

(2017) 05 AHC CK 0024
In the Allahabad High Court
Case No : 156 of 2017

Gaurav Sharma

APPELLANT

Vs

State Of U.P. Thru Secy. And ORS.

RESPONDENT

Date of Decision : 04-05-2017

Acts Referred:

[Constitution of India](#), [Article 16 \(4\)](#) -
Income Tax Act 1957, Section 1, Section 3

Citation : (2017) 05 AHC CK 0024

Hon'ble Judges : Dilip B. Bhosale, Dilip Gupta, Yashwant Varma

Bench : Full Bench

Advocate : Himanshu Pandey, S.N. Pandey, Sujeet Kumar, Chhaya Gupta,
Manisha Chaturvedi, Chandra Kala Chaturv, Vijay Gautam, Madhulika Singh

Judgement

1. The present Full Bench came to be constituted for determination of the following three issues which stand formulated in the referral order dated 6 April 2017. "A. Whether the candidature of an OBC candidate is liable to be rejected on the ground of the caste certificate having been submitted after the last date for submission of applications?

B. Whether the decision in Arvind Kumar Yadav lays down and represents the correct position in law ?

C. Whether there exists any irreconcilable difference or repugnancy between the norms fixed by the Union and State Governments with regard to certification of creamy layer? If not, its effect."

2. The order of reference itself came to be made in an intra court appeal challenging a judgment of a learned Single Judge dismissing a writ petition following the decision in Arvind Kumar Yadav Vs. U.P. Police Recruitment and Promotion Board¹. Subsequent thereto, the learned Single Judge while considering a batch of writ petitions expressed doubt upon the correctness of the law as declared by the Division Bench in Arvind Kumar Yadav and by an order

dated 1 March 2017 referred the matters for consideration to a larger Bench. It was pursuant to the said order that the writ petitions came to be tagged along with the lead special appeal and were placed for consideration before the Division Bench on 6 April 2017.

3. During the course of consideration of submissions there came to the fore the issue of an apparent conflict between the decision rendered in Arvind Kumar Yadav and the judgments rendered by two other Division Benches in Pravesh Kumar Vs. State of U.P. and two others² and Shubham Gupta Vs. Indian Overseas Bank Office, Chennai & Ors³. In the referral order the Division Bench noted that while the decision in Shubham Gupta had come to be rendered before Arvind Kumar Yadav, the same 1 Special Appeal No. 762 of 2016 decided on 5 December 2016 2 Special Appeal Defective No.136 of 2017, decided on 1 March 2017 3 Writ Petition No.748(S/B) of 2014 had not been noticed therein. Insofar as the decision in Pravesh Kumar is concerned, the same although pronounced subsequent to Arvind Kumar Yadav, the Division Bench had failed to notice the latter judgment. This aspect was noticed in the referral order in the following terms: "The Division Bench while deciding Shubham Gupta observed:" Thus, before us, there are two views of the Supreme Court on the matter. The first one as propounded by the Supreme Court in the case of Bedanga Talukdar (supra) is that "there cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement". The Supreme Court further held that "the relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India". The second view as propounded by the Supreme Court in the case of Raj Kumar Gijroya (supra) is that the candidature of those candidates, who belonged to the Scheduled Caste and Scheduled Tribes categories, could not be rejected simply on account of late submission of caste certificate. In the case of Pushpa (supra), which has been upheld by the Supreme court one another case of Tej Pal Singh & Ors v. Govt. of NCT of Delhi has been referred to in which the Delhi High Court held that "if a person is SC his is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to "SC" category and act thereon by giving the benefit to such candidate for his belonging to "SC" category". The latest view accepted by the Supreme Court in the case of Raj Kumar Gijroya (supra) permits to accept the caste certificate even if it was submitted after the cut of date fixed therefor before publication of select list. Therefore, to our understanding, we proceed to accept the latest view of the Supreme Court laid down in the case of Raj Kumar Gijroya (supra) and quash the order impugned dated 26.04.2014 (Annexure No.1 to the writ petition). The writ

petition stands allowed."

4. In Pravesh Kumar the Division Bench took a similar view and summed up the legal position thus:" Law on the subject of certificate being accepted after the last cut of date has been clarified by Apex Court in the case of Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board & Another reported in 2016 (4) SCC 754. In view of this, once certificate had been submitted on 18.02.2016, then the said certificate in question could not have been refused to be accepted, on the premises that it was submitted after last cut of date. Perusal of certificate would go to show that certificate in question has been issued verifying social status of appellant. Said certificate apart from describing that appellant hails from OBC category, also proceeds to look into annual income of the parents of the appellant continuous for last three years and it has been found by the authorities concerned that annual income of parent of appellant in last three years is not more than Rs. 8 lacs nor they are having property more than that as is provided under Income Tax Act 1957. Once Creamy Layer has been defined and as per the certificate, petitioner will have to be accepted as falling under "Non Creamy Layer". Said certificate was in reference to preceding three years, and as per the terms and condition of advertisement, such certificates were valid that has been produced as per the format dated 01.04.2015 uptill the last date. The certificate, as it could not have been refused to be accepted, accordingly has to be accepted as it is."

5. The decision in Arvind Kumar Yadav, however, strikes a discordant view when it holds:" So far as the judgment of the Apex Court in Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board & Another [Civil Appeal No.1691 of 2016 (Arising Out of SLP (C) No. 27550 of 2012)] is concerned, we may only notice that the Apex Court judgment was not considering a case where the terms and conditions in the matter of certificate, being submitted in prescribed proforma for claiming the benefit of OBC category, had been provided for under the advertisement itself. The terms and conditions mentioned in the advertisement are binding upon all the appellants and have to be applied uniformly, learned Single Judge is correct in recording that the said judgment was clearly distinguishable to the facts of the present case."

6. Since there appears to be a clear conflict between the views taken by the Division Benches in Pravesh Kumar, Shubham Gupta on the one hand and Arvind Kumar Yadav on the other, it appears appropriate for the present batch of matters being referred to a larger Bench for consideration....."

7. The writ petitions as well as the special appeals emanate from identical facts and from a process of recruitment initiated by the U.P. Police Recruitment and Promotion Board. Since the facts are more or less identical, we for the purposes of the present decision, only note the skeletal facts pertaining to Special Appeal No. 156 of 2017. The appellant applied for selection to the post of Computer Operator GradeA in terms of an advertisement dated 23 February 2016. It is not disputed that the appellant applied as a candidate belonging to the Other

Backward Classes (OBC) and further held out in the application form that he belongs to the noncreamy layer. He is stated to have qualified a written examination as well as a typing test pursuant to which he was issued a provisional admit card and called for document verification on 8 September 2016. On 21 December 2016, the final results were declared and although the cut off marks for the OBC category was 90, the appellant who had secured more marks was not included in the list of selected candidates. In the writ petition, it was averred that the appellant was orally informed that since the caste certificate submitted by him was not in the prescribed format, the candidature of the appellant was treated as falling in the general category. Since the appellant had not obtained marks higher than the last admitted candidate in the general category, his name was not shown in the list of selected candidates. It was the case of the appellant further that after he had been orally informed of his caste certificate not being in the required format, he did apply for a fresh caste certificate which was subsequently obtained by him. However, the same was not accepted by the respondents constraining him to file the writ petition. The learned Single Judge following the decision in Arvind Kumar Yadav held that a certificate submitted after the last date cannot be taken into account.

8. In order to complete and encapsulate the facts which are common to all the petitioners and the appellant before us, it becomes pertinent to point out that all of them initially submitted certificates issued by the Government of U.P. which was described as a "CERTIFICATE TO BE PRODUCED BY OTHER BACKWARD CLASSES APPLYING FOR APPOINTMENT TO POST UNDER THE GOVERNMENT OF INDIA". These certificates which appear to be in a prescribed format held out the following certification : "This is to certify that "VERNACULR MATTER OMITTED" District "VERNACULR MATTER OMITTED" in the Uttar Pradesh state belongs to the Nai Community which is recognized as a backward class under the Government of India, Ministry of Welfare Resolution No. 12011/68/93-BCC (C) dated 10th Sept. 1993, published in the Gazette of India, Extra Ordinary Part-I Section-I Dated 13th Sept. 1993.

"VERNACULR MATTER OMITTED" his family ordinarily reside(s) in the 158,/1]

"VERNACULR MATTER OMITTED" District "VERNACULR MATTER OMITTED" of the Uttar Pradesh state. This is also to certify that he/she does not belongs to the persons/sections (Creamy Layer) mentioned in column 3 of the schedule to the Government of India, Department of Personnel & Training O.M. No. 36012/22/93 Estt(SCT) dated 080993 which is modified vide OM No. 36033/3/2004 Estt (Res.) dated 09/03/2004 and further modified vide OM No. 36033/3/2004Estt.(Res.) dated 14/10/2008 or the latest notification of the Government of India." Insofar as the advertisement is concerned, the caste certificate was liable to be submitted in the following format described as "Praroop 1": "VERNACULR MATTER OMITTED"

9. The primary contention which was canvassed on behalf of the appellants and writ petitioners was that insofar as Scheduled Castes, Scheduled Tribes and OBC

candidates are concerned, the prescription of a cut off date for the production of caste certificates is wholly superfluous and of no significance whatsoever. It was submitted that a caste certificate is essentially a recognition of a status already obtained and held by a candidate belonging to the aforementioned three categories. It was sought to be contended that the caste certificate was not a document conferring a particular status. Elaborating upon this submission, it was submitted that a candidate belonging to the Scheduled Caste, Scheduled Tribes or for that matter the OBC category acquires that status by virtue of belonging to a particular caste, category or group. The certificate therefore, it was submitted, was in essence a recognition or certification of an already existing status. In this view, learned counsels submitted that even if the caste certificate was submitted after the last date prescribed in the advertisement, the same could not be refused. It was submitted that the prescription of a last date for submission of such a certificate clearly did not prescribe to any rationale inasmuch as a holder of the said certificate belonged to that particular category even before the date prescribed in the advertisement and even thereafter. It was then submitted that such a prescription being read into the provisions of an advertisement or recruitment notice would not only be irrational and arbitrary but also violative of the constitutional guarantees enshrined in Articles 14, 15 and 16 of the Constitution. Insofar as question No. 3 is concerned, the issue itself came to be formulated in light of the submission advanced by learned counsels that there was no repugnancy between the creamy layer standards stipulated by the State and the Union Government. It was sought to be demonstrated before us that the benchmarks formulated by the Union Government were lower than those prescribed by the State and therefore, merely because the certificates produced were with reference to appointments to posts under the Government of India, the same could not be discarded by the State respondents. Appearing on behalf of the State, the learned Chief Standing Counsel submitted that insofar as OBCs are concerned, both the Central as well as the State Governments maintain a separate list. Our attention was drawn to a list of OBC's as specified by the Union Government and the list prepared by the State pursuant to the provisions of the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 to demonstrate that with respect to various entries there was lack of commonality in the two lists as also to establish that various castes/communities though classified as an OBC in the Central list did not find mention in the list of OBC's as formulated by the State of U.P. under the provisions of the 1994 Act. The learned Chief Standing Counsel then drew our attention to the provisions of the advertisement to contend that all participating candidates had been put to adequate notice that a caste certificate was to be obtained and submitted in a prescribed format. He further contended that the advertisement not just prescribed time limits within which a caste certificate on the prescribed format was to be submitted but also stipulated the consequences of a certificate not being submitted within the time fixed thereunder. Sri Upadhyay further sought to highlight the fact that for 1865 vacancies which came to be advertised, the Board received as many as 41,000

applications. It was his submission that in the recruitment process as many as 391, 37 and 503 vacancies stood identified as being reserved for Scheduled Castes, Scheduled Tribes and OBC candidates respectively. It was his submission that bearing in mind the large number of applications, which were made and the number of candidates who were ultimately shortlisted as being eligible, it cannot be said that the terms and conditions of the advertisement were ambiguous or had created any doubt or uncertainty in the minds of the prospective applicants. He submitted that the terms and conditions of the advertisement were liable to be construed strictly especially since no prejudice was caused to the appellants and the writ petitioners. The rival contentions and as is evident from the referral order itself turned upon the ratio as discernible from the judgment rendered by the Supreme Court in Ram Kumar Gijroya Vs. Delhi Services Selection Board & another, (2016) 4 SCC 754. While the appellants canvassed for our consideration that Ram Kumar Gijroya was an authority for the proposition that a caste certificate submitted even after the last date prescribed for an advertisement cannot be discarded or disregarded, the respondents would contend that no such absolute principle or proposition of law can be said to flow from the said judgment. Having noticed the backdrop in which the issue has travelled to the Full Bench, we deem it appropriate to notice the following additional facts. Admittedly under the advertisement, the last date for filing of applications was prescribed as 4 April 2016. In paragraph 5.1, the advertisement set forth the format and requirement of a caste certificate to be submitted by a candidate who claimed to belong to the OBC (noncreamy layer) category. This was again clarified further in paragraph 5.4. In terms of paragraph 5.4 (5) the respondents mandated that a candidate who claims to belong to the OBC (noncreamy layer) category in terms of the provisions of the 1994 Act would have to submit a caste certificate in "Praroop1" which should have been issued after 1 April 2015 but in any case not later than the last date for submission of the application form. In paragraph 5.4 (6), the advertisement further provided that all those candidates desirous of concessions by virtue of belonging to a reserved category must fill in the reservation category against which they were entitled to be selected and to also ensure that the certificate itself is obtained from the competent authority prior to the making of the application. Paragraph 5.4(10) reads thus: "VERNACULR MATTER OMITTED" This clause in unequivocal terms placed all candidates asserting to belong to a reserved category to notice that in case the original caste certificates are not produced it would be presumed that they do not seek to claim the benefit of reservation and their claim for reservation shall consequently stand negatived and they shall be treated as candidates falling in the general category. This clause further cautioned all such prospective candidates by providing that in respect of the above stipulation, no further opportunity would be provided to any candidate to seek any amendment or modification. Before we proceed to rule upon the questions framed for our consideration, it would be apposite to bear in mind certain basic precepts. While a Scheduled Caste or a Scheduled Tribe comes to be identified and declared as such by virtue of the constitutional orders promulgated by Parliament in terms of

Articles 341 and 342 of the Constitution, the classification of OBC's is a subject which is left in the province of individual State Governments. While a Scheduled Caste or a Scheduled Tribe may also be mentioned and identified under the constitutional orders with reference to a particular State, it is settled law that the States can neither expand nor modify any entry appearing in the two constitutional orders nor can they by an executive or administrative order expand upon or read something into an entry which appears in the orders promulgated under Articles 341 and 342. OBC's however are identified and recognized by individual States with reference to the backwardness of a particular caste, class or group in that particular State. Therefore, it logically follows that a list of OBC's which is prepared by a particular State cannot have an over arching or panIndia operation or effect. Castes which come to be included in a list of OBC's prepared by a State have to be necessarily read to mean OBC's in that particular State alone. The OBC's specified in Schedule I to the 1994 Act is, therefore, a list of castes/communities which are conferred the status of an OBC in the State of U.P. alone. This issue does not brook any debate. However, it is useful to refer to the following observations which appear in the judgment of the Supreme Court in *M.C.D. V. Veena and others*, (2001) 6 SCC 571: "Castes or groups are specified in relation to a given State or Union Territory, which obviously means that such caste would include caste belonging to an OBC group in relation to that State or Union Territory for which it is specified. The matters that are to be taken into consideration for specifying a particular caste in a particular group belonging to OBCs would depend on the nature and extent of disadvantages and social hardships suffered by that caste or group in that State. However, it may not be so in another State to which a person belongs thereto goes by migration. It may also be that a caste belonging to the same nomenclature is specified in two States but the considerations on the basis of which they been specified may be totally different. So the degree of disadvantages of various elements which constitute the data for specification may also be entirely different. Thus, merely because a given caste is specified in one State as belonging to OBCs does not necessarily mean that if there be another group belonging to the same nomenclature in other State and a person belonging to that group is entitled to the rights, privileges and benefits admissible to the members of that caste. These aspects have to be borne in mind in interpreting the provisions of the Constitution with reference to application of reservation to OBCs. xxxxxxxxxxxx xxxxxxxxxxxx A careful reading of this notification would indicate that the OBCs would be recognised as such in the Government of National Capital Territory of Delhi as notified in the Notification dated 20.01.1995 and further for the purpose of verification of claims for belonging to castes/communities in Delhi as per the list notified by the National Capital Territory of Delhi the certificates will have to be issued only by the specified authorities and certificates issues by any other authority could not be accepted. The Government of India has also issued instructions from time to time in this regard which indicated that a person belonging to OBC on migration from the State of his origin in another State where his caste was not in the OBC list was entitled to the benefits or

concessions admissible to the OBCs in his State of origin and Union Government, but not in the State to which he has migrated. Thus the High Court lost sight of these aspects of the matter in making the impugned order in either ignoring the necessary notifications issued in regard to classification of OBC categories or in the matter of verification thereof. Thus the order made by the High Court in this regard deserves to be reversed." This aspect assumes significance when viewed in conjunction with the recitals contained in the initial caste certificate submitted by the appellant and the writ petitioners, upon a careful scrutiny of which we find that the same only recognised the holder thereof as being a member of a backward class recognised as such under a Government of India notification. The subsequent certificates which were produced by the appellant and the petitioners clearly certified them as being members of the OBC and covered under Schedule I to the 1994 Act. Allied to this issue is the requirement of an OBC candidate being able to establish that he does not fall in the creamy layer. An OBC candidate therefore has to establish not just that he is recognised as an OBC in the State concerned but also that he does not fall within the zone of exclusion, namely the creamy layer. Both these conditions have to be cumulatively satisfied. We have articulated these basic principles for they shall have some bearing on the questions formulated for our consideration. The second aspect which must necessarily be noted is the significance of a last date prescribed in an advertisement and its impact. A last date comes to be prescribed in an advertisement or recruitment notice to seek certain well established objectives. It firstly puts all prospective candidates on notice with regard to the eligibility qualifications that the employer desires a particular candidate to hold. The prescription of the last date also acts as information to the prospective candidates to test and ascertain whether they are eligible to participate in the selection process. There are therefore, upon the prescription of such a last date in the advertisement no shifting timelines or uncertainty. The prescription of such a condition in the advertisement also eschews any arbitrary action and denudes the authority from wielding a discretion which may be abused. One may in this connection usefully refer to the judgment of the Supreme Court in *Rakesh Kumar Sharma Vs. State (NCT of Delhi) and others* 2013) 11 SCC 58 which noticed the earlier precedents on the subject and observed as follows: "12. In *U.P. Public Service Commission, U.P., Allahabad & Anr. v. Alpana*, (1994) 2 SCC 723, this Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined as on last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared upto the last date of submission of applications, would not be eligible.

13. A three Judge Bench of this Court, in *Dr. M.V. Nair v. Union of India & Ors.*, (1993) 2 SCC 429, held as under:"

9.....It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date." (Emphasis supplied)

14. In *Smt. Harpal Kaur Chahal v. Director, Punjab Instructions, Punjab & Anr.*, 1995 (Suppl) 4 SCC 706, this Court held:

"2....It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications, such of those candidates, who possessed of all the qualifications as on that date, alone are eligible to apply for and to be considered for recruitment according to Rules." (Emphasis supplied)

15. This Court in *Rekha Chaturvedi v. University of Rajasthan*, 1993 Supp (3) SCC 168 held:

"10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/ notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission v. B. Sarat Chandra* (1990) 2 SCC 669; and *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* (1990) 3 SCC 655." (Emphasis supplied)

17. A threeJudge Bench of this Court in *Ashok Kumar Sharma v. Chander Shekhar* (1997) 4 SCC 18 reconsidered and explained the judgment of *Ashok Kumar Sharma* (1993) (supra) observing:

"6. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a

wellestablished one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment." (emphasis added) The Court in *Ashok Kumar Sharma* (1993)(supra) further explained that the majority view in *Ashok Kumar Sharma* was not correct, rather the dissenting view by Justice R.M. Sahai was correct as the Court held as under:

"6. The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview." (Emphasis added)

19. In *Bhupinderpal Singh v. State of Punjab*, AIR 2000 SC 2011, this Court placing reliance on various earlier judgments of this Court held:

"13....The High Court has held (i) that the cutoff date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cutoff date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with." (emphasis supplied) A similar view has been reiterated by this Court in *Pramod Kumar v. U.P. Secondary Education Services Commission*, (2008) 7 SCC 153; and *State of Orissa v. Mamta Mohanty* (2011) 3 SCC 436.

22. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/ advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental

rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement." Not too a long ago, a Full Bench of this Court in *Rajendra Patel Vs. State of U.P.*⁸ was called upon to consider the validity of the requirement placed by the Public Service Commission upon candidates to submit hard copies of documents and testimonials by a particular date even though the same had already been uploaded along with an online application form. Underlining the importance to adhere to such requirements as placed in an advertisement, the Full Bench noted as follows: "Having regard to the clear stipulations which are contained in the advertisement which was issued by the Commission and the instructions to candidates in the brochure, all candidates were placed on an unambiguous notice in regard to the process of compliance and the consequences of a breach. Compliance was not made optional but was mandatory for all the candidates. When the Commission holds public examinations on such a large scale, candidates must be clearly aware of the fact that it is not open to a candidate to decide as to when an application should be submitted and compliance with the time schedule which has been indicated is mandatory. If this is not read to be mandatory, the entire process of holding an examination would stand dislocated. If no last date for the receipt of the hard copy of the application with the documents were to be provided for, the issue which would arise would be until when would the Commission be required to consider the application submitted. Should this be until the examination is held or should this continue until the date fixed for the holding of the interview? These aspects cannot be left in 8 2015 (8)ADJ 219 uncertainty more so at the individual discretion of candidates. The submission of the hard copy of the application together with the documents is not a mere ministerial act nor does it constitute a mere confirmation of the application which has been submitted online. Candidates who submit applications online are still required to submit full documentary evidence which evinces eligibility and satisfaction of the required conditions. For instance, a candidate who applies for a particular post may be required to hold a qualification with a specialisation in a particular subject. It is only on scrutinising the application and the documents that the Commission can determine whether the candidate does fulfil the required conditions. This process cannot be left in a perpetual state of indecision or uncertainty. Hence, we are of the view that as a matter of first principle, the time schedule which was prescribed by the Commission for submission of the print out copy of the application submitted online with the documents was of a mandatory nature. Noncompliance with the schedule would invite the consequence which was clearly specified, namely the rejection of the candidature of the applicant. Even on merits, we are not inclined to accept the correctness of the principle which has been laid down in *Nirbhay Kumar* (supra) that the submission of a hard copy of the application together with the accompanying documents is merely an act of confirmation of the application. The view which has found acceptance in *Nirbhay Kumar* (supra) would, in our view, dislocate the examination process and would render the process which is conducted by the Commission in a perpetual state of

uncertainty. We are, with respect, in agreement with the view which was expressed by the Division Bench in *Raj Narayan Singh (supra)* decided on 18 February 2015. Reliance was also sought to be placed on a judgment of the Supreme Court in *Dolly Chhanda Vs Chairman, JEE6*. In *Dolly Chhanda (supra)*, the Supreme Court has observed that the general rule is that while applying for any course of study or post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in the application form, as the case may be, unless there is an express provision to the contrary. The Supreme Court held that there could be no relaxation in the matter of holding the requisite eligibility qualification by the date fixed. However, depending upon the facts of the case, there can be some relaxation in the matter of submitting proof and it may not be proper to apply a rigid principle which may pertain to the domain of procedure. Hence, every infraction of the rule relating to submission of proof need not necessarily result in the rejection of the candidature. These principles which have been laid down are not in dispute and they cannot be. However, the issue in the present case is whether the submission of a hard copy by the specified date together with all the documents was merely a matter of procedure. To accept the submission of the petitioner would, as we have held earlier, result in a situation where a candidate would be entitled to assert that despite the stipulated last date and a prescribed consequence of invalidation which has been drawn to the notice of the candidates, the Commission would be bound to scrutinise applications which are received together with the hard copies beyond the prescribed date. This, in our view, would not be permissible. We may also note that in a judgment in *Secretary, UP Public Service Commission Vs S Krishna Chaitanya*, the Supreme Court has held that the Commission cannot be directed to declare the final results when the application form of a candidate had not been received within the prescribed period."

Having noted the basic principles which govern the issues raised herein we proceed to deal with the question whether the prescription of a cut off date in the case of an OBC candidate violates the provisions of Articles 14, 15 and 16 of the Constitution and is liable to be treated as superfluous. Reservation in favour of OBC's is traceable to the provisions of Article 16 (4) of the Constitution and stands provisioned for in the 1994 Act. The Constitution as well as the 1994 Act recognises the backwardness and social disadvantages faced and inflicted upon a class or group classified by the State as an OBC. Reservation is aimed at uplifting a particular class and is essentially an ameliorative measure to enable the members of the said class or group to ultimately shed off the burden of disparity and integrate in society. It is for this reason that the State provides for a particular percentage of seats in public services and posts being reserved in their favour. The 1994 Act further empowers the State Government to extend various other concessions and relaxations in favour of OBC's in respect of an upper age limit and entrance fee for examinations in terms of section 8 thereof. Section 8 reads thus:"

8. Concession and relaxation(1) The State Government may, in favour of the categories of person mentioned in subsection (1) of Section 3, by order, grant such concessions in respect of fees for any competitive examination or interview, and relaxation in upper age limit, as it may consider necessary. (2) The Government Orders in force on the date of the commencement of this Act, in respect of concessions and relaxations, including concession in fees for any competitive examination or interview and relaxation in upper age limit and those relating to reservation in direct recruitment and promotion, in favour of categories of persons referred to in subsection (1), which are not inconsistent with the provisions of this Act, shall continue to be applicable till they are modified or revoked, as the case may be." However a bare reading of the said provision clearly establishes that the enactment nowhere envisages exempting OBC's from the rigours of a cut off date prescribed under an advertisement.

Having noticed the statutory position, we then proceed to consider whether such a concession or exemption can be said to flow from Articles 14 or 16 of the Constitution as contended. Upon a thoughtful consideration, we find ourselves unable to accept the broad proposition as canvassed by the learned counsels. We are of the considered view that no such right of exemption can possibly be said to reside in or flow from Article 16 of the Constitution. Insofar as infraction of Article 14 is concerned, we presume that the same has been urged as a corollary to the contention that the prescription is superfluous. We are afraid that we find ourselves unable to sustain this submission either. As noted above the prescription of a cut off date in an advertisement serves more than one salutary purpose. By requiring all applicants to adhere to this date, the State is not practicing any discrimination nor can it be said to be acting unfairly. The absence of such a requirement would quagmire the entire selection process in a state of complete uncertainty. One of the primary purposes which such a stipulation serves is enabling the selecting body to identify the number of candidates constituting the field of eligibility. Judging whether a particular candidate is entitled to the benefits of reservation or has rightly claimed as falling in the said category is an essential exercise liable to be undertaken. For the purposes of undertaking this exercise the selecting body must be in a position to adjudge for itself whether a particular candidate is entitled to the benefits and exemptions as claimed. If this were not read as being an inherent power in the selecting body, the process of selection itself may be completely derailed. While it is a true that a caste certificate is only a recognition of an existing status, as noted above, an OBC candidate necessarily must establish the twin conditions of belonging to a OBC group recognised by the State and also that he does not fall within the creamy layer. This requirement is liable to be judged with reference to a date prescribed in an advertisement. The certificate of OBC (non creamy layer) is issued with reference to the financial condition of the holder or his parents assessed over a period of three years. The financial condition of a holder is liable to change or fluctuate over a period of time. Viewed in this light it cannot be said that the requirement of submission of such a certificate by a particular date is

not attracted to the case of an OBC candidate. We then proceed to address the second question framed for our consideration and which pertains to the correctness or otherwise of the judgment of the Division Bench in Arvind Kumar Yadav. As noted above, the sheet anchor of the case of the appellant and the writ petitioners was the judgment of the Supreme Court in Ram Kumar Gijroya. It becomes relevant to note that in the said case, the Supreme Court was called upon to consider the correctness of a judgment rendered by the Delhi High Court which had overturned a judgment rendered by a learned Single Judge of the said Court who had followed two earlier precedents to hold that the candidature of a Scheduled Castes/Scheduled Tribes candidate could not be turned down only on the ground that the caste certificate was submitted after the last date prescribed in the advertisement. The two prior precedents which the Delhi High Court considered were Pushpa Vs. Govt. (NCT of Delhi)⁹ and Tej Pal Singh V. Govt. (NCT of Delhi)¹⁰. In the appeal of Ram Kumar Gijroya, the learned Single Judge of the Delhi High Court following the two precedents referred to above had directed the respondents therein to accept the OBC certificate of the appellant. One of the significant and distinguishing features of Ram Kumar Gijroya, which immediately springs to light is that the advertisement did not prescribe a cut off date at all. The requirement of submitting the OBC certificate was introduced only by a notice issued by the Delhi Subordinate Services Selection Board while declaring the final results. This is evident when one reads paragraph 8 of the report which is as follows:

" 8. Mr. R.C. Kaushik, the learned counsel appearing on behalf of the appellant contends that the Division Bench of the High Court erred in not giving the opportunity to the appellant to submit the O.B.C. certificate after the cutoff date of the application. The requirement of submitting the O.B.C. certificate before the cutoff date of the application was introduced by the respondent DSSSB only while declaring the result on 15.12.2008, holding that the appellant was not eligible for selection of the post of Staff Nurse as the O.B.C. certificate was received after cutoff date. The learned counsel contends that the stand of respondent DSSSB is arbitrary, illegal and unreasonable and is also contrary to the settled proposition of law and guidelines issued on reservation and concession for candidates belonging to the reserved categories. The learned counsel places reliance upon the judgment of the Delhi High Court in the case of Tej Pal Singh & Ors. v. Govt. Of NCT of Delhi^[1], wherein it was categorically held by the High Court that the petitioners therein were entitled to submit such certificates even after the cutoff date fixed by the advertisement." It was then observed :

"In our considered view, the decision rendered in the case of Pushpa (supra) is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in the cases of Indra Sawhney and Valsamma Paul (supra) wherein this Court after interpretation of Articles 14,15,16 and 39A of the Directive Principles

of State Policy held that the object of providing reservation to the SC/ST and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39A of the Directive Principles of State Policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned single Judge. Hence, the impugned judgment and order passed by the Division Bench in the Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in the cases of Indra Sawhney and Valsamma Paul (supra). Therefore, the impugned judgment and order passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24.11.2010 passed by the learned single Judge in W.P. (C) No. 382 of 2009 is hereby restored." The judgment of the Delhi High Court in Pushpa was a reiteration of the principles laid down in Tej Pal Singh. A close reading of the judgment in Pushpa clearly establishes that the same was not considering the issue of a stipulation in the advertisement requiring candidates to submit all testimonials prior to a specified cut off date. The judgment notices that although the petitioner had applied for grant of a certificate prior to the last date for submission of applications, the same was issued by the office of the concerned Sub Divisional Magistrate only thereafter. The learned Single Judge of the Delhi High Court further noted that the OBC certificate had been sent prior to the declaration of the results and it was in this backdrop that it was held that the petitioner therein cannot be made to suffer for the lapses on the part of the office of the Sub Divisional Magistrate. In Tej Pal Singh, the issue of a specific stipulation in an advertisement did not arise at all. To the contrary, the following extract from the judgment of Tej Pal Singh clearly demonstrates the distinct factual background against which the same came to be rendered. In paragraph 14, it was held:"

14. This view taken by me stands confirmed even by the advertisement issued by the respondentBoard itself. It seems that that respondentBoard was conscious of the aforesaid government guidelines. It is because of this reason that in the advertisement although 30th June 1998 is stated as cut off date to adjudge the eligibility qua educational qualification, professional experience and age limit, this date is not specified for the purposes of furnishing SC and OBC certificates....." Neither Pushpa nor Tej Pal Singh considered a negative stipulation in an advertisement nor did the impact of a clause which purportedly disqualified a candidate from claiming the benefits of reservation arise or fall for determination. On the other hand, contentions on lines similar to those canvassed before us were addressed before a Division Bench of the Bombay High Court in Pranjali Bhalchandra Shirsat vs State Of Maharashtra¹¹ wherein again the judgment of

Ram Kumar Gijroya was pressed into aid. Noticing the negative stipulation in the advertisement which prescribed that in case a noncreamy 11 2016 SCC OnLine Bom 5307 layer certificate is not submitted on or before the last date, the category claim would be denied, the Division Bench of the Bombay High Court observed as follows:

"19. In the face of such a stipulation, which binds the petitioner as also the respondents, more particularly when it is not questioned or impugned as contrary to law or ultra vires the constitutional provisions, then, we cannot grant the relief as prayed in the writ petition. The petitioner has categorically mentioned in the writ petition itself that in the application form, though she claimed as belonging to OBC, she did not possess the noncreamy layer certificate. She did not possess this certificate till 2nd July, 2016, which was the last date for filling up the preference form and making changes, if any, therein. It is in these circumstances, when she took her chance in the first round of admission for MBBS degree course as open category candidate, but having not been successful therein, in the second round, she expects the court to recognise her OBC status and allow some proof of the income below the specified limit to be furnished belatedly.

20. She claims benefit of the two judgments, one delivered by the Hon'ble Supreme Court of India and one by this court. In the Hon'ble Supreme Court judgment in the case of Dolly Chhanda (supra) the appellant passed 10+2 (science) examination conducted by the Council of Higher Secondary Education. She was desirous of joining a medical course. She appeared in the Joint Entrance Examination, 2003 under the reserved MI category being daughter of an exserviceman on the ground of permanent disability. Clause 2.1.4 of the information brochure carved out certain reserved seats for children/widows of personnel of armed/paramilitary forces of Orissa, killed/disabled in action during war or peacetime operation. The petitioner pointed out that during the course of scrutiny of papers, it was revealed that in the certificate issued to her father by the Zilla Sainik Board, in column 3, which pertained to disabled/killed in war/hostilities, the words "not eligible" were written. Since the certificate did not satisfy the requirement of the reserved MI category, her candidature was rejected. The candidates who had secured ranks at 24 and 26 were granted admission. The petitioner produced the disability certificate which was issued to her father by the army authorities, but in view of the requirement of clause 2.1.4 of the information brochure, the same was not accepted. The appellant's father then requested the Zilla Sainik Board to rectify the mistake and it issued a fresh certificate on 16th July, 2003, which mentioned "permanently disabled" in column 3. It is in these circumstances and when another round of counseling had been fixed on 29 th October, 2003 on account of increase in seats that the appellant went to the admission centre and requested for being given admission on the basis of the fresh certificate issued by the Zilla Sainik Board, which certified that her father had been discharged from the armed forces on the ground of permanent disability. The candidates who had secured rank from 27 to

30 in the MI category were called for counselling, but the appellant's candidature was not considered. The case of the appellant was that it was a mistake of Zilla Sainik Board which had committed error in not issuing a correct certificate but the said mistake having been rectified in the second certificate, she was entitled to admission. It is such a writ petition containing complete factual details, which should not have been dismissed, according to the Hon'ble Supreme Court of India, by the Orissa High Court. It is in those circumstances that the Hon'ble Supreme Court reiterated the general rule in para 7. Its applicability, however, must depend on the facts and circumstances of each case. The category under which the admission was claimed was MI category being daughter of an exserviceman, who was discharged from the armed forces admittedly on the ground of permanent disability. About that, there was never a dispute. The proof of that, though available with the Board, it still issued a certificate contrary to it. That is how it rectified its mistake and upon rectification of that mistake by the Zilla Sainik Board, the discretionary relief was granted on the principle which has been laid down in para 7 and reiterated in para 8.

21. In the case before the Division Bench of this court, in the case of Miss Neha Achrekar (*supra*), the petitioner appeared for the examination styled as Common Entrance Test. She passed it. Her only problem was that she belonged to OBC category but did not have the noncreamy layer certificate when she filled up the form. She obtained it before approaching the court. The allotment of students to the colleges had not started. It is in these circumstances, the petitioner, who had appeared in the Common Entrance Test held in February, 2005, did not have the noncreamy layer certificate. The instructions, which were found and contained in the rules of admission to the course, as referred in para 4 did not contain a negative stipulation as in our case and reproduced above. Now, a distinct condition and stipulation is in place. It is in these circumstances that though the petitioner before this court in the Division Bench case had applied for admission and did not possess the noncreamy layer certificate, her application was still considered, though in the meanwhile she opted for open category. The Division Bench, in para 9, therefore, held that there was a provision of relaxation. The petitioner honestly filled the form in the open category since she did not have the noncreamy layer certificate at the relevant time. The fact that she has been issued the caste certificate enabled the court to hold that her claim was not after thought. It is only the noncreamy layer certificate which could not be obtained within the limitation i.e. upto 12th July, 2005, that relief was granted by this court in its extraordinary, equitable and discretionary jurisdiction. This court did not ignore any negative stipulation." It is often said that a judgment is not to be interpreted as an Euclid's theorem. The ratio of a decision has to be deciphered and culled out bearing in mind the factual backdrop in which it came to be rendered. One may usefully refer to the celebrated passage penned by Lord Halsbury in *Quinn*¹² and often cited in judgments delivered by our courts:"...

there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be

read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all." In *Krishna Kumar V Union of India*¹³ the Supreme Court observed:

"20. ... The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a preexisting rule of law, either statutory or Judgemade, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it. In the words of Halsbury (4th Edn., Vol. 26, para 573): "The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, as ascertained on a consideration of the judgment in relation to the subjectmatter of the decision, which alone has the force of law and which, when it is clear ... it is not part of a tribunal's duty to spell out with difficulty a ratio decidendi in order to be bound by it, and it is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi." We are therefore of the considered view that the Division Bench in *Arvind Kumar Yadav* rightly noted the distinct factual backdrop in which *Ram Kumar Gijroya* came to be rendered. The aspect of there being no consideration of the impact of a negative stipulation in an advertisement in the said judgment of the Supreme Court clearly escaped the Division Benches which pronounced judgments in *Pravesh Kumar* and *Shubham Gupta*. Insofar as question No. 3 as formulated for our consideration is concerned, it would be apposite to first notice the benchmarks placed by the Union and State Governments for the identification of the OBC candidates who may fall within the creamy layer. Insofar as the Union Government is concerned, our attention was drawn to an Office Memorandum dated 14 October 2008, issued by the Department of Personnel and Training in the Ministry of Personnel, Public Grievances and Pensions of the Union Government which prescribed the following standards for identification of OBCs who may fall in the creamy layer. The categorisation under this Office Memorandum is in the following terms: Category Description of Category To whom the rule of exclusion will apply VI Income/ Wealth Test Son(s) and daughter(s) of (a) Persons having gross annual income of Rs. 4.5 lakh or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for period of three consecutive years. (b)

Persons in Categories I, II, III and V A who are not disentitled to the benefit of reservation but have income from other sources of wealth which will bring them within the income/ wealth criteria mentioned in (a) above. Insofar as the State Government is concerned, we were invited to consider the prescription as put in place vide Government Order dated 22 October 2008 and the subsequent amendment to Schedule I to the 1994 Act as effected on 29 January 2014. The relevant extract of the Government order dated 22 October 2008 reads thus: "VERNACULR MATTER OMITTED" A perusal of the provisions made by the Union Government indicates that an OBC candidate who was a son or a daughter of a person having a gross annual income of Rs. 4.5 lakhs or above or possessing wealth above the exemption limit as prescribed in the Wealth Tax Act for a period of three consecutive years would fall within the creamy layer and to such a candidate the rule of exclusion became applicable. However, the ceiling as fixed under the Government Order dated 22 October 2008 in respect of OBC candidates was placed at Rs. 5 lakhs or more. The prescription in respect of the Wealth Tax Act remained the same. The 2014 Amendment to Schedule I further increased this ceiling by prescribing that in order to fall within the creamy layer, it would have to be established by a person that in the last three consecutive years he or his parents had an income of Rs. 8 lakhs or more coupled with the condition of the person not being in possession of wealth above the exemption limit as prescribed under the Wealth Tax Act. The Wealth Tax Act, it is not disputed, is a Central legislation and therefore, would uniformly apply. However, the ceiling limits for income in the last three years are different under the stipulations prescribed by the Union and State Governments. There is, however, evidently no inherent repugnancy in the two norms. While the Central Government prescribes the limit to be Rs. 4.5 lakhs or more, the State enactment places the ceiling at Rs 8 lakhs or more. Based solely upon the rival criteria as prescribed by the Union and State Governments, it is clear that an OBC candidate who does not fall foul of the limits prescribed by the Union Government would also not stand disqualified under the standards fixed by the State. There is therefore, no irreconcilable difference or repugnancy between the two standards. The issue which however, remains to be answered is the impact of such a finding. While it is true that an OBC candidate even if he produces a certificate which evidences that he does not stand excluded from the benefits of reservation in terms of the Office Memorandum dated 14 October 2008, the issue would still remain as to whether he is an OBC as classified and identified by the State of U.P. To recapitulate, we note that although the certificate initially submitted by the OBC candidates before us did not stand excluded by virtue of the standards fixed in the Office Memorandum dated 14 October 2008, the certificate did not evidence them belonging to an OBC as identified in the State of U.P. For the purposes of seeking the benefit of reservation, it is imperative for a candidate to establish that he belongs to the OBC as recognised and identified by the State concerned and further that he/she does not fall within the field of exclusion. We have already noted that both conditions must be cumulatively satisfied. Therefore, in our considered view, even though there is no repugnancy

between the financial criteria fixed by the Union and State Governments for the purposes of identification of a creamy layer, the same on its own would have no favourable impact upon the candidature of the applicant in the absence of a certificate also evidencing and identifying him as belonging to the OBC as recognised and identified by the concerned State. We accordingly answer Question No. 1 in the negative and hold that an OBC candidate is not exempt from the rigours of a cut off or last date prescribed in an advertisement or recruitment notice. We further declare that Arvind Kumar Yadav correctly articulates the law on the issue and overrule Pravesh Kumar and Shubham Gupta. Insofar as Question No. 3 is concerned, we hold that although there is no repugnancy in the norms fixed by the Union and State Government, the same would have no favourable impact upon the eligibility of a candidate unless he also furnishes a certificate evidencing him as belonging to the OBC category as recognised and identified by the State.