

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR
THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

W.P. No.37296 of 2017

Between:

1. G.Arun Kumar & Ors.

.... Petitioners

Vs.

1. The Union of India, Ministry of Home Affairs, New Delhi & Ors.

.... Respondents

DATE OF JUDGMENT PRONOUNCED: 24.11.2017

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? ---
2. Whether the copies of judgment may be marked to Law Reports/Journals - yes -
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? - yes -

ACTING CHIEF JUSTICE RAMESH RANGANATHAN

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% Dated 24-11-2017

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1. G.Arun Kumar & Ors.

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.... Respondents

! Counsel for the petitioners: Sri S. Rahul Reddy, Learned Counsel,

^ Counsel for respondents : Sri K.Lakshman, Learned Assistant Solicitor General for 1st respondent

Learned Advocate-General for the State of Telangana for 2nd respondent.

Sri D.Balakishan Rao, Learned Standing Counsel for 3rd respondent.

<GIST:

> HEAD NOTE:

? Citations:

1. (1969) 1 SCC 839
2. (1990) 2 SCC 259
3. 2003 (6) ALD 522 (DB)
4. 2007 (4) ALD 209 (DB)

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

Writ Petition No.37296 of 2017

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The petitioners, four in number, have invoked the jurisdiction of this Court, under Article 226 of the Constitution of India, seeking a writ of mandamus to declare the Telangana Direct Recruitment for the posts of Teachers Rules, 2017 (hereinafter referred to as the "2017 Rules"), in so far as it prescribes the revenue districts, reorganised with effect from 11.10.2016, as the local area and unit of appointment for the purpose of study/residence under Rules 2(5), 6 and 8(1) of the Rules, and Para-V and Para-VI of the Recruitment Notification No.53/2017 dated 21.10.2017 issued by the Telangana State Public Service Commission, for recruitment to the posts of Secondary Grade Teachers (SGTs) in school education, as illegal, unconstitutional, violative of Articles 16(1), 16(3) r/w. Article 371-D of the Constitution of India, and the existing Presidential Order in G.O.Ms.No.674 dated 29.10.1975. A consequential direction is sought to the respondents to hold recruitment to the posts of SGTs, by taking the erstwhile 10 districts as the unit of appointment for the purpose of study/residence and reservation of local candidates as per the existing Presidential Order in G.O.Ms.No.674 dated 29.10.1975, or in accordance with the provisions of the Constitution.

Facts, to the extent necessary, are that the petitioners are all local residents of the erstwhile Adilabad District, and possess the requisite academic and age qualifications for being appointed to

the posts of SGTs. The Government of Telangana made the 2017 Rules, among others, in the exercise of the powers conferred on it under Article 309 of the Constitution of India. These Rules were notified in G.O.Ms.No.25 dated 10.10.2017. Thereafter, the third respondent issued Notification No.53/2017 dated 21.10.2017 inviting applications from qualified candidates for being considered for appointment to 4779 vacancies of SGTs (all media excluding Urdu medium) and 636 SGTs of Urdu medium.

Rule 2(5) of the 2017 Rules defines “District” to mean a revenue district as formed/reorganised by the State of Telangana w.e.f. 11.10.2016. Rule 6 requires the third respondent to issue a notification, for direct recruitment to the posts of teachers, in accordance with the orders issued by the Government duly notifying the vacancies as per the requisition furnished by the Commissioner and Director of School Education for the 31 revenue districts as formed/reorganised by the State of Telangana w.e.f. 11.10.2016, taking each such district as the unit of appointment as per the relevant Rules. Rule 8 relates to preparation of selection lists. Rule 8(1) provides for the application of the rule of reservation to local candidates, and for the provisions of the Telangana Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order (Presidential Order), 1975 and amendments thereto, to be strictly followed.

After the Rules were made and notified in G.O.Ms.No.25 dated 10.10.2017, the third respondent issued notification dated 21.10.2017 for conducting the teachers recruitment test for SGTs. Para-V(4) thereof stipulates that the district and local reservations shall be followed as per Para-8 of the A.P. Public Employment

(Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (G.O.P.No.674, G.A. (SPF-A) Department, dated 20.10.1975) read with G.O.Ms.No.124 dated 07.03.2002 and other orders issued by the Government, and within the meaning of Sections 3 and 97 of the A.P. State Reorganisation Act, 2014. Para-VI, which relates to reservation to local candidates and contains the definition of a local candidate, reads thus:

PARA-VI: RESERVATION TO LOCAL CANDIDATES: Reservation to the Local candidates is applicable as provided in the Rules and as amended from time to time as in force on the date of notification. The candidates claiming reservation as Local candidates should obtain the required Study certificate (from IV Class to X Class or SSC) (OR) Residence Certificate in the Proforma only for those candidates who have not studied in any Educational Institutions as the case may be. The relevant certificates may be got ready with authorised signature and kept with the candidates to produce as and when required.

DEFINITION OF LOCAL CANDIDATE:- In terms of Para-(7) of A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (G.O.P.No.674, G.A. (SPF-A) Department, dated 20.10.1975). "LOCAL CANDIDATE" means a candidate for direct recruitment to any post in relation to that Local area where he/she has studied in Educational Institution(s) for not less than four consecutive academic years prior to and including the year in which he/she appeared for S.S.C or its equivalent examination. If, however, he/she has not studied in any educational institution and obtained SSC or its equivalent qualification or Open School, Private Study basis, he/she has to produce residential certificate issued by the Tahsildar.

- i) In case any Candidate who does not fall within the scope of above then, if he/she has studied for a period of not less than seven years prior to and inclusive of the year in which he/she has studied SSC or its equivalent qualification, he/she will be regarded as local candidate on the basis of the maximum period out of the said period of seven years and where the period of his/her study in two or more local areas or equal such local area where he/she has studied last in such equal periods will be taken for determining the local candidature. Similarly, if he/she has not studied during the above said period in any Educational Institution(s) and obtained private study the place of residence during the above period will be taken into consideration and local candidature will be determined with reference to the maximum period of residence or in the case of equal period where he/she has resided last in such equal periods.
- ii) If the claim for local candidature is based on study, the candidate is required to produce a certificate from the Educational Institution(s) where he/she has studied during the said 4/7-year period. If, however, it is based on residence, a certificate should be obtained from an officer or the Revenue

- Department not below the rank of Tahsildar or Deputy Tahsildar in independent charge of Mandal.
- iii) If, however, a candidate has resided in more than one Mandal during the relevant four/seven years period but within the same District or Zone as the case may be separate certificates from the Tahsildar exercising jurisdiction have to be obtained in respect of different areas.”

Para-VI also stipulates that the post is of a District Cadre, and the following are the present Districts in Telangana State.

Dist Code	Name of the District	Dist Code	Name of the District	Dist Code	Name of the District
01	ADILABAD	11	WARANGAL (URBAN)	21	MAHABUBNAGAR
02	MANCHERIAL	12	WARANGAL (RURAL)	22	WANAPARTHY
03	NIRMAL	13	JAYASHANKAR (BHUPALLAPALLI)	23	NAGARKURNOOL
04	KOMRAMBHEEM (ASIFABAD)	14	JANGAON	24	JOGULAMBA (GADWAL)
05	KARIMNAGAR	15	MAHABUBABAD	25	NALGONDA
06	JAGITIAL	16	KHAMMAM	26	SURYAPET
07	PEDDAPALLI	17	BHADRADRI (KOTHAGUDEM)	27	YADADRI (BHONGIRI)
08	RAJANNA (SIRICILLA)	18	MEDAK	28	VIKARABAD
09	NIZAMABAD	19	SANGAREDDY	29	MEDCHAL-MALKAJGIRI
10	KAMAREDDY	20	SIDDIPET	30	RANGAREDDY
				31	HYDERABAD

From the above table, it is evident that the 31 revenue districts, formed/reorganised by the State of Telangana with effect from 11.10.2016, are detailed therein and the local area reservation for district cadre posts is to be provided to each of the 31 districts, and not to the erstwhile 10 districts which constituted the territories of the State of Telangana on the appointed day i.e 02.06.2017.

Sri S.Rahul Reddy, Learned Counsel for the petitioner, would submit that the State Government lacks jurisdiction to reorganise local cadres; the Presidential Order had organised the local cadre into 10 districts; for district cadre posts, the local area reservation should relate to the 10 districts as is referred to in the Presidential Order; the result of confining local area reservation, to each of the

newly created 31 districts, is that a local area is being carved out within the local area specified in the Presidential Order, for the purpose of providing local area reservation for district cadre posts; such a power to sub-divide local areas, and to carve-out new local areas, from among the erstwhile 10 districts which constituted the local area for district cadre posts, is not available to the State Government, and is in violation of the Presidential Order; the 2017 Rules which confine a district to each of the newly created 31 districts, and the notification which provides for local area reservation in each of the newly carved out 31 districts are ultra-vires Article 371-D of the Constitution of India and the Presidential Order; the State Government lacks power to prescribe residence in a part of the State for the purpose of employment; the 2017 Rules, to the extent it defines a “district” to mean the newly formed 31 districts as a local area, is in violation of Articles 16(2) and 371-D of the Constitution, and the Presidential Order; by way of Rules 2(5) and 6 of the 2017 Rules, the State Government has sought to reorganise the local cadre, already organised under the Presidential Order; since the power of the State Government to organise a local cadre was available to be exercised only within a period of 27 months from the date on which the Presidential Order was issued, i.e. by 17.01.1978, it is only the erstwhile 10 districts, as referred to in the Presidential Order, which can form the basis for providing local area reservation; by confining local area reservation, to the newly formed 31 districts, the Government of Telangana has reorganised the local cadre, and has created a local cadre within the existing local cadre; and reorganising local cadres in each of the 31 districts, as opposed to the 10 districts referred to

in the Presidential Order, is in violation of Article 371-D of the Constitution of India and the Presidential Order. Learned Counsel would rely on **A.V.S.Narasimha Rao v. State of Andhra Pradesh**¹; **S.Prakasha Rao v. Commissioner of Commercial Taxes**²; **M.Kesavulu v. State of Andhra Pradesh**³; and **Government of A.P. v. P.Vema Reddy**⁴.

On the other hand, the Learned Advocate-General for the State of Telangana would submit that Para-6 of the Presidential Order only confines local area reservation to a district; unlike local area reservation for zonal posts, which detail the districts which comprise a zone, the local area limits of a “district” is not defined in the Presidential Order; the very object of providing local area reservation is to give preference to local candidates, instead of those who are not; the State Government has, therefore, sought to give preference to local candidates within the 31 newly formed districts; and the object of providing local area reservation to each of the newly formed 31 districts is laudable, and is in furtherance of the spirit of the Presidential Order.

While reiterating that the action of the State Government, in providing local area reservation to each of the 31 newly formed districts, is legal and valid, Learned Advocate-General would submit that, in case this Court were to hold otherwise, the State Government may then be permitted to re-adjust the vacancy position with respect to the 10 erstwhile districts in the State of Telangana; to issue an errata to the Notification dated 21.10.2017 whereby local area reservation has been prescribed for the newly

¹ (1969) 1 SCC 839

² (1990) 2 SCC 259

³ 2003 (6) ALD 522 (DB)

⁴ 2007 (4) ALD 209 (DB)

created 31 districts; to grant 15 more days time, for those who did not apply earlier, to submit their applications; and to notify that it is not necessary for such of those candidates, who have already applied, to apply again. Learned Advocate-General would submit that, since it is not even the petitioners' case that the recruitment process should be interdicted, both the State Government and the third respondent-Public Service Commission should be permitted to hold the examinations, as scheduled, in February, 2018 as the State Government intends to provide employment to the unemployed qualified candidates from the State, and to strengthen the existing school system by employing adequate number of teachers in each school.

Before examining the rival submissions it is useful to take note of the relevant Constitutional provisions, the provisions of the Presidential Order, the provisions of the A.P. Reorganisation Act, 2014, and G.O.Ms.No.524 dated 14.05.1976. Article 371-D of the Constitution of India are the special provisions with respect to the State of Andhra Pradesh or the State of Telangana. Clause (1) of Article 371-D enables the President, by order made with respect to the State of Andhra Pradesh or the State of Telangana, to provide, having regard to the requirement of each State, for equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment, and in the matter of education, and different provisions to be made for various parts of the State. Article 371D(2)(a) stipulates that an order made under clause (1) may, in particular, require the State Government to organise any class or classes of posts in the civil service of, or any class or classes of civil posts under, the State

into different local cadres for different parts of the State and allot, in accordance with such principles and procedure as may be specified in the order, the persons holding such posts to the local cadres so organised. Article 371-D(2)(b)(i) provides that an order, made under clause (1), may, in particular, specify any part or parts of the State which shall be regarded as the local area for direct recruitment to posts in any local cadre (whether organised in pursuance of an order under Article 371-D or constituted otherwise) under the State Government or in favour of candidates who resided or studied for any period specified in the order in the local area in respect of such cadre, university or other educational institution, as the case may be. Clause (10) of Article 371-D stipulates that the provisions of Article 371-D, and of any order made by the President thereunder, shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force.

It is only because Article 371D(10) gives over-riding effect to an order made by the President under Article 371-D(1), that the Presidential Order has effect notwithstanding anything contained in Article 16(2) of the Constitution which stipulates that no citizen shall be ineligible for, or be discriminated against in respect of, any employment or office under the State, among others, on grounds only of descent, place of birth or residence. While Article 16(3) of the Constitution stipulates that nothing in Article 16(1) 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, it cannot be lost sight of that the Rules, notified in G.O.Ms.No.25 dated 10.10.2017, have been made by the Governor of the State of Telangana, among others, in the exercise of the powers conferred on him under the proviso to Article 309 of the Constitution, and is not a law made by Parliament referable to Article 16(3) of the Constitution of India.

The Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (hereinafter referred to as the “Presidential Order”) was notified by the President of India in G.S.R.524(E) dated 18.10.1975, and was republished by the erstwhile Government of Andhra Pradesh in G.O.Ms.No.674 dated 20.10.1975. Para 2(e) of the Presidential Order defines ‘local cadre’ to mean to any local cadre of posts under the State Government organised in pursuance of paragraph 3, or constituted otherwise for any part of the State. Para-3 thereof relates to organisation of local cadres. Para-3(1) stipulates that the State Government shall, within a period of 27 months from the commencement of the Presidential Order, organise classes of posts in the civil services of, and classes of civil posts under, the State into different local cadres for different parts of the State to the extent, and in the manner, hereinafter provided. Under the proviso thereto, notwithstanding the expiration of the said period, the President may, by order, require the State Government, whenever he considers it expedient so to do, to organise any classes of posts in the civil services of, and classes of civil posts under, the State into different local cadres for different parts of the State.

Para.5(1) stipulates that each part of the State, for which a local cadre has been organised in respect of any category of posts, shall be a separate unit for the purposes of recruitment, appointment, discharge, seniority, promotion and transfer, and such other matters as may be specified by the State Government, in respect of that category of posts. Para.6 relates to local areas and para.6(1) stipulates that each district shall be regarded as a local area (i) for direct recruitment to posts in any local cadre under the State Government comprising all or any of the posts in any department in that district belonging to the category of a lower division clerk or to any other category equivalent to or lower than that of a lower division clerk. Para.6(2) stipulates that each zone shall be regarded as a local area (1) for direct recruitment to posts in any local cadre under the State Government comprising all or any of the posts in any department in that zone belonging to any non-gazetted category other than those referred to in sub-para.(1).

Sub-para (iii) and (iv) of Para 6 (1) were inserted by G.O.Ms.No.224, G.A.D, dated 30.06.2000. Para 6(1) (iii) stipulates that each district shall be regarded as a local area for direct recruitment to all the posts in the Andhra Pradesh School Education Subordinate Services and all other similar/equivalent categories of posts of teachers under any department of the State Government. Para 6(1)(iv) stipulates that each district shall be regarded as a local area for direct recruitment to all posts of teachers under a local authority or such other under any management, as may be notified by the State Government from time to time, carrying a scale of pay equal to that of the posts in the Andhra Pradesh School Education Subordinate Service.

Consequently, each District is a local area for direct recruitment to the post of secondary grade teachers in Government Schools and schools run by a local authority.

Para.8 relates to reservation in the matter of direct recruitment. Para.8(1) stipulates that 80% of the posts to be filled by direct recruitment at any time (a) in any local cadre under the State Government comprising posts belonging to the category of lower division clerk or a category equivalent to or lower than that of a lower division clerk, and (b) in any cadre under a local authority comprising posts carrying a scale of pay, the minimum of which, or a fixed pay which, does not exceed the minimum of the scale of pay of a Junior Assistant shall be reserved in favour of local candidates in relation to the local area in respect of such cadre.

Clauses C(i) and (ii) were inserted to Para 8(1) of the Presidential Order by G.O.Ms.No.2, GA(SPF.A) Department, dated 03.01.2002 with effect from 01.06.2001. Para 8(1)(c)(i) stipulates that 80% of the posts to be filled by direct recruitment at any time in any local cadre under the State Government comprising posts belonging to the categories of Teachers in the Andhra Pradesh School Education Subordinate Service and all other similar or equivalent categories of posts of teachers under any department of the State Government shall be reserved in favour of local candidates in relation to the local area in respect of such cadre. Para 8(1)(c)(ii) stipulates that 80% of the posts to be filled by direct recruitment at any time in any cadre under a local authority or under any such other management, as may be notified by the State Government from time to time carrying a scale of pay equal to that

of posts in the Andhra Pradesh School Education Subordinate Service shall be reserved in favour of local candidates in relation to the local area in respect of such cadre. Para.8(5) stipulates that 60% of the posts under the State Government belonging to the category of Civil Assistant Surgeons to be filled by direct recruitment at any time shall be reserved in favour of and allocated amongst the local candidates in relation to the local area specified in column (1) of the Table below in the respective ratios specified in the corresponding entry in column (2) thereof. The table below para.8(5) divides the 23 districts of the erstwhile State of Andhra Pradesh into different zones with the districts of Adilabad, Karimnagar, Warangal and Khammam in Zone-V, the districts of Rangareddy, Nizamabad, Mahboobnagar, Medak and Nalgonda in Zone-VI and the city of Hyderabad in Zone-VII.

In exercise of the powers conferred by Para-3(1), the erstwhile State of Andhra Pradesh had organised local cadres, in the Department of School Education, vide G.O.Ms.No.529 dated 14.05.1976. Paragraph 2 of the said G.O. refers to Annexure-III as detailing non-gazetted posts, equivalent to the cadre of LDC and below, the present unit of appointment of which is a District, and which will have to be continued as a District cadre under para 3(7) of the Presidential Order read with para 7 of G.O (P) 728 dated 01.11.1975. The posts of Secondary Grade Teachers are referred to at Serial No.5 of Annexure-III, and the territorial spread in Column 5 refers, among others, to Adilabad, Karimnagar, Warangal, Khammam, Hyderabad Dist.(-city), Nizamabad, Mahboobnagar, Medak, Nalgonda and the City of Hyderabad i.e the

erstwhile 10 districts of the State of Telangana (prior to formation of 31 districts with effect from 11.10.2016).

Part-II of the A.P. Reorganisation Act, 2014 relates to reorganisation of the erstwhile State of Andhra Pradesh. Section 3, thereunder, relates to the formation of Telangana State and provides that, on and from the appointed day (i.e. 02.06.2014), there shall be formed a new State to be known as the State of Telangana comprising the following territories of the existing State of Andhra Pradesh, namely – Adilabad, Karimnagar, Medak, Nizamabad, Warangal, Rangareddy, Nalgonda, Mahbubnagar, Khammam (excluding certain Mandals) and Hyderabad districts; and thereupon the said territories shall cease to form part of the existing State of Andhra Pradesh. The aforesaid 10 districts of the erstwhile State of Andhra Pradesh formed the territories of the new State of Telangana which came into being on the appointed day i.e 02.06.2014.

The Telangana Districts (Formation) Act, 1974 is an Act to provide for the formation of districts in the State of Telangana, and for alteration of areas or boundaries of the districts, in the interests of better administration and development of the areas comprised therein, and for matters connected therewith. Section 3 relates to division of the State into districts, formation of new districts and alteration of areas, boundaries or names of existing districts. Section 3(1) enables the Government by notification, from time to time for the purposes of revenue administration, to divide the State into such districts with such limits as may be specified therein.

In the exercise of the powers conferred by Section 3 of the 1974 Act, the Governor of Telangana, in the interests of better administration and development of the area concerned, issued, among others, G.O.Ms.No.221 dated 11.10.2016 altering the boundaries of the existing districts i.e. as specified in Section 3 of the 2014 Act and its revenue divisions and mandals and villages, as specified in the Schedule, with effect from 11.10.2016. Schedule-I of G.O.Ms.No.221 dated 11.10.2016 contains details of the erstwhile districts and the names of the present districts. The names of the present district is given in Col.2 of Schedule-I whereas the name of the erstwhile district is given in Col.5 thereof. While the erstwhile districts, shown in Schedule-I of all the G.Os issued, are the 10 districts which together formed the State of Telangana on the appointed day i.e 02.06.2014, the districts referred to in Col.2 of Schedule-I are the 31 districts formed with effect from 11.10.2016. The avowed intent and purport of creation of 31 districts, as is evident from the Statement of Objects and Reasons of L.A. Bill No.14 of 2016, is to bring the Government closer to the common man, for decentralised development of the various areas of the State, and to have better administration.

Since Para 6(1)(iii) & (iv) require each District to be regarded as a local area for direct recruitment to the post of Secondary grade teachers, the question which necessitates examination is whether the Districts, as referred to in Para 6(1), are the Districts which are referred to in G.O.Ms.No.529, Education Department, dated 14.05.1976, and in Section 3 of the A.P. State Reorganisation Act, 2014 on the appointed day i.e 02.06.2014, or they are the 31 Districts which have been created with effect from

11.10.2016 in the exercise of the powers conferred under the Telangana District Formation Act.

In terms of Para 3(1) of the Presidential Order, notified in G.S.R.524(E) dated 18.10.1975, the power of the State Government to organise classes of posts in the civil services of, and classes of civil posts under, the State into different local cadres for different parts of the State, to the extent and in the manner provided, is to be exercised within a period of twenty seven months from the date of commencement of the Presidential Order i.e twenty seven months from 18.10.1975 i.e on or before 17.01.1978. G.O.Ms.No.529, Education Department, dated 14.05.1976, whereby local cadres were organised in the Department of School Education, was issued by the erstwhile Government of Andhra Pradesh well within the 27 months period stipulated in the Presidential Order and, as has been noted hereinabove, refers to the ten erstwhile districts of the State of Telangana. After 17.01.1978, neither was the erstwhile Government of Andhra Pradesh, nor the present Government of Telangana, empowered to reorganise local cadres, and such a power is available, in terms of the proviso to para 3(1), only with the President of India. Reorganisation of the erstwhile 10 districts of the State of Telangana into 31 districts under the Telangana Districts (Formation) Act, 1974 is for administrative convenience, and not to provide local area reservation under the Presidential Order.

While the State Government may create division/divisions within the local area or local cadre, for the purpose of efficient administration or convenience, but for the purpose of recruitment, seniority, promotion, discharge, etc. the local cadre once organised

under para 3(1) shall be final, and shall continue to be operative until action is taken under the proviso to Para 3(1). **(S.Prakasha Rao²)**. Creation of 31 Districts, with effect from 11.10.2016, has no bearing on local area reservation to be provided in terms of the Presidential Order. The 10 districts, notified in G.O.Ms.No.529 dated 14.05.1976, would continue to be regarded as a local area, unless and until otherwise amended on the directions of the President.

Several notifications were issued by the Government of Telangana forming/reorganising the erstwhile 10 districts of the State of Telangana into 31 districts. Rules 2(5) and 6 of the 2017 Rules, which defines a “local area” to be the newly formed 31 districts, in effect, means that local area reservation would now be confined within each of the 31 districts. Consequently, candidates who do not satisfy the residential requirement of a particular local area (i.e in any one of the newly formed 31 districts) would be deprived of local area reservation in that particular district, even though they fulfilled the residential requirement within a local area in the correspondent district among the earlier 10 districts of the State of Telangana. This can be better explained by way of an illustration. For instance the erstwhile Adilabad district has now been reorganised and is largely spread, among others, over Mancheri, Nirmal, Komram Bheem and Utnoor districts. In view of Rules 2(5) and 6 of the 2017 Rules local area reservation would now be confined to each of the aforesaid newly constituted districts. Consequently a person who is a local candidate in the erstwhile district of Adilabad, would not be entitled to be treated as a local candidate in the newly formed Mancheri district if he

satisfies the residential requirement of the newly formed Nirmal district, but does not satisfy the said requirement with respect to the newly formed Mancherial district. Prior to formation of the 31 new districts from 11.10.2016, such a candidate would have been treated as a local candidate of Adilabad district which largely includes the territories of the present Mancherial and Nirmal districts. In effect the local cadre organised by the State Government in G.O.Ms.No.529 dated 14.05.1976, pursuant to the Presidential Order notified in G.S.R.524(E) dated 18.10.1975, is now sought to be reorganised by the State Government into smaller local cadres. As the 31 districts were formed only on 11.10.2016, these new districts would be treated as local areas only if it had the prior approval of the President in view of the proviso to Para 3(1) of the Presidential Order, which it does not.

The only source of power under the Presidential Order, for the State Government to organize local cadres on its own, was Para 3(1) thereof. This power was not only circumscribed by the words *'to the extent and the manner hereinafter provided'*, fetters were also put on its exercise in terms of a time limit of 27 months from the date of commencement of the Presidential Order. If no such limitation had been prescribed then, in view of the provisions of the General Clauses Act having been made applicable to the Presidential Order, the power under Para 3(1), to organize local cadres, could have been exercised from time to time. The power of the State Government to organize different local cadres for different parts of the State, *"to the extent and in the manner provided in the Presidential Order"*, was available only for a period of 27 months from the commencement of the Presidential order i.e., prior to 17-01-1978.

It is only during the period when such a power was available to the State Government was it empowered, under Para 3(1), to organize a separate cadre in respect of any category of posts in any department for any part of the State. Since the State Government is divested of the power to organize local cadres under Para 3(1), after 17-01-1978, it is no longer entitled to organize a separate cadre in respect of any category of posts in any department for a "part of the State. (**P.Vema Reddy**⁴). It is with a view to overcome this hurdle, and in order to enable cadres, newly created thereafter, to be organized into local cadres, was a proviso inserted to Para 3(1) giving power to the President to require local cadres to be organised. After expiry of 27 months from the date of commencement of the Presidential Order, the power to organize local cadres is conferred only on the President, and not on the State Government. (**P.Vema Reddy**⁴).

Once the State Government has organised a class or classes of posts in the civil services of, and class or classes of civil posts under, the State as local cadres in a district, it ceases to have any power to bifurcate or reorganise the cadre or cadres therein. The State Government should place necessary material before the President who shall then, in the exercise of the powers conferred under the proviso to Para.3(1), consider whether it is expedient to organise any class or classes of posts in the civil services of, and class or classes of civil posts under, the State into a further local cadre within the local cadre in the district already prescribed, and to pass an order in that regard requiring the State Government to so organise it. (**S.Prakasha Rao**²). Both for abolition of the cadres, which were hitherto organised into local cadres, and to

organize newly created cadres into local cadres, the President has to make an order, and till such an order is made neither can an existing local cadre be abolished nor can a newly created cadre be organized into a local cadre, (**P.Vema Reddy**⁴), nor, for that matter, can a local area be further sub-divided into different local areas.

Once the local cadre has been organized in respect of categories of posts declared by the President of India, and in pursuance of which the State Government has issued a notification organizing local cadres for local areas, the sanctity of such local cadre should be maintained except in cases where the amendment is effected with the approval of the President of India. (**M.Kesavulu**³). The consequences of organizing different local cadres for different parts of the State is that each of these local cadres, being a separate unit for the purposes of recruitment, seniority, promotion etc, in effect, provides for reservation on the basis of residence in a part of the State. But for the protection conferred on it by the Presidential Order, any such action would have been void under Article 13(2), as it would contravene Article 16(2). (**P.Vema Reddy**⁴).

It is not as if the 2017 Rules were made on the directions of the President, exercising his powers under the proviso to Para 3(1) of the Presidential Order. The submission that the 10 erstwhile districts of the State of Telangana are mentioned only in Para.8 with reference to zonal posts, and are not specified in Para 6(1) wherein each district shall be regarded as a local area for direct recruitment, and therefore formation of 31 districts by the State Government would automatically result in such local area being provided reservation under para.6(1) of the Presidential Order,

ignores the fact that the power of the State Government to organise classes of posts in the civil service of, and classes of posts under, the State into different local cadres came to an end on 17.01.1978, and it is only the districts, which existed then, which are to be regarded as a local area.

Creation of 31 districts by the Government of Telangana, with effect from 11.10.2016, more than thirty eight years after the cut off date of 17.01.1978, cannot be understood as an exercise undertaken by the State Government to reorganise local cadres for these 31 districts. By the time these 31 districts were formed on 11.10.2016, it is only the President who, in view of the proviso to Para 3(1), was entitled by order to require the State Government to organise local cadres. The 2017 Rules were not made pursuant to any order issued by the President, and the 31 newly created districts cannot, therefore, be regarded as a local area under Para 6(1) of the Presidential Order.

As it would suffice to read down Rules 2(5) and (6) of the 2017 Rules, as the ten districts referred to in G.O.Ms.No.529 dated 14.05.1976, it is wholly unnecessary for us to strike down the said Rules as ultra-vires the Presidential Order. Rules 2(5) and (6) of the 2017 Rules shall, henceforth, be read as the 10 districts of the State of Telangana, as is referred to in G.O.Ms.No.529 dated 14.05.1976 and in Section 3 of the 2014 Act, and not the 31 districts created by the Government of Telangana in the exercise of the powers conferred on it by the Telangana District Formation Act, 1974.

As we are satisfied that the impugned notification issued by the 3rd respondent, to the extent the 31 districts created with

effect from 11.10.2016 have been regarded as a local area, must be set aside, the Government of Telangana shall readjust the vacancies with respect to each of the erstwhile 10 districts; an errata to the notification dated 21.10.2017 shall be issued stipulating each of the 10 erstwhile districts, as referred to hereinabove, as the local area; further time shall be granted till 15.12.2017 for those, who did not apply earlier, to submit their applications making it clear that it is not necessary for those candidates, who had applied earlier, to apply again. The examination, proposed to be held in February, 2018 for recruitment to the posts of SGTs, shall be held as scheduled providing local area reservation for each of the 10 districts referred to in Annexure-III to G.O.Ms.No.529 dated 14.05.1976, and in Section 3 of the A.P. State Reorganisation Act, 2014.

The Writ Petition is allowed. Miscellaneous petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

Date: 24th November, 2017.

Note:
L.R. copy to be marked.
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