
(2010) 12 RAJ CK 0071

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 13491, 12810 and 13884 of 2009

Captin Gurvinder Singh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 15(4), 16, 16(1)
Rajasthan Scheduled Castes, Scheduled Tribes, Backward Classes, Special Backward Classes & Economically Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2008 — Section 2, 3, 4
Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Seats in Educational Institutions and of Appointments) or Posts in the (Services under the State) Act, 1994 — Section 4, 5, 7

Citation : (2011) 1 RLW 697

Hon'ble Judges : Arun Mishra, C.J; Mahesh Bhagwati, J

Bench : Division Bench

Judgement

Arun Mishra, C.J.—These writ petitions have been filed by the Petitioners assailing the vires of Rajasthan Scheduled Castes, Scheduled Tribes, Backward Classes, Special Backward Classes and Economically Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments and Posts in Services under the State) Act, 2008 (hereinafter referred to as "the Act of 2008"). Prayer has also been made to direct the State Government to review the ceiling limit of reservation in favour of SC, ST and OBC of 16%, 12% and 21% respectively.

2. Facts are being noticed from Civil Writ Petition No. 13491/2009 wherein the Petitioner No. 4-Samta Andolan, which is a registered society, has submitted that constitutional intent is to reduce the reservation. It is submitted that the foremost requirement for reservation is to collect quantifiable data in overall State relating to the population as well as relating to economical standard of the caste in general and people in that caste in particular. After having collected such datas and further making a comparative statement with respect to other castes

in the State only for the purposes of providing upliftment of particular class or caste, reservation can be provided. 100 point roster is being applied and reservation has been increased. The Act of 2008 has been published in the Rajasthan Gazette on 31st July, 2009 under which various castes including Gurjars and Rebaries have been included in the SC/ST, OBC, Special Backward Classes (SBC) and Economically Backward Classes (ECB). While enacting the aforesaid Act of 2008, the State has not relied upon any census conducted in this regard and no exercise at the level of the State was ever done to ascertain whether any particular caste is actually socially backward or not. The Petitioners sought information under the which indicates that no such study has been undertaken by the State Government. It is further averred that so far as Gurjars and Rebaries are concerned, they were included in Other Backward Classes. However, due to political stir, the State Government without examining the issue, came up with the Notification dated 31st July, 2009 notifying the Act of 2008. Now, reservation of seats in educational institutions in the State has been provided to the extent of 68% to SC, ST, OBC, SBC and EBC. 16% for Scheduled Castes, 12% for Scheduled Tribes, 21% for Backward Classes, 5% for Special Backward Classes and 14% for Economically Backward Classes with the rider that persons belonging to the creamy layer shall not be eligible for consideration against the reserved quota of seats in any educational institution in the State. However, provision of creamy layer shall not be applicable to the reservation for the Scheduled Castes and Scheduled Tribes. The aforesaid reservation in service has been provided vide Section 4 of the Act of 2008. As per mandate of the Supreme Court in no quantifiable datas are being collected of various castes or so called backward classes in the State of Rajasthan. In-fact, there was no need for giving any further reservation as by efflux of time, there is upliftment of the persons belonging to backward classes. The Petitioners have applied for furnishing certain datas, but that has not been furnished. However, whatever datas, which have been furnished, indicate that State has no reliable and up-to-date datas regarding representation of the different class or caste in the public employment. Adequate representation does not mean proportionate representation. With the passage of time, most of the tribal population have lost their "tribal" character and does not fulfil the criteria laid down by the Apex Court for providing reservation. All tribal groups have been represented in public employment not only adequately but more than proportionately.

3. The State Government has also issued Notification dated 25.8.2009 in exercise of the power conferred u/s 2(b) of the Act of 2008 and has increased the ceiling financial limit for creamy layer from 2.5 lacs to 4.5 lacs. The aforesaid notification is not constitutionally valid as it would not be possible to percolate down the benefit to the needy. The Act is incompatible with the constitutional intentment and is against the mandate of Indra Sawhney Union of India 1992 Supp (3) SCC 217). The validity of 77th, 81st and, 85th Amendment was challenged before the Supreme Court in M. Nagaraj's case (supra) and the Apex Court has enumerated the essential criteria that study has to be done for

providing reservation. The Apex Court has made it clear that creamy layer is required to be excluded from SC/ST apart from OBC otherwise it would be against the mandate of Article 16(1) of the Constitution. The gap between BPL and ceiling limit of creamy layer is huge. The State ought to have made endeavour to reduce reservation and it has acted contrary to the intentment of the Constitution by enhancing reservation upto 68%.

4. In the return filed by the State Government, it is contended that the State of Rajasthan has separated Gurjar community from Other Backward Classes and had separately given 5% reservation to Gurjars, Gadia Lohars, Banjaras and Raikas as Special Backward Classes (SBC). Under the Act of 2008, provision for reservation to the extent of 14% for Economically Backward Classes (EBC) had been made. Due to the aforesaid provision, reservation has exceeded to the extent of 68%. Gurjar community has been held as most backward caste/class by the Backward Class Commission headed by Kaka Kalekar. Other cognate communities are not adequately represented in the services of the State. The Committee headed by Justice J.R. Chopra was appointed looking to the demand of Gurjars to grant them status as Scheduled Tribe. The Commission has found that Gurjars are inadequately represented in the services of the State and they are socially and educationally backward. Gurjars, Gadia Lohars, Banjaras and Raikas are the communities, which are dependent upon villiage commons for their livelihood. They are also being nomadic communities at times. Considering the report of the Committee, positive and proactive action has been taken by the State. A case had been made out to exceed reservation beyond 50% considering the peculiar situation. The Act of 2008 has been enacted with a view to uplift Gurjars, Gadia Lohars, Banjaras and Raikas. Mandate of Indra Sawhney (supra) and M. Nagaraj (supra) has not been violated. The Committee employed the following criteria for identifying the special backward class:

- (i) Low social position in the traditional caste hierarchy.
- (ii) General educational advancement among the major section of caste/ community.
- (iii) Inadequate representation in government service.
- (iv) Inadequate representation in the field of trade, commerce and industry.

5. In Chapter-V of the report, the Committee examined the status of the Gurjars. The petitions cannot be said to be maintainable. The action is intended to bring equality. The petitions being meritless deserve dismissal.

6. Rejoinder has been filed by the Petitioners pointing out that in Rajasthan, no Committee has been formed and Kaka Kalekar Commission was a Commission for All India and there was no commission specifically for the State of Rajasthan. Datas have not been collected for increasing the extent of reservation. Increase in reservation is politically motivated. Reliance has also been placed on the decision of the Apex Court in Suraj Bhan Meena and Anr. v. State of Rajasthan

and Ors. SLP (Civil) No. 6385 of 2010, decided on 7.12.2010) in which decision in the case of M. Nagaraj (supra) was relied upon and the judgment of this Court quashing Notifications dated 28.12.2002 and 25.4.2008 issued by the State of Rajasthan was upheld on the ground that no exercise was undertaken in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Scheduled Castes and Scheduled Tribes communities in public services. The point of reference to Chopra Committee is whether Gurjars should be included in ST category with which Chopra Committee did not agree. Thus, no study was undertaken by Chopra Committee with respect to Gurjar belonging to Special Backward Classes particularly when Gurjars were already covered under the category of OBC. There was no rhyme or reason to provide them special status by including them in Special Backward Classes without undertaking requisite study.

7. Mr. S.P. Sharma, Mr. Shobhit Tiwari and Mr. Sandeep Singh, learned Counsel appearing on behalf of the Petitioners have submitted that the provisions of Sections 3 and 4 of the Act of 2008 are illegal and arbitrary, inasmuch as, reservation has been enhanced upto 68% without undertaking requisite study and collecting quantifiable data and without considering the criteria laid down by the Apex Court in M. Nagaraj's case (supra). The Act of 2008 could not have been enacted without undertaking any study. Notification has also been issued with respect to enhancement of financial limit of creamy layer in the Other Backward Classes from 2.5 lacs to 4.5 lacs. The effect of notification would be detrimental even to the Other backward classes and benefit is going to be usurp by higher income group. There was no rhyme or reason behind increasing the income from 2.5 lacs to 4.5 lacs for being creamy layer. Reliance has also been placed on the decision of the Apex Court in the case of S.V. Joshi and Ors. v. State of Karnataka and Ors. (Writ Petition (Civil) No. 259 of 1994, decided on 13th July, 2010). In any case, the reservation could not have been exceeded 50% and efforts should have been made to reduce it by undergoing requisite study. Gurjars are already included in the Other Backward Classes and Chopra Committee has opined that they could not have been treated as Members of ST category, there was no reason for creating Special Backward Class for Gurjars, Gadia Lohars, Banjaras and Raikas. Point of reference to Chopra Committee was not for creating Special Backward Class, no such category could have been created. The reservation which has been provided to the Economically Backward Classes (EBC) and to the extent of 14% is also impermissible and suffers from the same vice and is clearly hit by the decisions of the Apex Court in the cases of M. Nagaraj (supra), Indra Sawhney (supra) and Ashoka Kumar Thakur Vs. Union of India (UOI) and Others,

8. Mr. P.P. Rao, learned Senior Counsel appearing with Mr. G.S. Bapna, Advocate General on behalf of the State submitted that the Act of 2008 has been enacted considering the down-trodden status of Gurjars, Gadia Lohars, Banjaras and Raikas and in order to bring about equality and duly considering the representation in the State services and taking into account the report of the

Chopra Committee, though the point referred to Chopra Committee was with respect to whether Gurjars could be treated as tribal persons for inclusion in Scheduled Tribes, but observations have been made in report that Gurjars are most backward class. It is further submitted that in the case of S.V. Joshi (supra), the Apex Court has only directed to collect quantifiable data, but the Act has not been struck down. In case this Court directs further quantifiable data to be collected, they are ready to do so. However, their action is justified in the prevailing backwardness of the aforesaid castes-Gurjars, Gadia Lohars, Banjaras and Raikas.

9. After hearing the learned Counsel for the parties at length and after going through the materials placed on record, it could not be disputed that there is a need to identify and collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in the public employment, keeping in mind maintenance of efficiency in administration. Reservation has to be decided on facts of each case. In the instant case, it could not be disputed at bar that the State has not undertaken any study nor collected quantifiable data before enhancing reservation upto 68%. Thus, the Act of 2008, which has been enacted so as to enhance the reservation upto 68% could not be said to be justified.

The Apex Court in the case of Suraj Bhan (supra) has observed:

44. The vital issue which fell for determination was whether by virtue of the implementation of the Constitutional Amendments, the power of Parliament was enlarged to such an extent so as to ignore all constitutional limitations and requirements. Applying the "width" test and "identity" test, the Constitution Bench held that firstly it is the width of the power under the impugned amendments introducing amended Articles 16(4-A) and 16(4-B) that had to be tested. Applying the said tests, the Constitution Bench, after referring to the various decisions of this Court on the subject, came to the conclusion that the Court has to be satisfied that the State had exercised its power in making reservation for Scheduled Castes and Scheduled Tribes candidates in accordance with the mandate of Article 335 of the Constitution, for which the State concerned would have to place before the Court the requisite quantifiable data in each case and to satisfy the Court that such reservation became necessary on account of inadequacy of representation of Scheduled Castes and Scheduled Tribes candidates in a particular class or classes of posts, without affecting the general efficiency of service. The Constitution Bench went on to observe that the Constitutional equality is inherent in the rule of law. However, its reach is limited because its primary concern is not with efficiency of the public law, but with its enforcement and application. The Constitution Bench also observed that the width of the power and the power to amend together with its limitations, would have to be found in the Constitution itself. It was held that the extension of reservation would depend on the facts of each case. In case the reservation was excessive, it would have to be struck down. It was further held that the

impugned Constitution Amendments, introducing Article 16(4-A) and 16(4-B), had been inserted and flow from Article 16(4), but they do not alter the structure of Article 16(4) of the Constitution. They do not wipe out any of the Constitutional requirements such as ceiling limit and the concept of creamy layer on one hand and Scheduled Castes and Scheduled Tribes on the other hand, as was held in Indra Sawhney's case (supra). Ultimately, after the entire exercise, the Constitution Bench held that the State is not bound to make reservation for Scheduled Castes and Scheduled Tribes candidates in matters of promotion but if it wished, it could collect quantifiable data touching backwardness of the applicants and inadequacy of representation of that class in public employment for the purpose of compliance with Article 335 of the Constitution.

45. In effect, what has been decided in M. Nagaraj's case (supra) is part recognition of the views expressed in Virpal Singh Chauhan's case (supra), but at the same time upholding the validity of the 77th, 81st, 82nd and 85th amendments on the ground that the concepts of "catchup" rule and "consequential seniority" are judicially evolved concepts and could not be elevated to the status of a constitutional principle so as to place them beyond the amending power of the Parliament. Accordingly, while upholding the validity of the said amendments, the Constitution Bench added that, in any event, the requirement of Articles 16(4-A) and 16(4-B) would have to be maintained and that in order to provide for reservation, if at all, the tests indicated in Article 16(4-A) and 16(4-B) would have to be satisfied, which could only be achieved after an inquiry as to identity.

46. The position after the decision in M. Nagaraj's case (supra) is that reservation of posts in promotion is dependent on the inadequacy of representation of members of the Scheduled Castes and Scheduled Tribes and Backward Classes and subject to the condition of ascertaining as to whether such reservation was at all required. The view of the High Court is based on the decision in M. Nagaraj's case (supra) as no exercise was undertaken in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Schedule Castes and Scheduled Tribes communities in public services. The Rajasthan High Court has rightly quashed the notifications dated 28.12.2002 and 25.4.2008 issued by the State of Rajasthan providing for consequential seniority and promotion to the members of the Scheduled Castes and Scheduled Tribes communities and the same does not call for any interference. Accordingly, the claim of Petitioners Suraj Bhan Meena and Sriram Choradia in SLP (Civil) No. 6385 of 2010 will be subject to the conditions laid down in M. Nagaraj's case (supra) and is disposed of accordingly. Consequently, Special Leave Petition(C)Nos. 7716, 7717, 7826 and 7838 of 2010, filed by the State of Rajasthan, are also dismissed.

10. Reliance has been placed by the Apex Court on the decision in M Nagaraj (supra) to hold that such study and collection of quantifiable data is necessary before making provision for reservation in the matter of providing accelerated

promotion also.

11. In *M. Nagaraj (supra)*, the Apex Court has laid down the extent of reservation thus:

55. Word of caution against excess reservation was first pointed out in *G.M., S. Rly Rangachari, Gajendragadkar, J.* giving the majority judgment said that reservation under Article 16(4) is intended merely to give adequate representation to backward communities. It cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees. A reasonable balance must be struck between the claims of backward classes and claims of other employees as well as the requirement of efficiency of administration.

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

57. But in *State of Kerala N.M. Thomas Krishna Iyer, J.* expressed his concurrence with the views of *Fazal Ali, J.* who said that although reservation cannot be so excessive as to destroys the principle of equality of opportunity under Clause (1) of Article 16, yet it should be noted that the Constitution itself does not put any bar on the power of the Government under Article 16(4). If a State has 80% population which is backward then it would be meaningless to say that reservation should not cross 50%.

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

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

12. With respect to study necessary for reservation, the Apex Court has laid down that there is a need of maintenance of efficiency in administration and there are numerous factors which have to be considered and *Chopra Committee* has not gone into all these aspects. The Apex Court held thus:

46. The point which we are emphasizing is that ultimately the present controversy is regarding the exercise of the power by the State Government depending upon the fact-situation in each case. Therefore, "vesting of the

power" by an enabling provision may be constitutionally valid and yet "exercise of the power" by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure backwardness and inadequacy keeping in mind the efficiency of service as required under Article 335.

107. It is important to bear in mind the nature of constitutional amendments. They are curative by nature. Article 16(4) provides for reservation for backward classes in cases of inadequate representation in public employment. Article 16(4) is enacted as a remedy for the past historical discriminations against a social class. The object in enacting the enabling provisions like Articles 16(4), 16(4A) and 16(4B) is that the State is empowered to identify and recognize the compelling interests. If the State has quantifiable data to show backwardness and inadequacy then the State can make reservations in promotions keeping in mind maintenance of efficiency which is held to be a constitutional limitation on the discretion of the State in making reservation as indicated by Article 335. As stated above, the concepts of efficiency, backwardness, inadequacy of representation are required to be identified and measured. That exercise depends on availability of data. That exercise depends on numerous factors. It is for this reason that enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimize these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment. This is amply demonstrated by the various decisions of this Court discussed hereinabove. Therefore, there is a basic difference between "equality in law" and "equality in fact" (See: "Affirmative Action" by William Darity). If Articles 16(4A) and 16(4B) flow from Article 16(4) and if Article 16(4) is an enabling provision then Articles 16(4A) and 16(4B) are also enabling provisions. As long as the boundaries mentioned in Article 16(4), namely, backwardness, inadequacy and efficiency of administration are retained in Articles 16(4A) and 16(4B) as controlling factors, we cannot attribute constitutional invalidity to these enabling provisions. However, when the State fails to identify and implement the controlling factors then excessiveness comes in, which is to be decided on the facts of each case. In a given case, where excessiveness results in reverse discrimination, this Court has to examine individual cases and decide the matter in accordance with law. This is the theory of "guided power". We may once again repeat that equality is not violated by mere conferment of power but it is breached by arbitrary exercise of the power conferred.

117. The test for judging the width of the power and the test for adjudicating the exercise of power by the concerned State are two different tests which warrant two different judicial approaches. In the present case, as stated above, we are required to test the width of the power under the impugned amendments. Therefore, we have to apply "the width test". In applying "the width test" we have to see whether the impugned amendments obliterate the constitutional limitations mentioned in Article 16(4), namely, backwardness and inadequacy of representation. As stated above, these limitations are not obliterated by the

impugned amendments. However, the question still remains whether the State concerned has identified and valued the circumstances justifying it to make reservation. This question has to be decided case-wise. There are numerous petitions pending in this Court in which reservations made under State enactments have been challenged as excessive. The extent of reservation has to be decided on facts of each case. The judgment in Indra Sawhney does not deal with constitutional amendments. In our present judgment, we are upholding the validity of the constitutional amendments subject to the limitations. Therefore, in each case the Court has got to be satisfied that the State has exercised its opinion in making reservations in promotions for S Cs and S Ts and for which the State concerned will have to place before the Court the requisite quantifiable data in each case and satisfy the Court that such reservations became necessary on account of inadequacy of representation of S Cs/S Ts in a particular class or classes of posts without affecting general efficiency of service as mandated under Article 335 of the Constitution.

13. The Apex Court held that in every case where the State decides to provide for reservation there must exist two circumstances, namely, "backwardness" and "inadequacy of representation". Backwardness has to be based on objective factors whereas inadequacy has to factually exist. In the instant case, this exercise has not been done by the State before increasing the percentage of reservation.

14. In *M. Nagaraj* (supra), the Apex Court has concluded thus:

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

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

123. However, in this case, as stated above, the main issue concerns the "extent of reservation". In this regard the State concerned will have to show in each case the existence of the compelling reasons, namely, backwardness, inadequacy of representation and overall administrative efficiency before making provision for

reservation. As stated above, the impugned provision is an enabling provision. The State is not bound to make reservation for SC/ST in matter of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment in addition to compliance of Article 335. It is made clear that even if the State has compelling reasons, as stated above, the State will have to see that its reservation provision does not lead to excessiveness so as to breach the ceiling-limit of 50% or obliterate the creamy layer or extend the reservation indefinitely.

15. In the instant case, the study, which has been held to be necessary, has not been admittedly undertaken by the State. It has also increased the percentage of reservation to 68% in oblivion of aforesaid decisions. When Gurjars were already in backward classes what prompted it to create Special Backward Classes as compared to other backward classes, has not been indicated by comparable data. Question is also of creating EBC when backward class was already having concept of creamy layer. No such exercise to create such class and within class has been undertaken and mind has not been applied to extent of reservation which is permissible considering efficiency in administration. The point of reference to Chopra Committee was different.

16. The Apex Court in S.V. Joshi (supra) has passed the following order on 13.7.2010:

Writ Petition (C) No. 259 of 1994

Learned Counsel for the Petitioners states that, in view of the subsequent events, this writ petition has become infructuous, which is, accordingly dismissed.

This writ petition, basically has become infructuous because the Petitioners have since retired. However, this order of dismissal of the writ petition would not result in denial of pensionary benefits to the Petitioners herein.

Writ Petition (C) Nos. 454/1994, 473/1994, 238/1995 and 35/1996:

The short question which arises for determination in these writ petitions, is whether the quantum of reservation provided for in Tamil Nadu Backward Classes, Scheduled Castes and Scheduled Tribes (Reservation of Seats in Educational Institutions and of Appointments to the Posts in the Services under the State) Act, 1993, is valid?

The impugned Act received the Presidential assent on 19th July, 1994. Subsequent to the filing of the above writ petitions, Articles 15 and 16 of the Constitution have been amended vide Constitution (Ninety-third Amendment) Act, 2005 and Constitution (Eighty-first Amendment) Act, 2000 respectively, which Amendment Acts have been the subject-matter of subsequent decisions of this Court in the cases of in which, inter alia, it has been laid down that if a State wants to exceed fifty per cent reservation, then it is required to base its decision on the quantifiable data. In the present case, this exercise has not been done.

Therefore, keeping in mind the said parameter, we direct the State to place the quantifiable data before the Tamil Nadu State Backward Classes Commission and, on the basis of such quantifiable data amongst other things, the Commission will decide the quantum of reservation. We are informed by learned Solicitor General that such data in the form of Reports, which are subsequently prepared, is already available.

Consequently, these writ petitions stand disposed of with a direction to the State Government to re-visit and take appropriate decision in the light of what is stated above.

It needs to be mentioned that the interim orders passed by this Court from time to time in relation to admissions to Educational Institutions shall continue to be in force and in operation for a period of one year from today.

In the circumstances, we are not expressing any opinion on the validity of 1993 Act at this stage.

The Registry is directed to send the records and proceedings, if any, connected to these writ petitions back to the State.

Writ Petition (C) No. 471 of 1994:

By this writ petition, Government Order dated 25th July, 1994, passed by the State of Karnataka, is sought to be challenged only to the extent that it provides for reservation in excess of fifty per cent, both in the matter of Admission to Educational Institutions and in the matter of Recruitment to Service.

On 9th September, 1994, the present writ petition had come up for directions along with LA. No. 4 in Writ Petition (C) No. 438 of 1994. In this case, we are concerned only with Writ Petition (C) No. 471 of 1994. On the said date, this Court passed the order in the following terms:

The State Government "shall be at liberty to make reservations in terms of the law laid down by this Court in Indra Sawhney case (reported in 1992 Suppl.(3) SCC 217)

It was also made clear that the State Government can make reservations upto fifty percent, inclusive of Scheduled Castes, Scheduled Tribes and Other Backward Classes.

We may state that, subsequent to the filing of this writ petition in 1994, Articles 15 and 16 of the Constitution have been amended vide Constitution (Ninety-third Amendment) Act, 2005 and Constitution (Eighty-first Amendment) Act, 2000, respectively. Moreover, subsequent decisions in the cases of M. Nagaraj and Others Vs. Union of India (UOI) and Others, and Ashoka Kumar Thakur Vs. Union of India (UOI) and Others, are also required to be kept in mind by the State Government, if at all, it seeks to pass any other order in near future.

Subject to above, this writ petition stands disposed of.

Writ Petition (C) No. 694 of 1994:

By this writ petition, challenge is laid to Sections 4, 5 and 7 of the Kamataka Scheduled Castes, Scheduled Tribes and Other Backward Classes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the (Services under the State) Act, 1994. By interim Order dated 11th November, 1994, this Court has stayed the operation of Sections 4, 5 and 7 of the 1994 Act, which is in operation till date. It is not in dispute that, after the filing of this writ petition and during it's pendency, Articles 15 and 16 of the Constitution have been amended vide Constitution (Ninety-third Amendment) Act, 2005, and Constitution (Eighty-first Amendment) Act, 2000, respectively. Further, after the filing of the writ petition, various pronouncements have been made by the judgments of the Constitution Benches of this Court in the cases of Under the said decisions, which have been rendered in the light of Constitution (Eighty-first Amendment) Act, 2000, and Constitution (Ninety-third Amendment) Act, 2005, reservation exceeding fifty per cent could be made only on the basis of quantifiable data before the Government. It appears that till today, this exercise has not been undertaken and the State Government has not collected the quantifiable data. It has not presented such data before the Court.

In the circumstances, we hereby direct the State of Karnataka to revisit Sections 4, 5 and 7 of 1994 Act in the light of the judgments of this Court, referred to above. We give one year's time to the State Government to take appropriate decision, if so advised. The interim order dated 11th November, 1994, will continue to operate for a period of one year from today. After one year, liberty is given to the Petitioner, if so advised, to move this Court if no steps are taken by the State Government, as directed above.

Subject to above, this writ petition stands disposed of.

17. The Apex Court has taken note of amendment made in Articles 15 and 16 of the Constitution vide Constitution (Ninety-third Amendment) Act, 2005 and Constitution (Eighty-first Amendment) Act, 2000 respectively and decisions in the cases of M. Nagaraj (supra) and Ashoka Kumar Thakur (supra) and has held that the State is required to keep in mind the aforesaid provision before it seeks to pass any order in future. The Apex Court has also held that in case State wants to exceed 50% reservation then it is required to base its decision on the quantifiable data and as this exercise has not been done, therefore, keeping in mind the said parameter, the Apex Court directed the State to place the quantifiable data before Tamil Nadu State Backward Classes Commission and on the basis of quantifiable data amongst other things, the Commission will decide the quantum of reservation.

18. In the matter of State of Karnataka, the Apex Court duly considered the aforesaid provision and decision and held in the context of Karnataka Scheduled Castes, Scheduled Tribes and other backward Classes (Reservation of Seats in Educational Institutions and of Appointments or Posts in the (Services under the

State) Act, 1994 that operation of Sections 4, 5 and 7 of the Act of 1994 was stayed and amendment to Articles 15 and 16 of the Constitution has been made vide Constitution (Ninety-third Amendment) Act, 2005 and Constitution (Eighty-first Amendment) Act, 2000 respectively and considering the pronouncement in *M. Nagaraj (supra)* also laid down that reservation could be made only on the basis of quantifiable data before the Government and as this exercise has not been undertaken and the State Govt, has not collected the quantifiable data nor presented such data before the Court, the Apex Court directed the State of Karnataka to re-visit Sections 4, 5 and 7 of the Act of 1994 in light of the judgments of the Apex Court. One year's time was given to the State Government to take appropriate decision. The interim order was ordered to be continued for a period of one year.

19. In the instant case, the State Government has not made any study nor collected the quantifiable data, which is necessary. When certain community is already in backward class what makes it special one as compared to others in backward class was not point of reference to Chopra Committee, when concept of creamy layer exclusion was existing in backward classes what led to providing further reservation to EBC has been not made clear in any comparable data. In view of the decisions of the Apex Court in the cases of *M. Nagaraj (supra)*, *Indra Sawhney (supra)* and *Ashoka Kumar Thakur (supra)*, we direct that the State Government shall re-visit Sections 3 and 4 of the Act of 2008 as well as the Notifications. The State Government shall keep in mind that benefit of reservation is provided to the needy and is not usurp by the persons in the same class who have already come up on higher level income group. Reservation to the higher income group is not envisaged in the Other Backward Classes. The State shall keep in mind the law laid down by the Apex Court in various decisions in *Indra Sawhney (supra)*, *M. Nagaraj (supra)* and *Ashoka Kumar Thakur (supra)*. The State shall also consider the extent of reservation which it can do in light of aforesaid decisions and of providing of further reservation than existing. We direct the State not to give effect to the Sections 3 and 4 of the Act of 2008 and the Notification with respect to enhancing financial limit of creamy layer from 2.5 lacs to 4.5 lacs. Let the State reconsider provision for creating Special Backward Class, provision of 14% reservation to EBC also.

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

reservation for a period of two months thereafter. As agreed, we leave all the questions raised in the petitions to be examined by the State at first instance in light of amended provisions of Articles 15 and 16 of the Constitution and decisions of Apex Court in *Indra Sawhney (supra)*, *M. Nagaraj (supra)*, *Ashoka Kumar Thakur (supra)*, *Suraj Bhan Meena (supra)* and *S.V. Joshi (supra)*.

21. The writ petitions thus stand disposed of in terms of the aforesaid observations and directions.