अहीर	6	2	2	8				2	2	3	25	1.546
9	विश्वनोई	4	2	3	4				1	2	17	0.592	
10	कुमावत, कुम्हार (प्रजापति), सुआरा	5		2	2				1	1	4	15	3.171
11	माली, सैनी, बागवान	3		2	2	1	2		1	3	14	3.257	
12	जागिड, खाती, बढई, सुथार, तरखान	1		1	1						5	8	1.845
13	सोनी, सुनार, स्वर्णकार, जडिया	1		1	3				1	4	10	0.652	

14	दर्जी	1			3					4	0.420
15	साद, स्वामी, बैरागी, जंगम	1	1		2				2	6	0.26
16	नाई, सेन, वेदनाई							1		1	1.408
17	रावत	1		1						2	0.940
18	धाकड़	1								1	0.823
19	रावणा-राजपूत, दशेगा, हजरी, वजीर	1			2				1	4	1.589
20	बडला, जोधन, भाट, जागी, राव								1	1	0.330
	कलाल (टोका), कलाल (मेवाडा), कलाल (सुबाचका), सत्यमेव जयते कलाल (जायसवाल), कलाल (अहलवालिया), कलाल (पटेल)	1			1					2	0.377
22	ठठेरा, कंसारा (भरावा)									0	0.024
23	घांची									0	0.046
24	तेली	1						1		2	0.719
25	खारोल (खारवाल)									0	0.063
26	सतिया सिन्धी			1			1			2	
27	कायमखानी	2			1			1		4	0.308
28	लखेरा (लखारा),कचेरा, मनिहार									0	0.110
29	धोबी (मुस्लिम)									0	0.040
30	लोहार, पांचाल	1								1	0.722
31	जोगी, नाथ, सिद्ध	1								1	0.669
32	छीपा (छीपी), भावसार, नामा, खट्टी, छीपा, रंगरेज, नीलगर						1			1	0.300
33	धीवर, कहार, भोई, सगरवंशी-माली, कीर, महेरा, मल्लाह (निषाद), बारी, भिशती, मछुआरा									0	0.328
34	दांगी									0	0.431
35	जणवा, खारडिया (सिरवी)				1					1	0.031
36	डाकोत, देशांतरी, रंगासामी (अडमोपा)	1			1				1	3	0.237



37	महा-ब्राह्मण (आचारज), फकीर (कब्रिस्तान में कार्य करने वाले)								0	0.483
38	कनबी, कलबी, पटेल, पाटीदार, आंजणा, डांगी पटेल, कुलमी							1	1	0.0005
39	मेव	1							1	1.421
40	गिरी, गोसांई (गुशाई)								0	0.260
41	हत्तली, कसाई								0	0.210
42	जुलहा								0	0.151
43	हिन्धी, मुसलमान	1							1	0.369
44	सत्यमेव जयते तमोली (तम्बोली)								0	0.052
45	लोधी(लोधा)								0	0.077
46	राठ								0	0.447
47	मेर (मेहरात-काठात, मेहरात- घोडात, चीता)								0	0.243
48	बागरिया								0	
49	भडभूजा								0	0.031
50	नगारची-दमामी, राणा, बायती (बारोट)								0	0.085
51	हेला								0	
52	कंडेरा, पिंजारा								0	0.235
53	किरार (किराइ)								0	0.133
54	मिरासी, ढाडी, लंगा/मंगनियार								0	0.150
55	मोगिया(मोग्या)								0	0.051
56	न्यारिया (न्यारगर)								0	0.020
57	ओड								0	0.020
58	पटवा (फदाल)								0	0.066
59	सिकलीगर, बन्दूकसाज (उस्ता)								0	0.0177
60	सिरकीवाल								0	0.003
61	जागरी								0	0.007
62	रायसिख			1					1	



63	लोढे-तंबर									0	
64	सोंधिया									0	0.290
65	गद्दी									0	0.045
66	फारूकी भटियारा									0	0.0001
67	सिलावट (सोमपुरा, मूर्तिकार के अतिरिक्त/चेलाग)								1	1	0.121
68	खेरवा									0	0.003
69	कूजहा (शिवक)									0	0.037
70	सापेरा (गैर हिन्दू जाति)									0	0.35
	मदारी, बाजोगर (गैर हिन्दू जाति)									0	0.001
72	नट (गैर हिन्दूजाति)									0	0.064
73	गाडीत नागौरी									0	1.409
74	खेलदार									0	0.0002
75	चूनगर									0	0.005
76	मुल्लसानीज									0	0.001
77	मोची (गैर हिन्दू जाति)									0	0.012
78	देशवाली									0	0.073
79	कोतवाल/कोटवाल									0	0.002
80	चोबदार									0	0.021
81	काछी (कुशवाह), शाक्य									0	0.513
82	मुस्लिम				1					1	
83	अन्य									0	

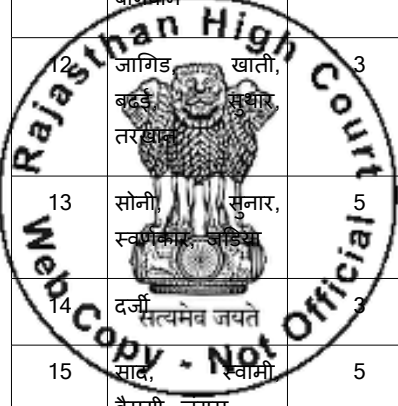
नोट :- उपरोक्त सारणी
राज्य सरकार के सम्बन्धित
विभागों द्वारा प्राप्त सूचना
के आधार पर संकलित की
गई है।

राजस्थान सरकार में वर्ष
2007 से 2012 तक
आरपीएससी से चयनित
अन्य पिछड़ा वर्ग के
राजपत्रित अधिकारियों की
जातिवार सूचना



क्र.स.	सेवा का नाम/नाम जाति वर्ग	जेसीटीओ	सार्वजनिक निर्माण विभाग		ग्रामीण विकास एवं पंचायती राज विभाग		कॉलेज शिक्षा	तकनीकी की शिक्षा	निदेशालय, चिकित्सा, स्वास्थ्य एवं परिवार कल्याण सेवाएं	कुल	सेंसस 1931 की जनसंख्या का प्रतिशत
			सहायक अभियन्ता (सिविल विद्युत)	एवं	कनिष्ठ अभियन्ता	सहायक अभियन्ता	सहायक प्रोफेसर	प्रवक्ता	डॉक्टर्स		
	कुल चयन	485	99	246	10	852	199	4783	6674		
	ओबीसी में चयनितों की संख्या	96	20	54	3	90	45	1137	1445		
	ओबीसी में चयनित + सामान्य के विरुद्ध चयनित ओबीसी की संख्या	163	29	93	3	163	54	1559	2064		
1	गाडिया-लुहार, गाडोलिया							2	2	0.074	
2	राईका, रैबारी(देबासी)			1				2	3	0.172	
3	बंजारा, बालदिया, लबाना							2	2	0.199	
4	गडरिया (गाडरी), गायरी, घोसी (ग्वाला)	1						2	3	0.656	
5	गूजर, गुर्जर	5	1	4		1		52	63	4.767	
6	जाट	80	12	29	2	71	20	670	884	9.097	
7	चारण	9	1	2		10		21	43	0.285	

8	यादव, अहीर	10	2	3		18	2	114	149	1.546
9	विश्वेनोई	5		3		1	2	37	48	0.592
10	कुमावत, कुम्हार (प्रजापति), सुआरा	5	1	8		9	6	67	96	3.171
11	माली, सैनी, बागवान	10	6	15		10	7	108	156	3.257
12	जागिड, खाती, बदई, सुधीर, तरखान	3		4		5	7	50	69	1.845
13	सोनी, सुनार, स्वर्णकार, जडिया	5		2	1	4		45	57	0.852
14	दर्जी, सत्यमेव जयते	3		2		2		11	18	0.420
15	साद, स्वामी, बैरागी, जगम	5		2		4		25	36	0.246
16	नाई, सेन, वेदनाई	3	1			3	3	8	18	1.468
17	रावत	1		3		1		5	10	0.940
18	धाकड़			3		1		53	57	0.823
19	रावणा-राजपूत, दरोगा, हजूरी, वजीर		1	1		3		5	10	1.589
20	बडवा, जाचक, भाट, जागा, राव	2		1				10	13	0.330
21	कलाल (टांक), कलाल (मेवाडा), कलाल (सुवालका), कलाल (जायसवाल), कलाल (अहलूवालिया), कलाल (पटेल)	1	1			2		9	13	0.377
22	ठठेरा, कंसारा (भरावा)	1				1		1	3	0.024
23	घांची		1	1		1	1	3	7	0.046
24	तेली	1	1	1		1	1	15	20	0.719
25	खारोल (खारवाल)		1					0	1	0.063
26	सतिया सिन्धी							2	2	
27	कायमखानी	4						12	16	0.308



28	लखेरा (लखारा), कचेरा, मनिहार					2		2	4	0.110
29	धोबी (मुस्लिम)							0	0	0.040
30	लोहार, पांचाल	1				2	1	3	7	0.722
31	जोगी, नाथ, सिद			2				2	4	0.669
32	छोपा (छोपा), भावसार, जामा, खड़ी, छोपा, रंगरज, जोरमग	2		5		1	2	29	39	0.300
33	धीबर, कलक, भोई, सागरवंशी-माली, कीसतयमेव जयहेरा, मन्नाह (निषदा), बागी, भिश्ती, मछुआरा			1				2	4	0.328
34	दांगी							4	4	0.431
35	जणवा, खारडिया (सिरवी)	1						25	26	0.031
36	डाकोत, देशांतरी, रंगासामी (अडमोपा)					2		0	2	0.237
37	महा-ब्राह्मण (आचारज), फकीर (कब्रिस्तान में कार्य करने वाले)	1						6	7	0.483
38	कनबी, कलबी, पटेल, पाटीदार, आंजणा, डांगी पटेल, कुलमी	2				3		34	39	0.0005
39	मेव	1				1	1	1	4	1.421
40	गिरी, गोसांई (गुशांई)	1				2		3	6	0.260
41	हलाली, कसाई							0	0	0.210
42	जुलाहा							11	11	0.151
43	सिन्धी मुसलमान					1		4	5	0.369
44	तमोली (तम्बोली)							1	1	0.052
45	लोधी(लोधा)						1	4	5	0.077
46	राठ							0	0	0.447

47	मेर (मेहरात-काठात, मेहरात-घोडात, चीता)							2	2	0.243
48	बागरिया					1		5	6	
49	भडभूजा							0	0	0.031
50	नगामची दमागी, गण, बागची (बारोट)							1	1	0.085
51	हेल							0	0	
52	कंडेर, पिजारा							4	4	0.235
53	किरार (किरड)							0	0	0.133
54	मिसासी, बडी, लंगा/मंगनियार							0	0	0.150
55	मोगिया(मोग्या)							0	0	0.051
56	न्यारिया (न्यारगर)							0	0	0.020
57	ओड							1	1	0.066
58	पटवा (फदाल)							0	0	0.024
59	सिकलीगर, बन्दूकसाज (उस्ता)							1	1	0.0177
60	सिरकीवाल							0	0	0.003
61	जागरी							0	0	0.007
62	रायसिख							0	0	
63	लोढे-तंवर							0	0	
64	सोंधिया							2	2	0.290
65	गद्दी							2	2	0.045
66	फारूकी भटियारा							1	1	0.0001
67	सिलावट (सोमपुरा, मूर्तिकार के अतिरिक्त)चेजारा							0	0	0.121



68	खेरवा							0	0	0.003
69	कूजडा, राइन							0	0	0.037
70	सपेरा (गैर हिन्दु जाति)							0	0	0.035
71	मटारी बाजोगर (गैर हिन्दु जाति)							0	0	0.001
72	नरु (गैर हिन्दु जाति)							0	0	0.064
73	गाडीत नागोरी							3	3	1.409
74	खेतदार							2	2	0.0002
75	चूनगर							1	1	0.005
76	मुल्लानीज							0	0	0.001
77	मोची (गैर हिन्दु जाति)							0	0	0.012
78	देशवाली							1	1	0.073
79	कोतवाल/कोटवाल							0	0	0.002
80	चोबदार							0	0	0.021
81	काछी (कुशवाह), शाक्य							1	1	0.513
82	मुस्लिम							0	0	
83	अन्य							7	7	

राजस्थान सरकार में वर्ष 2007 से 2012 तक आरपीएससी से चयनित अन्य पिछडा वर्ग के अधीनस्थ सेवा / मंत्रालयिक / अन्य कर्मचारियों की जातिवार सूचना :

क्र.स.	विभाग	गृह विभाग		राजस्थान लेखा सेवा	आबकारी	वाणिज्य कर विभाग	श्रम एवं नियोजन	उद्योग	खाद्य एवं नागरिक आपूर्ति	कुल	सेसस 1931 की जनसंख्या का प्रतिशत
		उपनिरीक्षक	उपनिरीक्षक / प्लेटून कमा.	जूनियर लेखाकार	निरीक्षक ग्रेड-II	टीए	कनिष्ठ श्रम अधिकारी	जिला उद्योग अधिकारी	अधिनस्थ सेवाएं		
	कुल घयन	835	277		72	351	1	9	92	1637	
	ओबीसी में घयनितों की संख्या		134	25	14	58		3	24	258	
	ओबीसी में घयनित + सामान्य वर्ग घयनित ओबीसी की संख्या	263	134		20	106		3	26	552	
1	गाडिया-तुहार, गाडोलिया									0	0.074
2	राईका, रैबारी(देबासी)		1							1	0.172
3	बंजारा, बालदिया, लबाना					1				1	0.199
4	गडरिया (गाडरी), गायरी, घोसी (ग्वाला)									0	0.656
5	गूजर, गुर्जर	10	6	1					1	18	4.767
6	जाट	166	69		7	26			11	279	9.097
7	चारण	32	13		3	2			1	51	0.285
8	यादव, अहीर	15	6	2		9	1		1	34	1.546
9	विश्वेई		15	2	2	3			1	23	0.592
10	कुमावत, कुम्हार (प्रजापति), सुआरा	5	2		2	14		1	3	27	3.171
11	माली, सैनी, बागवान	5		5	2	7			2	21	3.257
12	जागिड, खाती, बढई, सुथार, तरखान	4	4	3	1	10				22	1.845
13	सोनी, सुनार, स्वर्णकार, जडिया		3		1	2			1	7	0.652
14	दर्जी			2		4			1	7	0.420
15	साद, स्वामी, बैरागी, जंगम					1			1	2	0.246

16	नाई, सेन, वेदनाई		1	2		1			4	1.468
17	रावत		2	1					3	0.940
18	धाकड़					2		1	3	0.823
19	रावणा-राजपूत, दरोगा, हजुरी, वजीर		3	1	1	4			9	1.589
20	बडवा, जोड़क, भट्ट, जागा, सब				1				1	0.330
21	कखार (टांक), कलाल (मिवाडा), कलाल (सुवालका), कलाल (बायबवाल), कलाल (अहमदगंज) कलाल (पदेन)		1			2		1	4	0.377
22	ठठेरा, कंसारा (भरावा)								0	0.024
23	घांची					2			2	0.046
24	तेली					1			1	0.719
25	खारोल (खारवाल)								0	0.063
26	सतिया सिन्धी		1	2		1			4	
27	कायमखानी							1	1	0.306
28	लखेरा (लखारा), कचेरा, मनिहार					2			2	0.110
29	धोबी (मुस्लिम)								0	0.040
30	लोहार, पांचाल			1		1		1	3	0.722
31	जोगी, नाथ, सिद्ध		3			2		1	6	0.669



49	भडभूजा									0	0.031
50	नगारची-दमामी, राणा, बायती (बारोट)									0	0.085
51	हेला									0	
52	बहेरा, पिजरा									0	0.235
53	किराडा, किराडा									0	0.133
54	सिरसी, दाडी, तमा/भयानियारा			1						1	0.150
55	सत्यमेव जयते सोगिया(मोग्या)									0	0.051
56	न्यारिया (न्यारगर)									0	0.020
57	ओड									0	0.066
58	पटवा (फदाल)									0	0.024
59	सिकलीगर, बन्दूकसाज (उस्ता)									0	0.0177
60	सिरकीवाल									0	0.003
61	जागरी									0	0.007
62	रायसिख									0	
63	लोढे-तंवर									0	
64	सोंधिया									0	0.290
65	गद्दी									0	0.045
66	फारूकी भटियारा									0	0.0001
67	सिलावट (सोमपुरा, मूर्तिकार के अतिरिक्त)चेजारा									0	0.121
68	खेरवा									0	0.003
69	कूजडा, राइन									0	0.037



70	सपेरा (गैर हिन्दु जाति)								0	0.035
71	मदारी, बाजीगर (गैर हिन्दू जाति)								0	0
72	नट (गैर हिन्दूजाति)								0	0.064
73	गाडीत-बागौरी								0	1.409
74	खेसटम								0	0.0002
75	चूतगर सत्यमेव जयते								0	0.005
76	मुल्तसानीज								0	0.001
77	मोची (गैर हिन्दू जाति)								0	0.012
78	देशवाली								0	0.073
79	कोतवाल/कोटवाल								0	0.002
80	चोबदार								0	0.021
81	काछी (कुशवाह), शाक्य								0	0.513
82	मुस्लिम		4						4	
83	अन्य	26							26	

नोट : उपरोक्त सारणी राज्य सरकार के संबंधित विभागों द्वारा प्राप्त सूचना के आधार पर संकलित की गई है।"

The data aforesaid show no representation in services of few castes, whereas, adequate representation of other castes, yet it has been ignored by the Commission.



Learned Solicitor General Mr. Ranjeet Kumar has referred the Notification dated 31st July, 2009 to show extra ordinary situation in the State so as to bring the Act of 2008 for making a new category of "special backward class". A reference of Section 2H of the Act of 2008 has been given to show definition of "Special Backward Class". Section 4 provides reservation to various categories, which includes, Special Backward Class.

Five castes brought under the umbrella of special backward classes were earlier also getting benefit of reservation for last many years. No extra ordinary situation could be given by the SBC Commission and the State Government to create a new category for five castes. The extra ordinary circumstances have been shown for sake of it and otherwise based on incomplete data. If the extra ordinary situation is due to less or negligible representation of five castes in the services as well as in educational courses, the status of other castes was not seen which are having no

representation. It seems that the SBC Commission was to make recommendation only for five castes out of 82, without proper justification. It is moreso when the IDS was asked to submit report for 82 castes and even the reference by the State Government was for all those castes. Why the report was submitted without complete survey, could not be explained.



It was also urged by learned Solicitor General that once a decision has been taken by the Government to provide reservation to special backward classes, it should not be interfered unless shown to be with ulterior motive or enactment is unconstitutional, otherwise, wisdom of Legislature should prevail.

The aforesaid has been taken into consideration by this Court.

We find that reservation has been provided beyond 50 per cent having no extra ordinary situation. All the five castes were getting reservation in OBC category and it is not that the Gujjars/Gurjars and others were having no representation either for admission in the educational institutions or in services. The data has not been collected to

the extent it was required. In those circumstances, recommendation of the SBC Commission can be said to be perverse. It is otherwise without consideration for exclusion of few castes when adequate representation exists. It was expected that if one or two castes has taken major part of the reservation and, for that, other caste could not get adequate representation, then to exclude castes taken major part of reservation, so that remaining castes may get due benefit.



This Court has made its observation on the report of SBC Commission on few issues, otherwise, entire report is such, on which, confidence cannot be deposited. The Commission has given reference of Kaka Kalelkar Committee report apart from many other committees in ignorance of the direction of the Apex Court to review the list every ten years. The purpose to review is not only to include but exclude those, who could get adequate representation in the services as well as educational institutions. The statement has even been prepared after taking into consideration the ratio on the total population though not permissible and otherwise, in reference to the year 1931. In view of the above, the SBC

Commission and the State Government have failed to discharge their obligation as per the directions of the Apex Court to collect quantifiable data.



It has been admitted that IDS had conducted survey in urban as well as rural areas. In a district, only five villages under Panchayat Samitis were chosen and, for urban area, 13 cities and towns were selected. We need not to make further comment on it because the SBC Commission itself has made serious comments on the report of the IDS. The scientific method to conduct survey has not been adopted, though the SBC Commission thereupon relied on the report of IDS while drawing its conclusions in Chapter Ten, which remains in contradiction to their own comments on the report.

Learned Solicitor General Mr. Ranjeet Kumar was fair to admit that the SBC Commission did not accept the report of IDS as it was without adopting scientific method and proportional formula. The State Government was thus asked to submit data of various castes in regard to admission in the educational institutions and appointment in the services. It was submitted thereupon but in a haste. It was for appointment in class I and II services leaving others, that

too, selection by the Rajasthan Public Service Commission though selections were conducted by many Departments itself followed by appointments but those were not taken into consideration.



It is further admitted by learned counsel appearing for the State Government that IDS had shown various practical difficulties in survey. All those facts have been reflected in the reply of IDS to the Commission and has been referred by this Court in the previous paras. No survey was conducted by the SBC Commission.

The backwardness of the castes has been assessed only by IDS and not by the State Government and if said assessment has been relied by the SBC Commission then it cannot be said to be proper when it was not based on scientific and proportionate basis, as commented by the Commission itself. The State Government has not conducted survey or supplied any data for percentage of backwardness of each caste.

The survey regarding admission in the educational institutions and appointment in services conducted by the State Government is largely for five years, i.e., from the year

2007 to 2012, though the Commissioner-cum-Secretary to the Social Justice and Welfare Department had furnished figures from the year 2001 till 2012. The conclusions of the

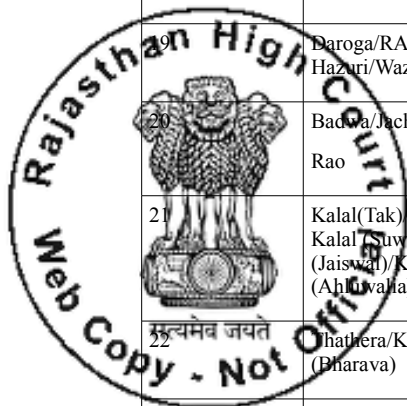
SBC Commission should have been in reference to the said period for all the castes. The consolidated table referred by the Commission is also quoted hereunder for ready reference :



**Table No.16-In State Government, Government Undertakings, Cooperative Institutions and Autonomous Corporation
Category Wise/Castewise made appointment from 1.1.2001 to 30.09.2012 (First and Second Step)**

S.No.		I	% to total appointment	II	% to total appointment	III	% to total appointment	Total	% to total appointment	% to total OBC appointment	% to total Population on Census 1931
	Total Appointment	1400		21514		26361		49275			
	Reserved for OBC	296		3905		5412		9613			
	Total Selection of OBC	432		5748		9098		15278			
1	2	3	4	5	6	7	8	9	10	11	12
1	Gadia-lohar/Gadolia	0	0.00	11	0.05	11	0.04	22	0.04	0.14	0.074
2	Raika, Rebari (Debasi)	2	0.14	6	0.03	15	0.06	23	0.05	0.15	1.173
3	Banjara/Baladia/Labana	0	0.00	39	0.18	19	0.07	58	0.12	0.38	1.199
4	Gadaria (Gadri)/Gayri/Ghosi (Gvala)	0	0.00	8	0.04	68	0.26	76	0.15	0.50	0.661
5	Gujar/Gurjar	7	0.50	195	0.91	634	2.41	836	1.70	5.47	4.767
6	Jat	178	12.71	2126	9.88	2240	8.50	4544	9.22	29.74	9.097
7	Charan	48	3.43	185	0.86	115	0.44	348	0.71	2.28	0.285
8	Ahir (Yadav)	30	2.14	430	2.00	473	1.79	933	1.89	6.11	1.546
9	Vishnoi	22	1.57	128	0.59	168	0.64	318	0.65	2.08	0.593
10	Kumhar (Prajapati), Kumawat/Suara	16	1.14	311	1.45	940	3.57	1267	2.57	8.29	3.171
11	Mali/Saini/Bagwan	20	1.43	437	2.03	1212	4.60	1669	3.39	10.92	3.257
12	Badai/Jangid/Khati/Suthar/Tarkhan	15	1.07	247	1.15	446	1.69	708	1.44	4.63	1.846
13	Swarnkar/Sunar/Soni/Jadia	25	1.79	175	0.81	111	0.42	311	0.63	2.04	0.652
14	Darzi	10	0.71	83	0.39	125	0.47	218	0.44	1.43	0.420

Table No.16-In State Government, Government Undertakings, Cooperative Institutions and Autonomous Corporation											
Category Wise/Castewise made appointment from 1.1.2001 to 30.09.2012 (First and Second Step)											
15	Sad/Swami/Bairagi/Jangam	6	0.43	110	0.51	180	0.68	296	0.60	1.84	0.246
16	Nai/Sain/Vednal	2	0.14	86	0.40	224	0.85	312	0.63	2.04	1.469
17	Rawat	2	0.14	23	0.11	105	0.40	130	0.26	0.85	0.940
18	Dhakar	3	0.21	118	0.55	329	1.25	450	0.91	2.95	0.823
19	Daroga/RAvna Rajput, Hazuri/Wazir	4	0.29	79	0.37	280	1.06	363	0.74	2.38	1.589
20	Badwa/Jachak/Bhat/Jaga/ Rao	1	0.07	29	0.13	40	0.15	70	0.14	0.46	0.338
21	Kalal(Tak)/Kalal(Mewara)/ Kalal (Suwalka)/ Kalal (Jaiswal)/Kalal (Ahluwalia)/Kalal (Patel)	5	0.36	66	0.31	91	0.35	162	0.33	1.06	0.377
22	Thathera/Kansara (Bharava)	0	0.00	4	0.02	5	0.02	9	0.02	0.06	0.024
23	Ghanchi	2	0.14	20	0.09	27	0.10	49	0.10	0.32	0.046
24	Teli	2	0.14	59	0.27	134	0.51	195	0.40	1.28	0.719
25	Kharol (Kharwal)	1	0.07	2	0.01	5	0.02	8	0.02	0.05	0.077
26	Satiya Sindi	2	0.14	8	0.04	4	0.02	14	0.03	0.09	0.000
27	Kayamkhani	7	0.50	50	0.23	82	0.31	139	0.28	0.91	0.309
28	Lakhera (Lakhara), Kachera/Manihar	1	0.07	16	0.07	28	0.11	45	0.09	0.29	0.110
29	Dhobi (Muslim)	1	0.07	1	0.00	24	0.09	26	0.05	0.17	0.044
30	Lohar/Panchal	1	0.07	19	0.09	76	0.29	96	0.19	0.63	0.723
31	Jogi/Nath/Sidh	1	0.07	23	0.11	72	0.27	96	0.19	0.63	0.69
32	Chhipa (Chhipi)/Bhavsar>Nama/Kh ati Chippa/Rangrej/Neelgar	1	0.07	108	0.50	94	0.36	203	0.41	1.33	0.300
33	Dhivar/Kahar/Bhol/Sagarv anishi- Mali/Keer/Mehra/Mallah (Nishad)/Bari/Bhisti/Mach uara	1	0.07	14	0.07	47	0.18	62	0.13	0.41	0.235
34	Dangi	0	0.00	2	0.01	7	0.03	9	0.02	0.06	0.432
35	Janwa, Khardiya (Sirvi)	1	0.07	33	0.15	22	0.08	56	0.11	0.37	0.031
36	Dakaut/Deshantri/Rangasa mi (Adbhopa)	2	0.14	10	0.05	26	0.10	38	0.08	0.25	0.237
37	Maha-Brahman (Acharaj)/Fakir (Working in Kabristan)	1	0.07	14	0.07	36	0.14	51	0.10	0.33	0.484
38	Kanbi/Kalbi/Patel/Patidar/ Anjana/Dangi Patel/Kumi	1	0.07	81	0.38	64	0.24	146	0.30	0.96	0.001
39	Mev	1	0.07	15	0.07	27	0.10	43	0.09	0.28	1.421
40	Giri/Gosain (Gushain)	0	0.00	28	0.13	46	0.17	74	0.15	0.48	0.260
41	Halali/Kasai	0	0.00	5	0.02	8	0.03	13	0.03	0.09	0.211
42	Julaha	2	0.14	28	0.13	41	0.16	71	0.14	0.46	0.151



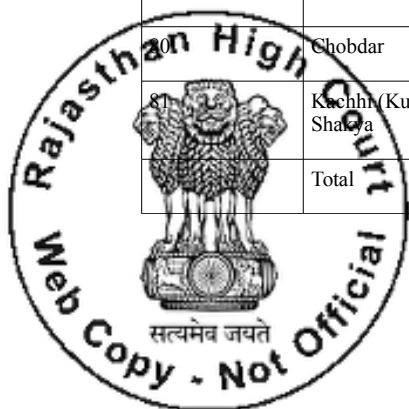
**Table No.16-In State Government, Government Undertakings, Cooperative Institutions and Autonomous Corporation
Category Wise/Castewise made appointment from 1.1.2001 to 30.09.2012 (First and Second Step)**

43	Sindhi Musalman	2	0.14	10	0.05	30	0.11	42	0.09	0.27	0.370
44	Tamoli (Tamboli)	1	0.07	17	0.08	12	0.05	30	0.06	0.20	0.052
45	Lodhi (Lodha)	0	0.00	12	0.06	58	0.22	70	0.14	0.46	0.089
46	Rath	0	0.00	1	0.00	25	0.09	26	0.05	0.07	0.447
47	Mer (Mehrat-Kathat, Mehrat-Ghodat, Cheeta)	1	0.07	5	0.02	26	0.10	32	0.06	0.21	0.244
48	Bagaria	0	0.00	6	0.03	1	0.00	7	0.01	0.05	0.000
49	Bharbhua	0	0.00	0	0.00	4	0.02	4	0.01	0.03	0.031
50	Nagarchi-Damarchi/Bana/Baiti (Barot)	0	0.00	3	0.01	3	0.01	6	0.01	0.04	0.085
51	Hela	0	0.00	0	0.00	0	0.00	0	0.00	0.00	0.000
52	Kandera/Pinjara	0	0.00	8	0.04	26	0.10	34	0.07	0.22	0.235
53	Kirar (Kirad)	1	0.07	3	0.01	13	0.05	17	0.03	0.11	0.133
54	Mirasi/Dandi/Langa/Mangniyar	0	0.00	3	0.01	9	0.03	12	0.02	0.08	0.150
55	Mogia (Mogya)	0	0.00	0	0.00	0	0.00	0	0.00	0.00	0.052
56	Nyaria (Nyargar)	0	0.00	0	0.00	3	0.01	3	0.01	0.02	0.021
57	Odd	0	0.00	3	0.01	12	0.05	15	0.03	0.10	0.066
58	Patwa (Phadal)	0	0.00	1	0.00	2	0.01	3	0.01	0.02	0.024
59	Siklgar/Bandooksaz (Usta)	0	0.00	2	0.01	4	0.02	6	0.01	0.04	0.018
60	Sirkwal	0	0.00	0	0.00	0	0.00	0	0.00	0.00	0.000
61	Jagri	0	0.00	0	0.00	2	0.01	2	0.00	0.01	0.008
62	Raisikh	0	0.00	12	0.06	46	0.17	58	0.12	0.38	0.000
63	Lodhe-Tanwar	0	0.00	2	0.01	9	0.03	11	0.02	0.07	0.000
64	Sohdhla	0	0.00	2	0.01	0	0.00	2	0.00	0.01	0.291
65	Gaddee	0	0.00	5	0.02	0	0.00	5	0.01	0.03	0.045
66	Farooki Bhatiyara	0	0.00	2	0.01	0	0.00	2	0.00	0.01	0.000
67	Silawat(Other than Sompura and Murtikaar)/Chejara	2	0.14	3	0.01	19	0.07	24	0.05	0.15	0.122
68	Kherwa	0	0.00	0	0.00	0	0.00	0	0.00	0.00	0.004
69	Kunjada/Raen`	0	0.00	0	0.00	0	0.00	0	0.00	0.00	0.038
70	Sapera (Non Hindu Caste)	0	0.00	0	0.00	0	0.00	0	0.00	0.00	0.035
71	Madari/Bajigar (Non Hindu Caste)	0	0.00	0	0.00	16	0.06	16	0.03	0.10	0.002
72	Nut (Non Hindu Caste)	0	0.00	0	0.00	3	0.01	3	0.01	0.02	0.065
73	Gadeet Nagauri	0	0.00	5	0.02	1	0.00	6	0.01	0.04	1.409
74	Kheldar	0	0.00	2	0.01	0	0.00	2	0.00	0.01	0.000
75	Chungar	0	0.00	3	0.01	0	0.00	3	0.01	0.02	0.005



**Table No.16-In State Government, Government Undertakings, Cooperative Institutions and Autonomous Corporation
Category Wise/Castewise made appointment from 1.1.2001 to 30.09.2012 (First and Second Step)**

76	Multanies	0	0.00	0	0.00	0	0.00	0	0.00	0.00	0.002
77	Mochi (Non Hindu Caste)	0	0.00	0	0.00	3	0.01	3	0.01	0.02	0.012
78	Deshwali	0	0.00	4	0.02	15	0.06	19	0.04	0.12	0.073
79	Kotwal/Kotwal	0	0.00	0	0.00	0	0.00	0	0.00	0.00	0.002
80	Chobdar	0	0.00	0	0.00	2	0.01	2	0.00	0.01	0.021
81	Kachhi (Kushwaha), Shakya	1	0.07	13	0.06	53	0.20	67	0.14	0.44	0.513
	Total	432	30.86	5559	25.84	9098	34.51	15089	30.62	98.76	44.671



The statement aforesaid reveals reservation of 9613 posts for OBC and, as against aforesaid, 15278 OBC candidates could get appointment, i.e., exceeding to reserve posts meant for them. If it is taken against 49275 posts, so advertised, then OBC candidates could occupy nearly 30 per cent posts. The aforesaid fact has also been ignored by the SBC Commission while considering the statement referred to above. It seems that ignoring the adequate representation of few castes, recommendation to create a new category of "special backward classes" has been given to satisfy the desire of the State Government. The way, recommendations have been made, cannot be said to be based on cogent reasons.

In all, 49275 appointments were made in various services since 01st January, 2001 till 30th September, 2012

and, out of it, 15278 posts were filled from OBC candidates, which comes to nearly 30 per cent of the total posts, whereas, reservation to the OBC category is 21 per cent. Out of 15278 appointments, 836 were of Gujjar/Gurjar caste, whereas, Jaats could get 4544 posts. The figures aforesaid shows that around 30 per cent posts have been occupied by that candidates.



A caste occupied around 30 per cent of the total posts of OBC category has not been considered for their exclusion so that remaining castes may get adequate share on its exclusion. If the total posts filled from four castes namely, Jaat, (4544), Ahir (Yadav) (933), Kumhar or Kumawat (Prajapati, Kumawat/Suara) (1267) and Mali/Saini/Bagwan (1669) are considered, then around 60 per cent of the posts came in their share leaving 40 per cent for all other castes in OBC category. In view of the judgment of the Apex Court, the SBC Commission was required to consider and make recommendations not only for inclusion of certain castes but should have been even for exclusion thereof. The new category has been created without extra ordinary situation because it is for those castes, which were otherwise getting

reservation for last many years.

It is urged that the Apex Court in the case of SV Joshi (supra) held that contradiction or other irregularity in the report of the Commission should not be taken as basis to discard or annul the legislation. It is, no doubt, true that while making detailed and lengthy report, some discrepancies occur but reference of the facts given above reveals major discrepancies and report of the SBC Commission shows contradiction and perversity. The report is not based on scientific method or quantifiable data. The Court cannot be silent spectator for the aforesaid, rather, if the discrepancies of the nature spelled out by this Court are allowed to stand then recommendations by the SBC Commission would be an empty formality only.

Many parts of the report reflect comment on the survey conducted by the IDS and are reproduced hereunder to show observations of the Commission itself that in what manner, data have been collected :

"In MOU it was made clear that sample survey technique would be adopted and conclusion would be drawn by applying scientific method as adopted by the





Institution. Survey would be conducted keeping in view the directions given by Hon'ble Rajasthan High Court in which social backwardness, educational backwardness and inadequate representation in government services would be included. A bare perusal of the report submitted by the Institution reveals that sample of castes/classes of villages and cities was lacking scientific method and proportional formula. For sample of a caste, index of population percentage in the State was not taken into consideration. Proportional formula in village sample and urban city sample was also not taken into consideration.

The institution collected primary data by conducting survey on various factors in the form of questioner. The questioner prepared by the institution is Appendix-15.

Quantifiable data on various factor should have been collected by applying random survey method, which is scientific but in various circumstances the data have not been collected applying full random survey method but data has

been collected applying purposive sample method. The result was otherwise affected.



From the analysis of above study, the commission has come to the conclusion that on the basis of survey of few houses it will not be justifiable to reach at correct conclusion. Out of 81 castes/classes, 13 castes are those in whose matter not a single house was surveyed in city areas and 4 are those in whose matter not a single house was surveyed in village areas. 27 castes are such in whose matter only 1-10 houses have been surveyed. Out of above 27 castes 16 are those in whose matter only 1-10 houses have been survey in city areas and 11 castes are those in whose matter only 1-10 houses have been surveyed in village areas. 12 castes are such in whose matter only 11-20 houses have been surveyed. Out of above 12 castes 8 are those in whose matter only 11-20 houses have been surveyed in city areas and 4 castes are those in whose matter only 11-20 houses have been surveyed in village areas. One of the parameters adopted in survey was that



information furnished by the individual was accepted as it was without any confirmation/satisfaction. One more lacuna left was that after entering into government service the villagers who migrated to cities were neither surveyed in cities nor in villages. Correct assessment of representation of inhabitants of that area in government employment cannot be determined.

The Commission has taken decision to call caste wise data of employees working in Government services belonging to all 81 castes of Backward Classes. Member Secretary of the Commission requested to the Chief Secretary and Principal Secretary, Department of Personnel to provide data. Principal Secretary, Department of Personnel has informed the Commission that in select list only OBC is mentioned and that caste wise select list is not prepared. He informed that it was very difficult to collect caste-wise data of employees. He further informed that if efforts were being made it would take at least 6 months to collect the information from



all departments of all districts. The Commission considered that aspect also decided to call caste wise and number wise data from main departments of last five years (2007-2012), such as total vacancies, vacancies reserved for OBC, selection of OBC candidates against general category candidates, total selection of OBC, information of caste of selected candidates on the basis of caste certificate submitted with application form or entry of caste in service book because the selection done by Rajasthan Public Service Commission during that period was on first and second class posts. Following departments were requested to send information:

1. Department of Personnel
2. Home/Police Department
3. Finance Department
4. Excise Department
5. Commercial Taxes Department
6. State Insurance Department
7. Women & Child Development
Department
8. Labour & Employment Department
9. Department of Industry
10. Food & Civil Supply Department

11. Public Works Department
12. College Education
13. Co-operative Department
14. Village & Panchayati Raj
Department
15. Technical Education

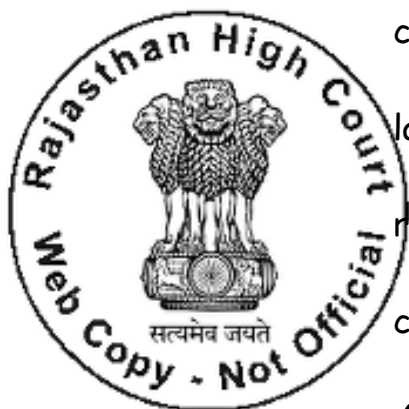


Data of selection of candidates of various castes/classes during five years in above departments and percentage of population of 1931 census of those castes were consolidated and cadre wise tables were prepared, which are Table No.13, 14 and 15 here-under."

The extracted portion above is only an illustration otherwise other discrepancies also exist and, in those circumstances, the report of the SBC Commission cannot be accepted. The survey should have been conducted in the manner required and otherwise directed by the Apex Court in various judgments. It was expected of the Commission not to rely on the old data which are not relevant at present. The deficiencies and the perversity in the report can be summarised as under :

- (i) The SBC Commission has failed to consider Article

16(4B) of the Constitution, rather, referred the judgment in the case of Indra Sawhney (supra) to exceed the ceiling of 50 per cent while drawing conclusions in Chapter Ten of the report where, in the last few paras, consideration has been made in reference to the judgment of the Apex Court in the case of Indra Sawhney (supra) and in reference to Article 16(4B) of the Constitution of India.



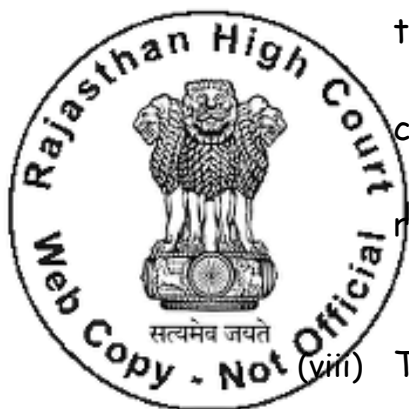
- (ii) The State Government provided details of representation of various castes in services but it was only in Class I and II services leaving others, that too, for few services out of 170 thus, data aforesaid should not have been relied in absence of complete survey and report thereupon.
- (iii) The SBC Commission has commented on the report of the IDS that survey has not been conducted in a scientific method yet, in later part, survey report has been relied.
- (iv) The SBC Commission has failed to consider that

economic criteria could not have been excluded altogether and it otherwise relied on only 8 points out of 24 given in 11 Indicators as per the report of the Mandal Commission. For the educational backwardness, only 2 points have been referred thus survey and the report does not refer to all the indicators and points before making the report.



- (v) The SBC Commission had considered 58 different courses of few colleges and few students, whereas, there are more than four lac students thus even survey for educational institutions was not properly undertaken.
- (vi) The issue of "Nomadic" status is again based on the old literature and papers and not based on the survey by the SBC Commission at their own.
- (vii) The SBC Commission further failed to consider the effect of the reservation on efficiency of administration, though, a direction for consideration of the aforesaid issue was also given. The Commission has made comment about various castes and their

representation for which no survey exists. It is for 25 castes yet report was given and seems to be in haste to fulfill the wishes, though, the Commission was expected to be independent and to draw conclusions after conducting survey of all the castes, that too, of the relevant period.



(vii) The SBC Commission failed to consider the issue of exclusion of any caste, if adequately represented, which may be the reason that other castes could get comparatively less representation.

The aforesaid are few issues to show perversity and the inadequacy in the report before making recommendations for reservation beyond 50 per cent, that too, after carving out a new category for those, who were already getting benefit of reservation for past many years. The extra ordinary circumstances to make out an exceptional case do not exist to provide 5 per cent reservation. The report cannot be said to be based on quantifiable data.

In view of the discussion made above, the report of the SBC Commission cannot be accepted and is,

accordingly, quashed. As a consequence of the aforesaid apart from the discussion made in reference to Article 16(4B) of the Constitution of India and the judgments of the Apex Court, the impugned Notification dated 16th October, 2015 issued by the State Government and the *Rajasthan Special Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2015* are struck down.



With the aforesaid, all the writ petitions are disposed of.

A copy of this order be placed in each connected file.

(J.K.RANKA), J.

(M.N.BHANDARI), J.

Preeti, P.A.