IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 2363 of 2020
alongwith connected matters
Reserved on: 10.9.2020
Decided on : 21.9.2020

1. CWP No. 2363 of 2020

Suresh Kumar Petitioner.

Versus

Union of India & others Respondents.

2. CWP No. 2644 of 2020

Mousam Deen and another Petitioners.

Versus

Union of India & others Respondents.

3. CWP No. 2804 of 2020

Anil Kumar Petitioner.

Versus

Union of India & others Respondents.

Coram:

Hon'ble Mr. Justice Sureshwar Thakur, Judge.
Hon'ble Mr. Justice Chander Bhu`san Barowalia, Judge.

Whether approved for reporting?[1] *yes*

CWP No. 2363 of 2020

For the petitioner: Mr. Naresh K Sharma, Advocate.

For the respondents: Mr. Lokender Paul Thakur, Senior Panel Counsel, for respondent No.1.

Mr. Ashok Sharma, A.G with Mr. Hemant Vaid and Mr. Hemanshu Mishra, Addl.A.Gs with Mr. Vikrant Chandel, Dy.A.G for respondents No.2 and 3.

[1] Whether reporters of the local papers may be allowed to see the judgment?

Mr. Avneesh Bhardwaj, Advocate, for applicant in CMP No. 7703 of 2020.

CWP No. 2644 of 2020

For the petitioners: Mr. Naresh K Sharma, Advocate.

For the respondents: Mr. Lokender Paul Thakur, Senior Panel Counsel, for respondent No.1.

Mr. Ashok Sharma, A.G with Mr. Hemant Vaid and Mr. Hemanshu Mishra, Addl.A.Gs with Mr. Vikrant Chandel, Dy.A.G for respondents No.2 and 3.

Mr. Angrej Kapoor, Advocate, for respondent No.4.

Mr. Avneesh Bhardwaj, Advocate, for applicant in CMP No. 7705 of 2020.

CWP No. 2804 of 2020

For the petitioner: Mr. Naresh K Sharma, Advocate.

For the respondents: Mr. Lokender Paul Thakur, Senior Panel Counsel, for respondent No.1.

Mr. Ashok Sharma, A.G with Mr. Hemant Vaid and Mr. Hemanshu Mishra, Addl.A.Gs with Mr. Vikrant Chandel, Dy.A.G for respondents No.2 and 3.

Mr. Sanjeev Kumar, Advocate, for respondent No.4.

Sureshwar Thakur, Judge.

Since all the writ petitions involve common questions of law, hence all become amenable, for, a common verdict becoming rendered thereon. However, only Annexures borne in

CWP No. 2363 of 2020 are being alluded in this verdict, as, on the file of other writ petitions, common thereto though specially assigned Annexure numbers exist.

2. Application(s) being CMP No. 7704 of 2020 in CWP No. 2644 of 2020 and CMP No. 7703 of 2020 in CWP No. 2363 of 2020, are, allowed and the applicant(s) therein, are, ordered to be impleaded as intervener(s)/respondent(s).

3. The writ petitioners, belong to the BPL category (non-SC/ST/OBC). The State of Himachal Pradesh, through, an advertisement embodied in Annexure P-7, advertised, for, the relevant purpose, the enumerated therein posts, of, TGT (Arts), TGT (Non-Medical), and, TGT (Medical). In all the afore advertised posts, vis-a-vis, the category appertaining, to, Economically Weaker Section (for short "EWS"), 39 posts became reserved, against advertised post(s) qua TGT (Arts), 18 posts became reserved against the advertised post(s) qua TGT (Non-Medical), and, 13 post(s) became reserved against, the, advertised post(s) qua TGT (Medical). However, in the note written, in the afore Annexure, an echoing is borne, vis-a-vis, those candidates,

belonging to unreserved BPL category, being not required to submit any Income, and, Asset certificate, rather theirs becoming eligible for being considered, for, selection, in, the afore category appertaining, to, the afore unreserved posts, vis-a-vis, EWS category (non-SC/ST/OBC), merely, on production, of, a BPL Certificate duly countersigned, by the Block Development Officer, besides upon a non-SC/ST/OBC certificate, becoming issued by the competent authority concerned.

4. The learned counsel, appearing for the petitioners, has expressed his resistance, to, the afore merger of BPL (non-SC/ST/OBC category), into, the larger nowat contemplated category, of, EWS, and, has strived, to, restore the hitherto reservation, as, exclusively made qua BPL category, hence, belonging to non-SC/ST/OBC category, as, the earlier hereto reservation, as, was in operation, prior to the issuance of afore Annexure P-7, hence, validly made BPL family(ies) aspirant(s) rather, to, exclusively fall within the domain, of, EWS.

5. The afore reservation, as, is meted to the non-SC/ST/OBC category, of, EWS hence in Annexure P-7, is, in pursuance to Annexure P-5 (notification of 11.6.2019).

6. The afore resistance, as is, with utmost vehemence expressed before this Court, by the learned counsel, for the petitioners, is, anvilled upon the trite ground (i) qua the enlargement of EWS category(ies) rather by the State of Himachal Pradesh, through its making Annexures P-5, and, P-7, for, theirs becoming entitled, to, the benefits of reserved posts qua them, (ii) moreso, on fixing, of, a higher per annum income borne in a sum of Rs. 4.00 lacs, than, the one previously in prevalence, in as much, as, the hitherto per annum qualifying income, of, the apposite BPL family (EWS category) being pegged, at, Rs.35000/-, (iii) perse whereupon(s), earlier, upon, evident per annum income, of, Rs.35,000/- becoming sourced, from, all resources, hence entitled any aspirant, to, fall within, the, EWS category, and, also his/her became entitled, to, exclusivity of benefits, of reservation made qua therewith, (iv) whereas, with the afore ceiling appertaining, to, per annum income upon, becoming nowat increased, to, a per annum

sum up to Rs. 4 lacs, as, is embodied in Annexure P-5, hence makes, visible bespeakings, vis-a-vis, the apposite escalation(s) in income criteria, happening in a shift short manner (v) and the afore escalation, in, the apposite income criteria, being both arbitrary and discriminatory, in as much, as, the special category, of, BPL families, alone merited inclusion, within the ambit, of, the constitutionally valid category of EWS, (vi) besides the extant subsuming therewithin(s) of persons, with, a higher income, with aspirants' hence earlier holding the afore pegged income, rather there-through creating or constituting a constitutionally invalid class, within, the insegregable class of EWS, nor the earlier made rather exclusive reservation qua BPL families, not meriting assignments, of, constitutional merit, as, the, afore holds no nexus, with, the constitutional objective, of valid reservation(s), in public employment, being meted to, no family, other than a BPL family category aspirant.

7. The writ petitioners, on, anvil of rules, existing prior to the issuance, of, Annexure P-5, in as much, as, thereat non-SC/ST/ OBC and BPL certificate holders, alone became entitled to the

prescribed per-centum, of, reservation, in public employment, make espousal(s), vis-a-vis, the constitutionally sacrosanct hitherto rule, not warranting any dilution, as has occurred, through issuance of Annexure P-5. In nutshell the learned counsel for the petitioners, espouses for setting aside, of, Annexures P-5, and, of P-7, rather, conspicuously on the ground, of, their legitimate expectation(s) in public employment, on, anvil, of, Annexure P-5 becoming jeopardized.

8. The State of Himachal Pradesh, filed a detailed reply, to the writ petition, and, has there-through strived to validate the issuance of Annexure P-5, and, also the tandem therewith, issued advertised notice, as, becomes embodied in Annexure P-7. The essence of the reply meted to the writ petition is encapsulated, in, the afore Annexure(s) being constitutionally valid, and, theirs becoming rested, upon, valid exercising(s), of, constitutional discretion by the State of Himachal Pradesh. A specific contention, is, also embodied therein qua the broadening, of, the category, of, BPL certificate holder(s), into, a large category, of, EWS (non-SC/ST/OBC), through, the apposite income criteria being

enhanced, up to Rs.4 lacs per annum, not undoing, the benefit, of, reservation earlier meted even to BPL certificate holders, rather, a, mere expansive swathe of population, also, hence with minimal incomes', being validly created, for, hence the benefits of reservation(s), on, the constitutionally sacrosanct pedestal, of, sub Article 6, of, Article 16, of, the Constitution of India, becoming meted, to all, hence, falling, in, the apposite category, of, EWS.

9. Moreover, it is also contended that since, from the hitherto 8% reservation, as, contemplated, for, BPL certificate holder(s), rather extantly, a, 10% reservation, to, EWS becomes contemplated through Annexure P-5, hence, for direct recruitment to class I, II, III and IV posts, necessarily hence in obvious expansion, of, category(ies) of posts, where-against reservation(s) became earlier contemplated, exclusively for BPL certificate holders (non-SC/ST/OBC), in as much, as, only qua class IV posts, reiteratedly there-through, the, apposite beneficial category becoming enlarged, in, both expanse and size (i) thereupon, the extant increase(s) in the per centum of reservation(s), and, also increases in number of reserved posts, hence would ensure accruing

of proportionally increased size(s), of, the constitutionally sacrosanct reservation(s) hence becoming meted to EWS, than, occurring earlier, (ii) whereupon, also the proportional increase(s) or inclusion(s) of, other persons, than, BPL aspirants, merit condonation. Significantly, hence it has become pointedly averred, in, the reply, that, the afore merger or inclusion, is, constitutionally valid, and, also has a keen and deep nexus, with the constitutional objective, in as much, as, there-through(s) the benefit(s) of reservation percolating into the largest swathe of population, hence, aspiring to become recipient(s) thereof, on, anvil of minimum or minimal income, (i) thereupon, the added category, of, persons hence befittingly becoming qualified, as, EWS, to, hence compete alongwith BPL certificate holders, for, all being considered for selection and appointment, vis-a-vis, the advertised posts.

10. Before proceeding to analyze the vigor, of, the afore strived contention, addressed before this Court, by the learned counsel for the petitioners, and, by the learned Advocate General, it is deemed imperative, to, go through, the relevant parameters, as become contemplated, in clause 3, of, Annexure P-5, (i) a reading

whereof unearths or unveils, vis-a-vis, an echoing being loudly voiced therein, vis-a-vis, a person holding, an annual income upto Rs. 4.00 lacs, hence becoming eligible for being entitled, to, avail, the, benefit, of, reservation made, vis-a-vis, EWS category, and afore income being construable alongwith all income(s) sourced from salary, agriculture, business, profession etc. Further more, dehors, the afore nowat contemplated, apposite EWS qualifying criteria, vis-a-vis, the afore per annum income, up to Rs.4.00 lacs, rather upon the aspirant concerned, holding more than one hectare, of, agricultural land in rural areas, and, 500 M^2 land in urban areas; or residential flat/house of more than 2500 square feet in rural/urban areas, rather rendering him self ineligible, besides upon his belonging, to, a family of income tax payee(s), or, upon, any, of, his family member(s) being, in, regular/contractual employment, of, the Central Government, State Government, Board, Corporations and autonomous bodies and public Sector undertakings etc, (i) thereupon, also his/her acquiring ineligibility, for, being construable to be fall, in, the EWS category. Moreover it has also become qualified, that, the property held by the family of the aspirant in

different locations or different places/cities, being amenable, for being clubbed, for, determining EWS category, besides, the aspirant concerned, his/her parents, and, siblings below the age of 18 years, as also his/her spouse and children, below the age of 18 years becoming declared to be the family, of, the aspirant.

11. Further more, along therewith, a, comparative study, of, the parameters/indicators, appertaining to entitlements qua BPL certificate(s) holders (non-SC/ST/OBC), is, also imperative, and, the requisite averments become embodied, in, a notification issued in July, 2018, and, notification whereof, has come to be placed on record, by the learned Advocate General, relevant paragraph whereof, is, extracted hereinafter.

" <u>प्रदेश सरकार ग्रामीण विकास विभाग</u>

संख्या एस०एम०जे०–120/2012–13 (बड)–आर०डी०डी०– **दिनांक जुलाई, 2018**

<u>अधिसूचना</u>

राज्यपाल हिमाचल प्रदेश गरीबी की रेखा से नीचे रहने वाले परिवारों (बी० पी० एल०) के चयन की प्रकिया में और अधिक पारदर्शिता लाने के उद्वेश्य से इस विभाग के पत्र दिनांक 29–01–2007 व 21–03–2013 द्वारा जारी दिशा–निर्देशों में निम्नलिखित संशोधन करने की सहर्ष स्वीकृति प्रदान करते हैं:–

(क) प्रत्येक बी० पी० एल० परिवार के मुखिया से ग्राम पंचायत द्वारा निम्नलिखित बिन्दुओं पर घोषणा पत्र (Affidavit) प्राप्त किया जाएगा:–

- कि मेरे परिवार के पास 2 हैक्टेयर से ज्यादा असिंचित भूमि या 1 हैक्टेयर से ज्यादा सिंचित भूमि नहीं हैं।
- मेरे परिवार के पास रहने के लिए आधुनिक शहरी प्रकार का पक्का/बड़ा निजी घर नहीं है।
- मेरा परिवार आयकर नहीं देता है।
- मेरे परिवार की वेतन, पैंशन, भत्ते, मानदेय, मजदूरी तथा व्यवसाय आदि से नियमित मासिक आय मु० 2500/– रू० से अधिक नहीं है।

• मेरे परिवार से कोई सदस्य सरकारी नौकरी अथवा गैर सरकारी नौकरी में नियमित तौर पर या अनुबन्ध पर कार्यरत नहीं है।

(ख) प्रत्येक बी० पी० एल० परिवार के कम से कम एक पात्र सदस्य को (सिवाय दिव्यांग व 70 वर्ष की आयु से अधिक सदस्यों) महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार गारन्टी अधिनियम (मनरेगा) में एक वर्ष में कम से कम 20 दिन कार्य करना अनिवार्य होगा। यदि कोई परिवार इस शर्त को पूर्ण नहीं कर पाता, तो ग्राम सभा द्वारा ऐसे परिवार का नाम बी० पी० एल० सूची से काट दिया जाएगा।

(ग) बी० पी० एल० परिवार के कम से कम एक पात्र सदस्य को दीन दयाल उपाध्याय ग्रामीण कौशल्य योजना या राष्ट्रीय ग्रामीण आजीविका मिशन में स्थानीय स्तर पर अपनी भागीदारी सुनिश्चित करनी होगी।

(घ) यदि बी० पी० एल० परिवार का कोई सदस्य अलग परिवार के रूप में अपना नाम दर्ज करने हेतु ग्राम पंचायत में आवेदन करता है तो उस अवस्था में ऐसे नये परिवार को आगामी 3 वर्षो तक बी० पी० एल० सूची में शामिल नहीं किया जायेगा तथा अविवाहित लोगों का परिवार बी० पी० एल० के लिए अलग परिवार नहीं माना जाएगा।

उपरोक्त के अतिरिक्त यह भी निर्णय लिया जाता है किः–

(1) ऐसी ग्राम पंचायतें जहां अब एक भी परिवार बी० पी० एल० में नहीं है, उन ग्राम पंचायतों के बी० पी० एल० परिवारों के लक्ष्य को सम्बन्धित उपायुक्त द्वारा उसी विकास खण्ड की अन्य ग्राम पंचायतों में पूर्व आबंटित लक्ष्य के समानुपात बांटा जाएगा तथा विकास खण्डों व जिले का बी० पी० एल० लक्ष्य पूर्ववत ही रहेगा। बी० पी० एल० मुक्त ग्राम पंचायतों को प्रोत्साहन हेतु विभाग द्वारा विशेष अनुदान/योजना का प्रावधान किया जायेगा।

(2) विभाग द्वारा प्रदेश में हर वर्ष अप्रैल माह में होने वाली ग्राम सभा की प्रथम बैठक में ग्राम पंचायत की बी० पी० एल० सूची की समीक्षा सुनिश्चित की जाएगी।

आदेश द्वारा
(डा० आर० एन० बत्ता),
सचिव (ग्रामीण विकास एवं पचां० राज),
हिमाचल प्रदेश सरकार, शिमला–2

12. A perusal thereof, discloses qua though there occurs therein a prescription, vis-a-vis, necessity of any BPL aspirant concerned (a) holding an income, upto, Rs.2500/- per month (b) the land holding of his or her family, vis-a-vis, un-irrigated land being up to 2 hectares, and, irrigated land up to 1 hectares (c) his or her family not residing in urban area like pakka house, (d) any member of his or her family being not an income tax payee (e) any member of his or her family not holding public employment either in

permanent or in a contractual capacity. A further reading thereof unveils, vis-a-vis, alike the apposite income criteria contemplated in Clause 3, of Annexure 5, an apposite income criteria, becoming also contemplated, in, the notification, of, July, 2018, excepting limits thereof, and, in both, the apposite income criteria, becoming prescribed, to, assume no relevance, upon, the aspirant's family holding, prohibited sizes of landed or immovable assets, as, become respectively embodied in Annexure A-5, and, in the notification, of, July, 2018.

13. Moreover, another similarity which occurs, inter-se, both the notification of July, 2018, and, clause 3 of Annexure P-5, is, vis-a-vis, an aspirant concerned, or, the family of the aspirant concerned, not, being an income tax payee. The afore similarity(ies) inter-se the notification of July 2018, wherethrough, the category of BPL became created, and, clause 3 of Annexure P-5, does prima-facie, ensure, vis-a-vis, the happening(s), of, enlargement(s), or, broadening(s), of, EWS category, hence enshrined, in, Sub Article 6 of Article 16, of, the Constitution of India, as, a constitutionally valid category, acquiring constitutional

merit besides concomitantly, the, exercising(s), of, apposite executive discretion becomes not amenable to judicial review, (i) significantly, and, amplifyingly, the, exercising of valid executive discretion, appears to ensue, from its meteing deference, vis-a-vis, the monetisable value(s), of, the immovable assets/land holdings, of an aspirant concerned, than any *stricto sensu* pegging(s), of, income upto Rs. 2500/- per month, (ii) perse whereupon(s) earlier an aspirant staked claim, for, his being both a befitting BPL family member, and, also claimed exclusivity, of, her/his hence falling within the category of EWS, (iii) as, thereupon(s), *prima-facie* the mandate of sub Article 6 of Article 16 of the Constitution of India, becomes meted valid deference, rather than suffer inapt nullification (iv) emphasisingly, the, leading valid factor in the making of the impugned notification, is grooved, in the consequent therewith economic necessity(ies), arising from passage, of, time since then upto now, hence bringing inflationary pressure upon an income higher than Rs.35,000/- per annum, with the apt corollary, vis-a-vis, the earlier economically empowered section(s) of society, becoming alike BPL certificate holders, rather marginalized, in,

terms of monetisable resources, thereupon theirs also becoming eligible through economic necessity, for staking claim, for, reservation, as, nowat made qua EWS category.

14. Even otherwise, the apposite constitutional mechanism, is enjoined to assume or enjoin the virtue, of, dynamism becoming imparted thereto, than any unwanted staticity, hence, upon, imparting(s), of, constitutional dynamism, to, the apposite norms, does validate, the inclusion of all afore nowat included persons, within the category of EWS, (i) as all fall within, the, constitutionally valid area/zone thereof, (ii) given there-through(s) not only economic necessity, arising from efflux of time, since the making, of, the earlier notification, vis-a-vis, the issuance, of, nowat notification, has become meted deference, (iii) but also the Executive has struck the apposite balance inter-se all competing interest(s) appertaining, to, constitutional norms/considerations, vis-a-vis, all marginalized or economically weaker sections of the society, deserving inclusions within the constitutional ambit of EWS.

15. Further thereonwards, there are, stringent prohibitive restrictions, cast in Annexure P-5, upon, an aspirant, whose family income though from all sources, is, Rs. 4.00 lacs per annum, for, hence, his though perse there-through deserving inclusion, in, EWS category, (i) in as much, as, upon the family of the aspirant, upon, evidently owning or possessing, more, than 1 hectare of agricultural land, in rural areas, and, 500 M^2 land in urban area, or, residential flat/house of more than 2500 square feet in rural/urban areas, (ii) whereupon, upon the afore exclusionary prohibitive clause(s) becoming proven, thereupon, the, aspirant becoming estopped to, anchor, his, claim, for, inclusion, within, EWS category, (iii) despite the apposite per annum income, being in consonance with, the, prior thereto opening(s) of clause 3. The afore prohibited sizes, of, landed assets, or, of, immovable assets, if held, by any aspirant, hence renders the relevant income criteria, to, become irrelevant. In aftermath, in the valid exercising(s) of discretion, by, the State of Himachal Pradesh, it appears it becoming well guided, by, the monetisable quantum, of, the afore holdings in as much, as, upon the monetisable landed assets or immovable assets, of the aspirant

being beyond Rs. 4.00 lacs, hence his becoming constitutionally disqualified, for, becoming reckoned, as, an EWS aspirant. Necessarily hence the afore necessity, of, size, of, per annum income, is, a well calibrated mechanism, for, making an apt determination, of, economic weakness or economic dis-empowerment, of, any aspirant, thereupon, the exercise, of, executive discretion becomes bereft, of, any vires, of, malafides or impropriety, and, even of constitutional illegality.

16. Be that as it may, even qua BPL certificate holders (non-SC/ST/OBC), upon, the size of the land holdings, in, as much, as, the size of the irrigable land, being beyond 1 hectare, and, vis-a-vis non-irrigable land being beyond 2 hectare, are cast, as fetter(s), against, an aspirant seeking BPL status, (i) dehors, the income criteria with the apposite ceiling limit becoming accomplished. In the face, of, the afore evidently proven exclusion(s), hence emanating from the afore respective prohibited size(s), of, land holdings, as, held by any BPL aspirant, though, would render the latter to be not a member, of, a BPL family, (ii) however, thereafter, upon, monetisable values, of, his apposite prohibited

size(s), of, land holdings, hence falling within the realm, of, the limit, of, income prescribed, vis-a-vis, the nowat created EWS category, would rather eligiblise the apposite BPL family aspirant, to, avail the benefit of reservation meted, in, the impugned notification, qua, EWS category, (iii) wherefrom, obviously, there is neither any absolute exclusion, of, any BPL family member nor *prima-facie* any inference, of any invalid discretion, being exercised is drawable, nor any exclusivity of reservation accruing, upon, an aspirant holding per mensem income, of, Rs. 2500/-, can beget constitutional condonation, nor, can become the valid touchstone, for, invalidating the impugned notification, (iii) preponderantly, also when through(s) the size, of, reservation, as, also the categories, of, posts, where-to-which, it becomes applicable, does give leverage, even, to, a BPL family aspirant rather holding an income, of, only upto Rs.35,000/- per annum, to, compete alongwith other categories nowat included within, the, EWS category.

17. In other words, the, prohibited monetisable value, of, land holdings, of any BPL aspirant, though when may exclude any

BPL aspirant, to, claim the benefits, of, the hitherto EWS reservation, (i) whereas, upon the apposite monetisable value thereof, arriving upto Rs.4.00 lacs, as, is the per annum, limit of income hence enhanced, from, the hitherto per annum limit of income, of, Rs. 35000/- rather would qualify the apposite excluded BPL family aspirant, to, avail the benefits, of, reservation, vis-a-vis, EWS category, (i) and, when the afore per annum income, is, the main criteria, vis-a-vis, the financial year prior to the year of application, (ii) thereupon, on the afore parameter(s), a palpable uniformity, and, equalization occurs, inter-se persons falling within, the, domain of clause 3 of Annexure P-5, with those aspirants who stand excluded from the category, of, BPL, and, who become nowat included within EWS category (iii) whereupon, obviously the afore brought equalizations, hence, bolsters an inference qua it becoming founded, upon, valid exercising(s) of discretion, by the executive. Moreover, therethrough hence the largest swathe of economically marginalized befitting population, also deserving, to, fall within the constitutional category, of, EWS, becoming validly benefited, (i) besides there-through an assimilation(s) therewithins, of, the afore

hitherto category of BPL aspirant, anchored, upon, income criteria, also happening (ii) besides, the afore assimilation, does not, render the broadened category of EWS, to become invalidly segregated, from, the hitherto BPL category, merely, on, income criteria. Moreover, the afore merger through the afore mode, of, BPL family aspirant hence also nowat concomitantly ensures subsumings therewith, hence, conspicuously within the larger category, of, economically marginalized families contemplated in clause 3 of Annexure P-5, thereupon, the afore merger hence becomes constitutionally meritworthy, (a) as, any BPL aspirant also becomes facilitated, to, avail the benefits, of, the extant reservation. Significantly with the mode of merger/inclusion of BPL family aspirant, into the larger category, of, economically marginalized families, becoming well founded, upon, the legitimate mode, contemplated in clause 3 of Annexure P-5, (a) in as much, as, both on the parameter(s) of size, of, income and also, on, the parameter(s) of monetisable values, of, immovable assets, (b) whereupon, the afore adopted mode, of, apposite merger, becomes a

constitutionally valid or a constitutionally sacrosanct creation or merger, as, the case may be.

18. Be that as it may, for the afore inference or conclusion, being firmly rested, on valid constitutional touchstone(s) hence permitting judicial review, of, Annexures P-5, and, of P-7, it becomes, incumbent, for this Court, to extract the relevant and permissible domains within ambits' whereof, the exercise of judicial review, of, executive action, becomes impermissible or permissible, as the case may be, (i) and, domains whereof became expressed in a judgment rendered, by the Hon'ble Apex Court in case titled as ***Chairman All India Railway Recruitment Board and another*** versus ***K Shyam Kumar and others*** (2010) 6 SCC 614, relevant paragraphs whereof, stand extracted hereinafter (ii) wherein trite underlining(s) are echoed, vis-a-vis, the apposite constitutional fetters, operating hence against or carrying leanings, vis-a-vis, affirmative exercise of judicial review, in as much, as, the exercising, of, apposite judicial review, upon, the decision making process or the making of executive discretion or the exercise of discretion, being illegal, (iii) and, the foundation of

illegality, as, a source, of, striking down executive action, is, ultra vires, errors of law and, onerous conditions, improper purpose, relevant and irrelevant factors, acting in bad faith, unauthorized delegation, failure to act etc. (iii) procedural impropriety, breach of natural justice, and, vice of caprice, malafides, ingraining the exercise, of, executive action, and, also upon, legitimate expectation(s) becoming eroded. Further thereonwards. it also becomes encapsulated therein, vis-a-vis, the afore "wednesbury" test, hence empowering the making, of, judicial review, of, executive decision(s), rather nowat also inching towards, the more omnibus doctrine of necessity, and, proportionality, (i) and, the imperative bench marks thereof being encapsulated in paragraphs 22 to 28 thereof, (ii) and, obviously a reading of the hereinafter extracted paragraphs, makes vivid echoings, vis-a-vis, both the proportionality test, as well, as, the "wednesbury" principle, continuing to co-exist, and, finest difference, inter-se both being comprised, in, proportionality test, becoming applicable, upon, violation of human right, (iii) and, or upon breach, of, fundamental rights rather evidently surfacing, (iv) whereas, "wednesbury"

principle, becoming attracted more on domestic law, and, obviously, when there is violation of citizens ordinary rights. Consequently, hence, the proportionality principle has not yet replaced wednesbury principle, rather both the afore principles coexist, hence in the afore factual touchstone(s). Thereupon, upon applying the afore tests hereat, the executive, has reasonably balanced the economic necessity, of, inclusion of a larger swathe, of, economically marginalized section of population, in, the EWS category (non-SC/ST/OBC category) than existing earlier (i) and, thereupon, the afore striking of balance, inter-se, the respective competing claims, vis-a-vis reservation within EWS category, of, persons, hence, in, both the notification of July, 2018, where-through the category of BPL families became created, and, of, persons, borne in the extant notification, who validly benefit, from, the hitherto upper limit of income criteria hence becoming enhanced, does find, its befitting constitutional bedrock. Necessarily also hence, thereupon, the necessity of inclusion(s) thereof(s), within EWS category, becomes well conceived, hence for the requisite purpose. Since the holistic constitutional virtue

behind sub Article 6, of, Article 16 of the Constitution of India, is fully achieved, thereupon, hence the impugned notification, cannot be deprecated. Moreover reiteratedly also when through the afore notification, the executive has meted deference, vis-a-vis, the doctrine of necessity, in as much, as, through the afore escalation of per annum income, from, the hitherto per annum income of Rs. 35000/-, it has definitely, validly merged therewithin, a large, and, expansive swathe, of, population, within, the EWS category (Non-SC/ST/OBC), (i) and, thereupon reiteratedly, also the apposite striking, of, balance has become meted the most befitting deference, (ii) whereupon both the afore apposite tests become satiated, conspicuously, when no material, vis-a-vis, vices, of, malafides or illegalities, rather seeking into the decision making processes, hence has made any appearance. Consequently, this Court refrains to exercise its power of judicial review, for, setting aside the impugned Annexures.

> "22. Judicial review conventionally is concerned with the question of jurisdiction and natural justice and the Court is not much concerned with the merits of the decision but how the decision was reached. In Council of Civil Service Unions Vs. Minister of State for Civil Service (1984) 3 All ER 935 the (GCHQ Case) the House of Lords rationalized the grounds of judicial review and ruled that the basis of judicial review

could be highlighted under three principal heads, namely, illegality, procedural impropriety and irrationality. Illegality as a ground of judicial review means that the decision maker must understand correctly the law that regulates his decision making powers and must give effect to it. Grounds such as acting ultra vires, errors of law and/or fact, onerous conditions, improper purpose, relevant and irrelevant factors, acting in bad faith, fettering discretion, unauthorized delegation, failure to act etc., fall under the heading "illegality". Procedural impropriety may be due to the failure to comply with the mandatory procedures such as breach of natural justice, such as audi alteram partem, absence of bias, the duty to act fairly, legitimate expectations, failure to give reasons etc.

23. The ground of irrationality takes in Wednesbury unreasonableness propounded in Associated Provincial Picture Houses Limited v. Wednesbury Corporation (1947)2 All ER 680, Lord Greene MR alluded to the grounds of attack which could be made against the decision, citing unreasonableness as an `umbrella concept' which covers the major heads of review and pointed out that the court can interfere with a decision if it is so absurd that no reasonable decision maker would in law come to it. In GCHQ Case (supra) Lord Diplock fashioned the principle of unreasonableness and preferred to use the term irrationality as follows:

"By `irrationality' I mean what can now be succinctly referred to as "Wednesbury's unreasonableness", ... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

24. In R. v. Secretary of State for the Home Department ex parte Brind (1991) 1 All ER 720, the House of Lords re-examined the reasonableness of the exercise of the Home Secretary's discretion to issue a notice banning the transmission of speech by representatives of the Irish Republican Army and its political party, Sinn Fein. Court ruled that the exercise of the Home Secretary's power did not amount to an unreasonable exercise of discretion despite the issue involving a denial of freedom of expression. House of Lords however, stressed that in all cases

raising a human rights issue proportionality is the appropriate standard of review.

25. The House of Lords in R (Daly) v. Secretary of State for the Home Department (2001) 2 AC 532 demonstrated how the traditional test of Wednesbury unreasonableness has moved towards the doctrine of necessity and proportionality. Lord Steyn noted that the criteria of proportionality are more precise and more sophisticated than traditional grounds of review and went on to outline three concrete differences between the two:-

(1) Proportionality may require the reviewing Court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions.
(2) Proportionality test may go further than the traditional grounds of review in as much as it may require attention to be directed to the relative weight accorded to interests and considerations.
(3) Even the heightened scrutiny test is not necessarily appropriate to the protection of human rights.
Lord Steyn also felt most cases would be decided in the same way whatever approach is adopted, though conceded for human right cases proportionality is the appropriate test.

26. The question arose as to whether doctrine of proportionality applies only where fundamental human rights are in issue or whether it will come to provide all aspects of judicial review. Lord Steyn in R. (Alconbury Development Limited) v. Secretary of State for the Environment, Transport and the Regions (2001) 2 All ER 929 stated as follows:-

"I consider that even without reference to the Human Rights Act, 1998 the time has come to recognize that this principle (proportionality) is part of English administrative law not only when Judges are dealing with Community acts but also when they are dealing with acts subject to domestic law. Trying to keep the Wednesbury principle and proportionality in separate compartments seems to me to be unnecessary and confusing".

Lord Steyn was of the opinion that the difference between both the principles was in practice much less than it was sometimes suggested

> and whatever principle was applied the result in the case was the same.
> 27. Whether the proportionality will ultimately supersede the concept of reasonableness or rationality was also considered by Dyson Lord Justice in R. (Association of British Civilian Internees: Far East Region) v. Secretary of State for Defence [2003] QB 1397 and stated as follows:-
> "We have difficulty in seeing what justification there now is for retaining Wednesbury test ..... but we consider that it is not for this Court to perform burial rights. The continuing existence of the Wednesbury test has been acknowledged by House of Lords on more than one occasion. A survey of the various judgments of House of Lords, Court of Appeals, etc. would reveal for the time being both the tests continued to co-exist."
> 28. The position in English Administrative Law is that both the tests that is. Wednesbury and proportionality continue to co-exist and the proportionality test is more and more applied, when there is violation of human rights, and fundamental freedom and the Wednesbury finds its presence more on the domestic law when there is violations of citizens ordinary rights. Proportionality principle has not so far replaced the Wednesbury principle and the time has not reached to say good bye to Wednesbury much less its burial."

19. Moreover, the, Hon'ble Apex Court, in, a judgment rendered in a case titled as ***Basic Education Board UP*** versus ***Upendra Rai*** (2008) 3 SCC 432, has made an expostulation of law, vis-a-vis, Courts being prohibited, to, interfere with the policy decision of the Government, unless, it is in violation of some statutory or constitutional provision, (i) whereupon(s) there is no necessity hereat, for this Court, to, exercise its power of judicial review, as, for all the afore reasons, the, decision making processes

involved in the making of Annexures P-5 and P-7, are, hence constitutionally sacrosanct, and, also constitutionally inviolable.

20. Significantly vis-a-vis the merger, which has happened and occurred hereat, the Hon'ble Apex Court in a judgment rendered in a case titled, as, ***Indian Airlines Officers' Assn.*** Versus ***Indian Airlines Ltd and others alongwith connected matters,*** (2007) 10 SCC 684, has in paragraph 46 thereof, paragraph whereof stands extracted hereinafter, hence cast an expostulation of law, rather making it impermissible for Courts of law, to, in the exercise of their constitutional power, of judicial review, to, rip apart or disintegrate the apposite merger, upon, the apposite merger became founded, upon, any constitutional valid policy besides therein, it has, become mandated, that, any arguments of inequality or vis-a-vis unreasonable classification, being a meritless ground, to, strike down, any, policy decision.

> "46. . In S.P. Shivprasad Pipal vs. Union of India & Ors. [(1998) 4 SCC 598] Mrs. Sujata Manohar, J. took into consideration that prior to the merger of the three cadres, the Cadre Review Committee recommended the merger of three cadres/services which Committee was headed by Cabinet Secretary and had members of various other Ministries such as Secretary Labour, Finance, Department of Personnel, Law and

Defence. These recommendations were approved by the Cabinet and it is thereafter that the Rules were framed which Rules were approved by the Department of Personnel and Law Ministry as also the Union Public Service Commission. The learned Judge noted that a detailed exercise was done to ensure that no injustice takes place to any of the merging cadres. The learned Judge then went on to note that the salary structure was similar in three cadres by 1987. The qualifications were also almost the same in all the three merging cadres. The learned Judge also further noted that the constitution of a unified cadre was in public interest and hence the merger could take place. The learned Judge went on to say:

"Hence the merger took place. Since this is essentially a matter of policy, the scope of review by the Court is limited. We can, however, examine the grievance of the appellant relating to unequals being treated as equals and the grievance relating to losing promotional avenues."

Learned Judge found no fault with the policy decision and in fact went on to hold in para 19 of the judgment as under:

"However, it is possible that by reason of such a merger, the chance of promotion of some of the employees may be adversely affected, or some others may benefit in consequence. But this cannot be a ground for setting aside the merger which is essentially a policy decision. This Court in Union of India v. S.L. Dutta examined this contention. In SL Dutta a change in the promotional policy was challenged on the ground that as a result, service conditions of the respondent were adversely affected since his chances of promotion were reduced. Relying upon the decision in the State of Maharashtra vs. Chandrakant Anant Kulkarni this Court held that a mere chance of promotion was not a condition of service and the fact that there was a

> reduction in the chance of promotion would not amount to a change in the conditions of service."
>
> We do not think anything more is required to be said as regards the three decisions relied upon by the learned counsel."

21. The afore trite underlining, as, becomes borne therein, is, rather with aplomb applicable hereat, vis-a-vis, merger of the hitherto BPL category, into the larger category of EWS, especially when the afore merger also does validly assimilate therewithin, even, the, hitherto category of BPL, through, the income limit, being enhanced from hitherto income of Rs.35000/- to Rs. 4.00 lacs hence drawn from all sources.

22. This Court, for, all the afore stated reasons, deems it not fit, to exercise its power to judicial review, to, invalidate the impugned Annexures, yet, the further reason(s) for this Court, not approbating, the arguments addressed by the learned counsel for the petitioners, is, founded upon (a) the exercise of executive discretion by the Government of H.P, through, the valid enshrinement(s), occurring in sub Article 6 of Article 16, of, the constitution of India, though yet not becoming rested, upon, the firmest, hence accurate statistical data. However, the afore infirmity, if any, is condonable,

as, in clause 3, of, Annexure P-5, and, for all the aforestated reasons, the, inclusion(s) therewithin, even of BPL certificate holders, is, an exercise rather may not requiring, any marshaling(s) qua therewith any precise scientific data, (i) especially only, vis-a-vis, any BPL family aspirant concerned, with an income up to Rs.35000/- per annum, as, any insistence, for, garnering(s), of, any firm scientific or precise data, vis-a-vis, the afore class, of, BPL family, is, rather not required to be undergone, by the executive hence prior to its, making the impugned Annexures, importantly given, the increase(s), in, sizes of reservation nowat meted to EWS category, and, also given the increase(s) in the number of posts, where-to-which, it has obviously become applicable than hitherto, (ii) and prominently, when the afore nowat contemplated economically marginalized section(s), of, society, than any aspirant holding a meager income of Rs.35000/- rather befittingly deserve, to, become valid recipient(s), of, the constitutional reservation, vis-a-vis, EWS, (iii) whereas, upon making them outside the afore realm merely, upon, firm statical data qua the number(s) of the afore remaining un-garnered, would bring breach becoming

encumbered upon, the apposite constitutional norms, moreso, when even the afore hitherto category(ies) also remain within realm and domain, of, EWS category. Hence, merely on the afore purported infirmity, the impugned Annexures, cannot be invalidated, as for all the afore stated reasons, they do strike, the requisite balance, and, also ensure the apposite proportionality becoming meted adherence, and, especially heightened reverence becoming meted, vis-a-vis, the test of economic necessity, of, inclusion, of, a larger economically marginalized section(s), of, society, than, the category of EWS, significantly when it has occurred without disturbing the inclusion therewithin(s), of, even the BPL certificate holders. Consequently, merely upon the purported rights, of, purported exclusivity, of, reservation, of, BPL certificate holder, becoming purportedly truncated upon persons falling within clause 3 of Annexure P-5, hence being permitted to enter into, the area, of, competition, is, a constitutionally invalid argument, as, it fails, both the wednesbury test, and, also fails the test of proportionality, and, necessity.

23. Moreover, since the learned counsel, for, the petitioner, has failed to convince this Court, that there, is any malafides or

gross impropriety, in, the exercise of discretion, by the State of Himachal Pradesh, in, the making of Annexures P-5 and P-7, thereupon also this Court rejects, all his submissions, inclusive of, the, one appertaining, to, the legitimate expectation, of the writ petitioners, who hitherto became vested, with, an exclusive right to stake claim, for, selection and appointment under EWS category, as, the afore argument also fails the test of proportionality, and, of necessity. Since advertised posts are made by the Government of Himachal Pradesh, thereupon the challenge to the apposite Annexures, as, made by the Central Government are deemed unnecessary, for, being meted any adjudication.

In view of the above, present petitions stand dismissed, alongwith all pending applications.

(Sureshwar Thakur),
Judge.

21.9. 2020 (Chander Bhusan Barowalia),
(priti) Judge.