

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

WP(C).No. 14526 of 2015 (M)

PETITIONERS : -

1. VINODKUMAR T.R., AGED 36 YEARS,
S/O.RAVINDRAN PILLAI, THUNDATHIL VEEDU,
ELANGAMANGALAM, ENATH P.O, PIN-691526,
PATHANAMTHITTA DISTRICT, MEMBER NO.5848).
2. SHAIJU, AGED 42 YEARS,
S/O.SHARAFUDEEN, MANNADY P.O., PIN-691530,
PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.N.K.SUBRAMANIAN
SRI.S.ANANTHAKRISHNAN

RESPONDENTS : -

1. THE SOCIETY, ENATH SERVICE CO-OPERATIVE BANK LTD.NO.2529,
ENATH P.O., ADOOR, PIN-691526,
PATHANAMTHITTA DISTRICT.
2. THE PRESIDENT,
BOARD OF DIRECTORS OF THE ENATH SERVICE CO-OPERATIVE BANK
LTD. NO.2529, ENATH P.O., ADOOR, PIN-691526.
3. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
PATHANAMTHITTA, PIN-689645,
CIVIL STATION, PATHANAMTHITTA DISTRICT.
4. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
MINI CIVIL STATION, ADOOR, ADOOR P.O.,
PIN-691523, PATHANAMTHITTA DISTRICT.

R1&R2 BY ADV.SRI.P.N.MOHANAN
R3 & R4 BY SPL. GOVERNMENT PLEADER SRI. D. SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-08-2015, ALONG WITH WPC. 14575/2015, WPC. 16095/2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS : -

- EXT. P1 : TRUE COPY OF THE DISABILITY CERTIFICATE OF THE 2ND PETITIONER ISSUED FROM GENERAL HOSPITAL, PATHANAMTHITTA, DATED 4-2-14.
- EXT. P2 : TRUE COPY OF THE ORDER NO.CRP(3) 2677/14 DATED 28-1-2015.
- EXT. P3 : TRUE COPY OF THE NOTIFICATION DATED 8-3-2015 PUBLISHED IN MANGALAM DAILY.
- EXT. P4 : TRUE COPY OF THE POST OF ATTENDER DETAILS OF APPLICANT ISSUED BY THE 1st RESPONDENT.
- EXT. P5 : TRUE COPY OF THE POST OF PEON DETAILS OF APPLICANT ISSUED BY THE 1st RESPONDENT.
- EXT. P6 : TRUE COPY OF THE POST OF NIGHT WATCHMAN DETAILS OF APPLICANT ISSUED BY THE 1st RESPONDENT.
- EXT. P7 : TRUE COPY OF THE ORDER NO.CRP (3) 2227/15 DATED 24-4-2015.
- EXT. P8 : TRUE COPY OF THE NOTIFICATION APPEARED IN THE MATHRUBHOOMI DAILY DATED 24-4-2015.
- EXT. P9 : TRUE COPY OF THE REPRESENTATION DATED 4-5-2015.
- EXT. P10 : TRUE COPY OF THE REPRESENTED DATED 6-5-2015.
- EXT. P11 : TRUE COPY OF THE CIRCULAR BEARING NO.54/2011 DATED 14-7-2011.
- EXT. P12 : COPY OF CIRCULAR No.12 OF 1990 DATED 23.03.1990 WITH TRANSLATION.

RESPONDENTS' EXHIBITS : -

- EXT. R1(a) : COPY OF THE RESOLUTION OF THE MANAGING COMMITTEE.
- EXT. R1(b) : COPY OF THE COVERING LETTER FORWARDED TO THE CO-OPERATIVE EXAMINATION BOARD.
- EXT. R1(c) : COPY OF THE CIRCULAR No.79/2011 DATED 9.11.2011.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

Dama Seshadri Naidu, J.

W.P.(C)Nos.14526, 14575 & 16095 of 2015

Dated this the 13th day of August, 2015

COMMON JUDGMENT

Facts in Brief:

The petitioner in W.P.(C)No.14575/2015, belonging to the Scheduled Caste, has assailed Exhibit P1 recruitment notification issued by the respondent Bank on the ground that no post has been reserved for the persons belonging to Scheduled Caste/Scheduled Tribe (SC/ST) communities. Similarly, the petitioner in W.P.(C)No.16095/2015, who also belongs to the Scheduled Caste, has assailed the notification on the same grounds.

2. In W.P.(C)No.14526/2015, the first petitioner is a member of the first respondent Bank, whereas the second petitioner, a prospective applicant, is a differently abled person having 50% disability. Both of them, too, have

assailed the recruitment notification issued by the respondent Bank on the ground that no reservation has been provided for the physically challenged persons. It appears that the first petitioner in W.P.(C)No.14526/2015 is not a job aspirant, but as a member of the respondent Society has a grievance that all is not well in the Society.

3. Since all the petitioners have ventilated similar grievances against the same set of respondents, involving the same recruitment notification, this Court proposes to dispose of all the three writ petitions through a common judgment. For the sake of convenience, I refer to the documents marked in W.P.(C)No.14526/2015 while discussing the issue even as regards the petitioners in the other two writ petitions. The respondents, too, are referred to as they have been arrayed in the said writ petition.

4. The petitioner in W.P.(C)Nos.14575/2015, belonging to the scheduled caste, applied in response to Exhibit P1

notification, but under the general category. The petitioner in W.P.(C)No.16095/2015 did not apply as there was no reservation for the community he belongs to the Scheduled Caste. Similarly, the second petitioner in W.P.(C)No. 14526/2015, belonging to the physically challenged category, also did not apply in response to Exhibit P1 notification, as no reservation had been provided for the differently abled persons.

5. It clearly emerges from the record that the petitioner in W.P.(C)No.14575/2015 did apply and face the written examination, but could not reach the stage of the interview. Neither the petitioner in W.P.(C)No.16095/ 2015 nor the second petitioner in W.P.(C)No.14526/2015 responded to Exhibit P8 notification, as no reservation has been provided for their respective categories: Schedule Caste and the differently abled.

6. On an earlier occasion, when the respondent Bank notified the post, the notification is said to have been challenged before this Court on the ground of not specifying the correct qualifications. Accordingly, the respondent Bank withdrew the said notification and issued the present one, which again has been assailed, presently, on the ground of not providing reservation for the Scheduled Caste candidates and also the physically challenged persons. As the issue of the earlier notification is not germane to our discussion, I am not adverting to it in detail.

Summary of Submissions:

Petitioners':

7. In the above factual background, Mr.Krishna Prasad.S, the learned counsel for the petitioners in W.P.(C) Nos.14575/2015 and 16095/2015, has contended that Exhibit P3 notification cannot be sustained since it is in gross violation of the statutory mandate providing reservation to

the Scheduled Castes. As regards the participation of the petitioner in W.P.(C)No.14575/2015 in the selection process, the learned counsel contends that there is no element of estoppel to challenge the notification that is ex facie illegal. In other words, it is the specific contention of the learned counsel for the petitioners that there can be no estoppel against asserting a fundamental right, as has been held by this Court in **Saurabh Jain v. State of Kerala**¹.

8. It is also the contention of the learned counsel that in any event, the petitioner in W.P.(C)No.16095/2015 belonging to the same community has not at all participated in the selection process. Contending that Exhibit P1 notification is laconic on the issue of reservation to the Scheduled Caste people, the learned counsel has submitted that the petitioners have already submitted Exhibits P2 and P3 representations to the authorities concerned in that regard, as a matter of protest.

¹ 2011 (1) KLT 888 (F.B)

9. Mr.N.K.Subramanian, the learned counsel for the petitioners in W.P.(C)No.14526/2015, has contended that Section 80(5) of the Act clearly stipulates that 3% of the total posts in any organization shall be reserved for physically challenged persons having disability of 40% or above, as certified by the Medical Board. According to him, the second petitioner has more than 50% disability. He has also contended that the respondent Bank has also violated the conditions and directions contained in Circular No. 54/2011 issued by the Registrar.

10. All the petitioners have also a grievance that in terms of Circular No.18/1991 and the ratio laid down by this Court in **Mohanan V. State of Kerala**², the entire selection process ought to have been entrusted to an outside agency. On this count, too, the petitioners have assailed Exhibit P1 notification and the consequential selection process that has been undertaken by the

respondent Bank.

11. Mr.N.K.Subraminian, the learned counsel for the petitioners in W.P.(C)No.14526/2015, having spared no efforts in finding the necessary precedential support, has made herculean efforts to impress upon this Court that the respondent Bank is an instrumentality of State; that there is a clear of violation of the petitioners' fundamental rights; and that even the participation of the petitioner in W.P.(C) No.14575/2015 in the selection process does not come in the way of his assailing Exhibit P3 notification. He has also contended that once this Court has rendered a judgment spelling out the selection procedure to be followed, it is incumbent on the part of the respondent officials to act strictly in compliance with those judicial directives.

12. The learned counsel has submitted that the respondent Bank has yielded to nepotism and corruption. Even the reservation of posts for SC/ST category and the

physically challenged persons, contends the learned counsel, was done only after the petitioners filing the writ petitions. According to him, all the records of Board resolutions, etc., have been fabricated subsequent to Exhibit P3 notification.

13. In support of his submission that there is no estoppel against violation of the fundamental rights, the learned counsel has placed reliance on Saurabh Jain (supra). To contend that the respondent Bank, to be amenable to the writ jurisdiction, has the trappings of the State or, it is, at least, an instrumentality of the State, the learned counsel has placed reliance on the following decisions: **Shri Anadi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and others v. V.R.Rudani and others**³, **Akalakunnam Village Service Cooperative Bank Limited and Another**

³ AIR 1989 SC 1607

v. Binu N. and Others⁴, Bindu K.B. v. State of Kerala and Others⁵, State of Assam v. Barak Upatyaka D.U.Karmachari Sanstha⁶, Association of Milma Officers and another v. State of Kerala and others⁷, U.P.State Cooperative Land Development Bank Ltd. v. Chandra Bhan Dubey and Others⁸, Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Others⁹, Thalappalam Service Co-operative Bank Ltd. v. State of Kerala¹⁰. The learned counsel, in the alternative, has also submitted, with certain precedential support, that the respondent Bank discharges public functions.

14. In support of his contention that the respondent Bank ought to have entrusted the task of recruitment to an outside agency, and that the Bank has acted in violation of the judicial directives, the learned counsel has placed

4 (2014) 9 SCC 294

5 2014 (4) KHC 772

6 (2009) 5 SCC 694

7 I.L.R. 2015 (1) KERALA 861

8 (1999) 1 SCC 741

9 (2002) 5 SCC 111

10 2013 (4) KLT 232 (SC)

reliance on Mohanan (supra), **Commissioner of Central Excise v. Ratan Melting and Wire Industries**¹¹, and **Mannady Service Co operative Bank v. Krishna Kumar**¹².

Finally, regarding the entitlement of the differently abled persons to have a reservation of three per cent, the petitioner has relied on **Jayaprakash v. Joint Registrar of Co-operative Societies**¹³. These precedents could be referred to at appropriate places, only if they are relevant to our discussion. In fact, some of the contentions raised by the petitioners could be obviated as has been demonstrated below.

Respondent Bank's:

15. Per contra, Mr.Mohanan, the learned counsel for respondents 1 and 2, has submitted that the Bank has, in fact, made reservation for physically challenged persons and also for persons belonging to SC/ST community. To

¹¹ 2008 (4) KLT 607(SC)

¹² 2011 (3) KLT Suppl. 50 (Ker)

¹³ 2013 (4) KLT 788

abide by the reservation policy as provided in Sections 80 (4) and 80(5) of the Act, the respondent Bank has already notified one vacancy of Data Entry Operator to be filled up from the ranks of the physically challenged persons; another vacancy of Junior Clerk for SC/ST category. According to the learned counsel, there can be no room for grievance on any count. Repelling the contention that posts with higher qualifications have been reserved for the SC/ST community, the learned counsel has contended that it is not for the petitioners to dictate which post should be reserved for whom.

16. The learned counsel for the respondent Bank has also stoutly denied all the allegations of nepotism and corruption. The learned counsel has further submitted that the resolutions complying with the rule of reservation had been passed prior to Exhibit P3 notification. He has also submitted that the petitioners have been estopped from

questioning Exhibit P3 notification having participated in the selection process.

Issues:

1. Whether the respondent Society is amenable to writ jurisdiction under Article 226 of the Constitution?
2. Whether the petitioners have been estopped from questioning Exhibit P3 notification?
3. Whether the respondent Society ought to have entrusted the task of recruitment to an outside agency?
4. Whether the respondent has acted illegally in reserving the posts with higher qualifications for the scheduled caste community through a separate process?
5. Whether the petitioner have followed the correct method of reservation vis-à-vis the differently-abled persons by reserving a particular post for the said category?

Discussion:

In re, Issue No.1:

17. The learned counsel for the petitioners have spent much of their energy in trying to impress upon this

Court that the respondent Bank has all the trappings of the State, or, at least, an instrumentality of the State. According to them, denying employment opportunities to the persons belonging to the reserved categories is, in fact, in violation of their fundamental rights guaranteed under Articles 14, 15, 16, 19(1)(g), and 21 of the Constitution of India. Indeed, they have cited a profusion of precedents in this regard.

18. We may keep aside for a while the issue of violation of the fundamental rights by the respondent, which, in any event, is not an instrumentality of the State, and much less a State. Nevertheless, the respondent Bank, being a Society, once acts or conducts itself in violation of any statutory mandate, it is amenable to judicial review. In fact, after undertaking an exhaustive analysis of the case law on the issue of maintainability of a writ petition against a co-operative society, a learned Seven-Judge Larger Bench

of this Court in Association of Milma Officers (supra) has summarized the judicial dictum, a portion of which, being relevant, is extracted herein below:

“i) The Writ Petitions against Co-operative Societies are maintainable in certain circumstances. When the action complained in the Writ Petition is of any statutory violation on the part of the Co-operative Society, a Writ Petition will lie. The action of the Co-operative Society, if falls in a public domain or breach of the public duty is complained of, a writ may also lie. However, in the absence of breach of any statutory duty or public duty, a Writ Petition cannot be entertained against a Co-operative Society.
... ”

(emphasis added)

19. With the above authoritative pronouncement of this Court on this issue after surveying the precedential position up to date, I do not think I should indulge in duplication of judicial discussion on the issue. Suffice it to hold that the writ petition is eminently maintainable.

In re, Issue No.2:

20. There are four petitioners in the three writ petitions; three of them are prospective job-seekers. Only

one of them, the petitioner in W.P.(C)No.14575/2015, has applied and appeared in the selection process. She has her justifications for that: she has already submitted a representation to the respondent officials pointing out the violation of the rule of reservation; that she has participated in the selection process after filing of the writ petition, especially in view of the interim order given by this Court; and that in the face of the violation of her fundamental rights, the respondent Bank cannot press into service the issue of estoppel. The fact, however, remains that the other petitioners have not participated in the selection process. As such, the issue of participation of the petitioner in W.P. (C)No.14575/2015 pales into insignificance.

In re, Issue No.3:

21. The next question to be considered is whether the respondent Bank ought to have entrusted the task of recruitment to an outside agency. The learned counsel for

the petitioners have placed reliance on Mohanan (supra). As can be seen, Rule 182(5) of the Rules lays down that in respect of the societies and posts not covered by Sections 80(3)(a) and 80B of the Act, the Managing Committee shall make appointments after conducting a written examination and an interview as per guidelines issued by the Registrar. The guidelines are contained in Circular No.18/91 dated 07.06.1991.

22. It emerges from the facts of Mohanan (supra) that, instead of the Managing Committee appointing a competent outside agency to conduct written tests, the President entrusted the task of conducting the written examination to an agency, the identity of which was unknown even to the members of the Managing Committee. This Court, referring to Circular No.18/91 dated 07.06.1991, has held that the written test has not been conducted in accordance with the stipulations in the

circular.

23. The learned counsel has also placed reliance on Ratan Melting & Wire Industries (supra). This decision was cited in support of the submission that on the same issue, if there is any conflict between the clarificatory departmental circulars or instructions on the one hand and the law declared either by the High Court or the Supreme Court on the other, the latter shall prevail. Indeed, the learned Constitution Bench of the Hon'ble Supreme Court, on reference, has affirmed the said proposition of law.

24. It is not unusual that the Government departments frequently issue clarificatory circulars for the guidance of its officers by interpreting certain statutory provisions. Such circulars or instructions do bind the department. Nevertheless, if, in the course of time, the very provision regarding which clarificatory circulars have been issued falls for judicial interpretation before any

Constitutional Court, the interpretative exposition of the Court, if it is to be at variance with the departmental view, shall prevail.

25. In fact, the Hon'ble Supreme Court in *Ratan Melting and Wire Industries (supra)* has held thus:

“6. [S]o far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.”

26. In *Mohanan (supra)*, Circular No.18/91 dated 07.06.1991 has fallen for consideration. Keeping in view the regnant regulatory position, this Court has interpreted the expression 'outside agency'. It has held that 'an outside agency' does not mean a non-descript organization formed by the retired employees of the Co-operative Department, but an agency of repute involved in the matters of conducting such examinations and selection procedures as

have been required by the respondent Bank.

27. It is not in dispute that the Registrar of Co-operative Societies issued Circular No.79/11 dated 09.11.2011 in modification of, among other things, Circular No.18/91 as well. Condition No.4(c) specifically stipulates that the written test shall be conducted by an outside agency having the expertise or knowledge or experience in the field of co-operation. The said agency, by definition, also includes individuals. In the present instance an individual, a retired officer of the Co-operative Department has been appointed. So long as Circular No.79/11 has not been challenged, I do not think the contention of the learned counsel for the petitioners has any substance. The learned Division Bench of this Court in Krishna Kumar (supra) has only held that when a Society conducts recruitment in violation of the Statute and circular issued by the Registrar, an aggrieved party can always invoke writ jurisdiction to

challenge the recruitment.

28. Without any further dilation, I may hold that Mohanan (supra) has only declared the law in tune with the then extant circular No.18/91, which now stands superseded by Circular No.79/11. A judgment is a binding precedent so long as the statutory substratum of the said judgment remains unchanged. Once there is any change in the statutory position, the ratio of a previous judgment rendered under unchanged circumstances no longer binds the authorities, for a judgment is not legislative in character, nor is it an edict etched in stone, thus fossilised forever.

In re, Issue Nos.4 & 5:

29. As can be gathered from the pleadings of the rival parties, the first respondent Bank belongs to Class III category, having a staff strength of 15. The Bank notified through Exhibit P3 one post of Attender, two posts of Peon

and one post of Night Watchman to be filled up with eligible candidates. The said notification, however, was challenged before this Court on the ground that the qualification mentioned was not in accordance with Rule 186 as amended with effect from 26.11.2014. As a result, the respondent Bank withdrew the said notification and issued a fresh notification, i.e. Exhibit P8.

A) The Significance of Exhibit P7 order of the Joint Registrar:

30. The record further reveals that, in the wake of Exhibit P8 notification, some of the persons including the petitioners approached the Joint Registrar pointing out certain alleged shortcomings in the selection process being adopted by the respondent Bank. The Joint Registrar, in turn, issued Exhibit P7 order appointing the Assistant Registrar of Co-operative Societies to be an observer. At any rate, the petitioners still persisted with the issue and

filed the present writ petitions. In this context, the learned counsel for the respondent Bank has contended that the petitioners having not challenged Exhibit P7 ought not to have approached this Court. Regrettably, this contention is devoid of much force. Their grievance in the writ petitions is concerning the rule of reservation, which aspect, I am of the opinion, cannot be adjudicated upon, much less redressed, by the Joint Registrar. As a result, it is to be held that Exhibit P7 is no bar against the petitioners' approaching this Court. It may further be observed that the Joint Registrar has issued Exhibit P7 order only to ensure transparency in the selection process; it has not, at any rate, dealt with the legality of Exhibit P8 notification.

31. Indeed, in terms of the interim order dated 22.05.2015, the respondent Bank has gone ahead with the selection process and conducted the interviews. It has, however, not published the rank list.

B) Venality and Nepotism:

32. Indeed, the petitioners have made certain—wild, as I perceive—allegations that the Board of Directors at the helm of the affairs of the respondent Bank has been not only venal but also guilty of nepotism. The petitioners, nevertheless, could not substantiate their allegations; they thus remained just allegations. I, therefore, reject as unfounded the claims and contentions of the petitioners on the counts of venality and nepotism as unfounded.

Reservation of Posts: The Time Line of Exhibits R1(a) & R1(b):

33. It is also the contention of the petitioners that the respondent Bank has first issued Exhibit P8 notification, and then prepared Exhibits R1(a) and R1(b) resolutions with ante-date, as if it had reserved posts for SC/ST and physically challenged categories much in advance. The learned counsel for the respondent Bank, on the other hand,

submitted that Exhibits R1(a) and R1(b) resolutions were passed on 21.04.2015 and 20.04.2015 respectively. Through those resolutions, the Co-operative Examination Board was asked to recruit suitable candidates for the posts of Data Entry Operator and Junior Clerk, which have been reserved for SC/ST and physically challenged categories respectively.

34. Given the repeated assertions of the learned counsel for the petitioners that even the minutes book and other records had been tampered with or, as a whole, fabricated, I summoned the records. In fact, the learned counsel for the respondent Bank did produce the records and demonstrate before the Court that the resolutions were passed by the Managing Committee reserving certain posts before Exhibit P8 could be issued.

35. Having the advantage of perusing the records thus produced, the learned counsel for the petitioners further contended that, despite the passage of time, the

records, still, remained very new and unspoiled. The book of resolutions did appear to be relatively new and unspoiled; the despatch register, which recorded the entries of despatching the resolutions to the Recruitment Board, on the other hand, appeared in a tattered condition, signifying it to be old. Suffice it to say that a mountain of sneaking suspicion cannot equal an ounce of proof. In other words, this Court cannot allow suspicion to take the place of legal proof. I, therefore, conclude that the resolutions had been passed prior to the issuance of Exhibit P8 notification.

Reservations:

36. The principle of reservation is said to have been maintained by the respondent Bank by notifying one vacancy of Data Entry Operator for physically challenged persons and one vacancy of Junior Clerk for the candidates belonging to SC/ST community, as is evident from Exhibits R1(a) and R1(b). As submitted above, the total working

strength is only 9, but the sanctioned strength is 15. So the respondent Bank is statutorily bound to appoint one person belonging to the physically challenged category and another one from SC/ST community.

37. It is the contention of the respondent Bank that already there is one employee from the SC/ST community, but the said appointment was without following the due process. As a result, the said appointment was treated to have been under the open category. The learned counsel for the respondent Bank has contended that now the Co-operative Examination Board is all set to initiate the recruitment process.

38. Despite the averments made by the respondent Bank, a perusal of Exhibits R1(a) and R1(b) reveals that the respondent Bank through the resolutions required the Examination Board to select two candidates, one from among the ranks of SC/ST and the other from the physically

challenged, to be appointed under the reserved quota in the vacancies to be arisen in future. It is, therefore, not a reservation in presenti.

39. Be that as it may, we shall still examine the method and the manner of reservations adopted by the respondent Bank. Contentious as the issue of reservations has been, not all reservations are uniform in their applications. Broadly speaking, there are two types of reservations: Social or Vertical and Special or Horizontal. In **Indra Sawhney v. Union of India**¹⁴, a Nine-Judge Bench of the Hon'ble Supreme Court in paragraph 812 has held thus:

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

14 1992 Supp. (3) SCC 217

referred to as horizontal reservations. Horizontal reservations cut across the vertical reservations that is called inter-locking reservations.”

40. In **Anil Kumar Gupta v. State of U.P.**¹⁵, the Hon'ble Supreme Court has further elucidated on the issue of vertical and horizontal reservations. The horizontal reservations can be either overall reservations or compartmentalised reservations. Their Lordships have explained the distinction thus:

“5. [W]e may explain these two expressions. Where the seats reserved for horizontal reservations are proportionately divided among the vertical (social) reservations and are not intertransferable, it would be a case of compartmentalised reservations. We may illustrate what we say: Take this very case; out of the total 746 seats, 112 seats (representing fifteen per cent) should be filled by special reservation candidates; at the same time, the social reservation in favour of Other Backward Classes is 27% which means 201 seats for OBCs; if the 112 special reservation seats are also divided proportionately as between OC, OBC, SC and ST, 30 seats would be allocated to the OBC category; in other words, thirty special category students can be accommodated in the OBC category; but say only ten special reservation candidates belonging to OBC are available, then these ten candidates will, of course, be allocated among OBC quota but the remaining twenty seats cannot be transferred to OC category (they

15 (1995) 5 SCC 173

will be available for OBC candidates only) or for that matter, to any other category; this would be so whether requisite number of special reservation candidates (56 out of 373) are available in OC category or not; the special reservation would be a watertight compartment in each of the vertical reservation classes (OC, OBC, SC and ST)."

41. Their Lordships have further held:

"[A]s against this, what happens in the overall reservation is that while allocating the special reservation students to their respective social reservation category, the overall reservation in favour of special reservation categories has yet to be honoured. This means that in the above illustration, the twenty remaining seats would be transferred to OC category which means that the number of special reservation candidates in OC category would be $56+20=76$. Further, if no special reservation candidate belonging to SC and ST is available then the proportionate number of seats meant for special reservation candidates in SC and ST also get transferred to OC category. The result would be that 102 special reservation candidates have to be accommodated in the OC category to complete their quota of 112. The converse may also happen, which will prejudice the candidates in the reserved categories. It is, of course, obvious that the inter se quota between OC, OBC, SC and ST will not be altered."

42. Having observed thus, the Hon'ble Supreme Court has further pointed out the difficulties involved in the compartmentalised system of horizontal reservations, and the remedial steps that could be taken in that regard. The

Apex Court has opined thus:

“17. It would have been better—and the respondents may note this for their future guidance—that while providing horizontal reservations, they should specify whether the horizontal reservation is a compartmental one or an overall one. . . We are of the opinion that in the interest of avoiding any complications and intractable problems, it would be better that in future the horizontal reservations are compartmentalised in the sense explained above. In other words, the notification inviting applications should itself state not only the percentage of horizontal reservation(s) but should also specify the number of seats reserved for them in each of the social reservation categories, viz., ST, SC, OBC and OC. If this is not done there is always a possibility of one or the other vertical reservation category suffering prejudice as has happened in this case. As pointed out hereinabove, 110 seats out of 112 seats meant for special reservations have been taken away from the OC category alone — and none from the OBC or for that matter, from SC or ST. It can well happen the other way also in a given year.”

43. In *Anil Kumar Gupta* (supra), the recruitment notification prescribes that fifteen per cent special reservation seats be filled up first, followed by the OC (merit) quota, OBC, SC and ST quotas. The method sought to be adopted by the Government was found to be wrong. The proper and correct course, according to the Apex

Court, is first to fill up the OC quota (50%) on the basis of merit; then fill up each of the social reservation quotas, i.e., SC, ST and BC; the third step would be to find out how many candidates belonging to special reservations have been selected on the above basis. If the quota fixed for horizontal reservations is already satisfied—in case it is an overall horizontal reservation—no further question arises. But if it is not so satisfied, the requisite number of special reservation candidates shall have to be taken and adjusted/accommodated against their respective social reservation categories by deleting the corresponding number of candidates therefrom.

44. The Apex Court has continued to hold, as regards the compartmentalised horizontal reservation, that the process of verification and adjustment/accommodation should be applied separately to each of the vertical reservations. In such a case, the reservation of fifteen per

cent in favour of special categories, overall, may be satisfied or may not be satisfied. Because the revised notification provided for a different method of filling the seats, it has contributed partly to the unfortunate situation where the entire special reservation quota has been allocated and adjusted almost exclusively against the OC quota.

45. Putting the issue in perspective, we may say that reservations under Article 16(4) of the Constitution are vertical or social; whereas the reservations under Articles 15(3) and 16(1) are horizontal or special. The candidates under vertical reservation can always compete in the open category as well; if they emerge successful on merit, their getting appointed under the open category does not diminish the percentage of vertical reservation for their community. To elucidate this through a simple arithmetic, we can assume that there are 100 posts to be filled up. 30

per cent posts have been reserved vertically, say, for the scheduled caste. 70 posts are meant for open category. In the selection process, 25 Scheduled Caste candidates got selected in the open category. Does their selection have any impact on the 30 per cent reserved for their community? The answer is 'No'. The other candidates from their community will vie for the 30 per cent post. In the end, combining both the streams, there will be 55 candidates appointed from the scheduled caste, but it does not, in any way, offend the reservation policy or upset the reservation ration. The candidates selected in the open category always remain candidates from that category, notwithstanding their community.

46. In **Rajesh Kumar Daria v. Rajasthan Public Service Commission**¹⁶, a Three-Judge Bench of the Hon'ble Supreme Court has summarised the precedential position in this regard thus:

¹⁶ (2007) 8 SCC 785

“7. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Article 16 (4) are 'vertical reservations'. Special reservations in favour of physically handicapped, women etc., under Articles 16 (1) or 15(3) are 'horizontal reservations'. Where a vertical reservation is made in favour of a backward class under Article 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percentage of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. [Vide - Indira Sawhney (Supra), R.K. Sabharwal v. State of Punjab [1995] 2 SCR 35, Union of India v. Virpal Singh Chauhan AIR 1996 SC 448 and Ritesh R. Sah v. Dr. Y.L. Yamul [1996] 2 SCR 695]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for scheduled castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women'. If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of scheduled caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent,

horizontal (special) reservation differs from vertical (social) reservation.”

47. As regards the horizontal reservation, in further elaboration, their Lordships have used the following illustration: If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC woman candidates, then there is no need to disturb the list by including any further SC woman candidate. On the other hand, if the list of 19 SC candidates contains only two woman candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four woman SC candidates (But if the list of 19 SC candidates contains more than four woman candidates,

selected on own merit, all of them will continue in the list and there is no question of deleting the excess woman candidates on the ground that “SC women” have been selected in excess of the prescribed internal quota of four).

48. The above illustration is concerning compartmentalised horizontal system. In the overall horizontal system, which is usually adopted if the number of posts to be filled up is limited, the horizontal system cuts across the the vertical system. In *Indra Sawhney* (supra), the following illustration is used in paragraph 812:

“[T]o be more precise, suppose 3% of the vacancies are reserved in favour of physically handicapped persons; this would be a reservation relatable to Clause (1) of Article 16. The persons selected against this quota will be placed in the appropriate category; if he belongs to S.C. category he will be placed in that quota by making necessary adjustments; similarly, if he belongs to open competition (O.C.) category, he will be placed in that category by making necessary adjustments. Even after providing for these horizontal reservations, the percentage of reservations in favour of backward class of citizens remains—and should remain—the same.”

49. Thus, an SC candidate who is also physically challenged, once selected, fulfils the twin criteria: the vertical and horizontal reservations at the same time. It is, therefore, impermissible to exclusively reserve a post or posts for the physically challenged persons or woman, both of whom fall under the horizontal category. In fact, in the present instance, through Exhibit R1(b) the respondent Bank is said to have reserved one post for physically challenged person, thereby depriving one post for the open category.

50. In terms of Section 80(5) of the Act, the respondent Bank has been statutorily mandated to provide reservations to the candidates aspiring for employment from the underprivileged class, such as SC/ST. Indeed, as has rightly been contended by the learned counsel for the respondent Bank, it is not for the job aspirants to dictate which post is to be reserved for which community. The

reservation should be either as per the roster, if it is available, or as per the discretion of the management. The discretion on the part of the management can, of course, be subjected to judicial scrutiny if it fails to pass the test of reasonableness or rationality. At the same time, the respondent Bank is also required to provide reservation for the physically challenged persons.

51. In the present instance, Exhibit P8 notification does not satisfy the statutory mandate of providing horizontal reservation to the physically challenged persons. It has, on the contrary, reserved a specific post exclusively for the physically challenged; in my considered view, it is impermissible. The method adopted by the respondent Bank results in deprivation of opportunity to the candidates of all sections to compete for one post. Further, even concerning SC/ST candidates, a post vacant in presenti has not been reserved. As is evident from Exhibit R1(a), only a future

vacancy has been reserved. This arrangement, too, fails to pass the statutory muster.

52. After taking into account the totality of circumstances, this Court is of the considered opinion that Exhibit P8 notification cannot be sustained and is accordingly set aside. It is, however left open for the respondent Bank to initiate fresh recruitment process by issuing a notification strictly in statutory terms ensuring that horizontal reservation for the physically challenged persons by reflecting the factum of reservation to the said class in the same notification. The respondent Bank is also, further, required to specify in the same notification the information as regards the post reserved for SC/ST community, though the recruitment for the said post could be effected by way of selection through Co-operative Service Recruitment Board. It is meant, as a matter of fairness, to avoid allegations that the posts have been

reserved secretly, in a pick-and-choose manner. As a consequence, the earlier communication sent by the respondent Bank to the said recruitment Board stands nullified.

In the result, the writ petitions are allowed to the extent indicated above. No order as to costs.

Dama Seshadri Naidu, Judge

tkv/DMR

'C.R.'